# United States Department of Labor
# Employees' Compensation Appeals Board

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| **C.B., widow of S.B., Appellant** | ) | |
| **and** | ) | **Docket No. 20-0189** |
| | ) | **Issued: November 20, 2020** |
| **DEPARTMENT OF ARMY, ARMY SUSTAINMENT COMMAND, 403 ARMY FIELD SUPPORT BRIGADE, Daegu, South Korea, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

### ***JURISDICTION***

On October 31, 2019 appellant filed a timely appeal from a May 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to establish that the employee's death on November 28, 2015 occurred in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On June 27, 2018 appellant filed a claim for compensation by widow (Form CA-5) alleging that her husband, the employee, died on November 28, 2015 of acute myeloid leukemia (AML) due to factors of his federal employment. On the reverse side of the claim form the employee's attending physician, Dr. Jae-Ho Yoon, a hematology specialist, indicated that the employee's direct cause of death was AML. He noted that he was told that the employee worked in a secure facility that stored radiological equipment and had worked with and around petroleum-based chemicals that cleaned, lubricated, and preserved materials in the secure facility. Dr. Yoon checked a box marked "yes" indicating that the employee's death was due to his employment-related condition, and he opined that there was a strong possibility that the employee's job of taking care of radiological materials by inventorying, cleaning, and issuing them had caused his diagnosed AML condition, as exposure to radiation and petroleum have known links to leukemia.

A 2014 position description from the employing establishment for a logistics management specialist indicated that the position entailed working in the Basic Issue and Sensitive Items, Materiel Branch, Supply Division, Army Prepositioned Stock-4. Duties included responsibility over brigade sets, sustainment stocks, operational projects, equipment and supplies, cyclic maintenance, and care of supplies in storage. Other duties included directing and ensuring completion of all inventories, identifying and fixing shortages, and assuming responsibility for all inventory requirements for materials. The description indicated that the position required undergoing nuclear-biological and chemical training. The conditions of employment indicated that he worked with radiological and toxic items, including two 120 millimeter mortars, and toxins listed included "trichsoroethysene, phosphate, steel wool, chromium, other, and cleaner, lubricant, and preservative" (CLP).

A June 20, 2018 letter from appellant indicated that the employee accepted a position in 2007 as a logistics management specialist at the employing establishment and had worked in that position for five years prior to his AML diagnosis. Appellant alleged that the employee worked with radiological materials and other petroleum-based toxins on a daily basis without adequate protection, which she alleged caused his AML.

In a July 18, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed to support her claim and afforded her 30 days to respond.

In a separate July 18, 2018 development letter, OWCP requested that the employing establishment provide additional factual information regarding appellant's claim, including comments from a knowledgeable supervisor regarding the accuracy of all statements submitted in support of appellant's claim. It also requested information regarding which specific materials the employee was exposed to, the frequency of and duration of each exposure, the tasks that the employee performed which resulted in exposure to or contact with radiological, benzene, and petroleum-based materials, and what precautions were taken to minimize the effects of exposure. OWCP also asked if other employees suffered similar ailments. It afforded the employing establishment 30 days to respond.

A July 25, 2018 letter from Dr. Yoon indicated that he had been informed that the employee worked as a logistics management specialist from 2007 until the employee was diagnosed with AML in July 2012, and that his duties included caring for radiological materials with petroleum-based chemicals. Dr. Yoon opined that the employee's occupational exposures to radiological materials and associated chemicals caused the employee's AML, which directly caused his death.

In a November 2, 2018 response, an OWCP development letter, the employing establishment indicated that the employee's former supervisor, who had worked in the facility since 2000, alleged that it was highly unlikely for an employee to be exposed to radioactive hazards because the equipment with radioactive material only emitted alpha rays, which were stopped by paper, skin, and plastic, and this equipment was stored in cardboard boxes and metal and plastic containers. It also stated that the secured warehouse where the employee worked was a humidity-controlled facility with two rooftop ventilators that constantly circulated the indoor air. The employing establishment indicated that lower level employees actually handled the equipment and referred to the 2014 position description for the logistics management specialist, noting that the employee's role as a supervisor would have limited his exposure to any mentioned equipment with radiological material. It explained that the only petroleum-based products used in the warehouse were cleaning solvents and CLP, which were used exclusively by contractors. The employing establishment stated that these products were stored at the opposite end of the warehouse from the employee's location, and that even contractors had limited exposure to these products as they were exposed for less than five minutes per incident, two to three times a day. It further explained that appellant's main duty was to oversee the overall warehouse operations, which included directing workforce and managing reports, and that the employee's exposure to the petroleum-based products was therefore highly unlikely. The employing establishment stated that it could not determine which materials the employee was exposed to or the frequency of his exposure since there were no requirements for him to handle radioactive materials or petroleum-based products. It noted that the Area-IV Industrial Hygiene (IH) office was gathering facility inspection results, specifically IH inspection reports, and it indicated that it would provide supporting evidence if needed.

In a May 15, 2019 letter, appellant indicated that the employee's office was inside the warehouse, and that humidity and rooftop ventilators did not guarantee good air quality. She stated that the employee undoubtedly handled equipment himself to ensure that inventories were appropriately conducted and to ensure that his responsibilities as stated in his position description were taken care of. Appellant explained that it would have been impossible for him to fulfill his duties if the materials were all covered and boxed. She indicated that the employee was informed by his colleagues that many Korean national employees had fallen ill while handling sensitive equipment at the warehouse. Appellant further indicated that when the employee returned from work he would smell like CLP, so even if it was true that the CLP products were stored at the opposite end of the warehouse, the ventilation was so poor that he was still exposed. She also stated that cleaning one weapon may have taken five minutes, but cleaning a set took much longer and was often a multiday process, and this compounded exposure. Appellant noted that it was suspect that the IH inspection only occurred after the employee's death, and stated that although the results had not been provided to her, she assumed they would be inaccurate because the inspection occurred after corrective action was taken. The employee was informed that the warehouse he worked in stopped using certain chemicals after he fell ill and had changed various

procedures deemed unsafe. Appellant also stated that she confirmed that civilians from the employing establishment no longer worked in the warehouse where the employee used to work.

By decision dated May 24, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the employee's death was due to a factor of his federal employment. It indicated that the employing establishment's November 30, 2018 statement alleged that it would have been highly unlikely that the employee was exposed to radioactive hazards in its warehouse that petroleum products were only used by contractors, and that supervisors were provided with personal protective equipment.

## ***LEGAL PRECEDENT***

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] An award of compensation in a survivor's claim may not be based on surmise, conjecture, or speculation or on appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.[3] Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his or her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his or her federal employment. Causal relationship is a medical issue and can be established only by medical evidence.[4]

## ***ANALYSIS***

The Board finds that this case is not in posture for decision.

Appellant's June 20, 2018 letter indicated that the employee accepted a position in 2007 as a logistics management specialist at the employing establishment and had worked with radiological materials and other petroleum-based toxins on a daily basis for five years. Her May 15, 2019 letter indicated that the employee's office was inside a warehouse, and she stated that the employee undoubtedly handled equipment himself to ensure that inventories were appropriately conducted and to check that his responsibilities for the material as stated in his position description were taken care of, as it would have been impossible for him to fulfill his duties if the materials were all covered and boxed. Appellant further indicated that when the employee returned from work he would smell like CLP, so even if it was true that the CLP products were stored at the opposite end of the warehouse, the ventilation was so poor that he was still exposed. While the employing establishment contended that appellant's exposure to radiological material and petroleum-based products was highly unlikely, its own position description noted exposure to 120 millimeter mortars as well as exposure to toxic materials including

[2] 5 U.S.C. § 8133 (compensation in case of death).

[3] *See W.C.*, Docket No. 18-0531 (issued November 1, 2018); *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

[4] *See L.R. (E.R.)*, 58 ECAB 369 (2007).

thrichsoroethysene, phosphate, steel wool, chromium, other, and cleaner, lubricant, and preservative (CLP). The Board thus finds that appellant has established that the occupational exposure occurred as alleged, as the record contains sufficient evidence to establish that the employee was exposed to toxic materials including radiological material and petroleum-based products during his federal employment.[5]

As appellant has established that the claimed occupational exposures occurred as alleged, the question becomes whether these exposures caused the employee's death. The case will therefore be remanded for OWCP to consider the medical evidence of record, including the submission of Dr. Yoon, as to whether the accepted employment exposures caused the employee's death. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that this case is not in posture for decision.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: November 20, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[5] *See M.B.*, Docket No. 19-1643 (issued July 20, 2020).