

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

K.P., claiming as widow of J.P., Appellant)	
)	
and)	Docket No. 20-0918
)	Issued: June 23, 2021
U.S. POSTAL SERVICE, WATERTOWN POST)	
OFFICE, Watertown, NY, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2020 appellant, through counsel, filed a timely appeal from a January 31, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's suicide on January 17, 2016 was causally related to factors of his federal employment.

FACTUAL HISTORY

On June 3, 2016 appellant filed a claim for compensation by widow (Form CA-5) in her capacity as wife of the deceased employee, a letter carrier, who passed away on January 17, 2016, at the age of 48.³ She indicated that the employee died by suicide. On the reverse side of the claim form a physician with an illegible signature from Family Practice Associates, completed an attending physicians report dated June 2, 2016. In response to the history of employment-related disease, the physician related that the employee had CRPS/ reflex sympathetic disorder (RSD) of the right hand with necrosis and amputation of digits with intractable pain. The physician indicated that the direct cause of death was suicide by gunshot wound. In response to the contributory causes of death, the physician indicated that it was unknown, but the intractable pain from CRPS of the right hand "may have triggered the suicide -- but there was no clear way to know."

In support of the claim, OWCP received several documents including a January 17, 2016 death certificate, which listed the immediate cause of death as cerebral avulsion due to gunshot injury on forehead and depression as other significant condition contributing to, but not related to the cause of death. Medical reports from 2015 diagnosed neuropathy pain right arm and CRPS with long-term use of narcotic medications. The reports discussed the employee's treatment for chronic pain and withdrawal/weaning from high-dose narcotic medication.⁴

In a development letter dated June 6, 2017, OWCP requested that appellant submit additional evidence in support of her claim for survivor benefits. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP also directed the employing establishment to provide all available assistance

³ OWCP accepted the employee's April 30, 2007 occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome that occurred on or about April 1, 2006 as a result of his federal employment. Following the initial injury, the employee returned to work in a full-time full-duty capacity on April 4, 2007 and worked until January 28, 2008, when he stopped work due to authorized surgery. OWCP paid him wage-loss compensation on the supplemental rolls, effective February 28, 2008, and on the periodic rolls since February 17, 2008. On January 17, 2016 the employee died due to a self-inflicted gunshot wound to the head. In 2019, OWCP expanded acceptance of the claim to include chronic regional pain syndrome (CRPS).

⁴ In a September 22, 2015 medical report, Dr. Bhupinder S. Bolla, a Board-certified anesthesiologist, provided an assessment of neuropathy pain right arm and CRPS, Type II, upper extremity. He noted that the employee was being maintained on high doses of narcotics until, he began a process of weaning off of the narcotic medications. In a treatment note of even date, Dr. Bolla indicated that the employee was totally disabled from his employment-related condition. In an October 15, 2015 report, Dr. Raymond Alcuri, a Board-certified physiatrist, noted the employee's employment injury and that his active problems include CRPS, upper limb; long-term (current) use of medications; and long term current use of opiate analgesic. The employee was reported to be following weaning instructions for high-dose narcotics and to continue use of Clonidine and Clonazepam to help with withdrawal symptoms. Dr. Alcuri opined that the employee may have a strong component of opiate-induced hyperalgesia which complicated his pain management. He also reported that the employee was frustrated.

to appellant to obtain the supporting documentation necessary to facilitate the claim. It afforded both parties 30 days to respond.⁵

In an August 4, 2017 statement, appellant advised that the employee was diagnosed with employment-related bilateral carpal tunnel syndrome and that his multiple OWCP-approved surgeries caused CRPS. She indicated that the employee had been in constant pain for six years and that the CRPS caused his fingers to disintegrate. Appellant related that both digits of the employee's hands were eroded nearly to the middle knuckles, and the index and middle fingers were open wounds that were always extremely painful. Therefore, he was forced to realize that he would not be able to go back to work or enjoy the activities he once enjoyed. The week of the employee's death, appellant indicated that the employee had been in more pain than ever and was desperate to find a doctor to treat his condition so that he could have a quality of life. She also noted that he had a restless night of sleep the night before his suicide. Appellant stated that the employee had been under stress for the last few months of his life due to the actions of both Spine and Wellness Center and OWCP and that he felt abandoned because of the way he was treated. She denied that the employee had "mental problems" prior to the employment injury. Appellant noted that he treated with a psychiatrist for anxiety due to not being able to work and for the emotional distress of his condition and was prescribed Clonazepam, which he had been taking for a few years. She indicated that the psychiatrist refused to provide her with the employee's treatment records.

Appellant provided letters written by the employee during the last few months of his life to his caseworker and physicians. Those letters concerned the denial of his pain medications needed for his RSD, which had worsened, and his need for a new doctor as his current physician could no longer treat his RSD.

OWCP received a series of medical reports from 2011, 2012, 2013, 2014, and 2015 along with progress reports from certified physician assistants from 2015 pertaining to the employee's CRPS and RSD of the upper extremities and long-term chronic use of medications and opiate analgesic. The reports noted recurrent infections, that the employee's phalanges were deteriorating secondary to CRPS and that debilitating pain rendered the hands unusable. Depression from not working was also reported.

OWCP also received a copy of the January 17, 2018 police report along with an August 28, 2017 letter from the employing establishment controverting the claim.

In a development letter dated December 13, 2017, OWCP requested that appellant provide a copy of the employee's autopsy report.

On January 12, 2018 OWCP received a copy of the January 18, 2016 autopsy report. Dr. Samuel A. Livingstone, a family medical specialist and medical examiner, indicated that the death was classified as suicide and that the cause of death was cerebral avulsion due to gunshot wound of forehead. Anxiety disorder was listed as other significant condition. The toxicology

⁵ On June 27, 2017 OWCP granted appellant an additional 30 days to respond to the June 6, 2017 development letter.

report indicated that the employee's ethanol level was considered intoxicated in New York. The remaining medications were in subtherapeutic or therapeutic ranges.

On March 22, 2018 OWCP forwarded the employee's case file along with a statement of accepted facts (SOAF) to a referral psychiatrist to determine if there were any additional conditions related to the employment injury, if the suicide death was the direct result of the accepted conditions, and if the suicide death was related to the prescribed opioids. The SOAF indicated that the claim was only accepted for bilateral carpal tunnel syndrome.

In an April 24, 2018 report, Dr. Christina Conciatori-Vaglica, a Board-certified psychiatrist, conducted a psychiatric peer review of the employee's medical file along with the SOAF. She noted that the employee was prescribed opioid analgesics since at least late 2007 through later 2015, comprised mainly of Oxycodone and OxyContin in addition to other narcotics in 2010 through 2014. Dr. Conciatori-Vaglica opined that additional conditions related to the employment injury included depressive disorder and anxiety disorder since late 2008. This was evidenced by the employee's subjective reports of depression and anxiety directly related to chronic pain stemming from his accepted employment injury and its complications and necessitated treatment by "Dr. Khan" who prescribed Cymbalta, Klonopin and Buspar for depression and anxiety. Dr. Conciatori-Vaglica opined that the employee's suicide death was the direct result of the accepted employment-related injury. Specifically, the employee developed anxiety and depression as a result of chronic pain due to carpal tunnel of his right hand and its complications, including CRPS of the right hand. Dr. Conciatori-Vaglica noted that the employee's sleep and mood were exacerbated by forced weaning of his opiate analgesics as a result of his insurance denying random urine drug screens, as evidenced by the employee's statements to his physician during October 15 and November 4, 2015 visits. She also opined that, consistent with the medical findings in this case and the factual basis as noted in the SOAF, the employee's suicide was caused by exacerbation of chronic pain-induced depression and anxiety combined with alcohol intoxication, leading to death by suicide by gunshot wound to the head. Dr. Conciatori-Vaglica opined that the employee's suicide was not related to his prescribed opioids, as there were no opioids found in his blood on the autopsy report. She related that the employee's suicide was caused by depressive disorder and anxiety disorder arising from chronic pain due to employment-related carpal tunnel syndrome and CRPS, which resulted directly in a mental disturbance, which produced a compulsion to commit suicide and disabled the employee from exercising sound discretion or judgment so as to control that compulsion. Factors which likely compounded the employee's compulsion to commit suicide include the forced weaning of his opioids and use of alcohol on the date of his suicide.

By decision dated August 16, 2018, OWCP denied appellant's claim for survivor's benefits. It found that appellant had not provided supporting evidence demonstrating an unbroken chain of causation between the accepted employment-related injury and the employee's suicide.

On August 24, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on January 17, 2019.

By decision dated April 3, 2019, an OWCP hearing representative set aside OWCP's August 16, 2018 decision and remanded the case for further development. She found that referral

for a psychiatric peer review was extremely premature as the adjudication of whether “the additional claimed conditions of RSD and chronic pain” are causally related to the April 1, 2006 employment injury must be resolved prior to the resolution of the emotional condition. The hearing representative also noted that there were several factual inconsistencies with regard to the suicide that must also be resolved prior to addressing the chain of causation.⁶ She further found that Dr. Conciatori-Vaglica’s report was not based on a complete history as it failed to reference the factual discrepancies in the January 17, 2016 police report.⁷ The hearing representative also noted that there was no evidence that any psychiatric bills were ever submitted to OWCP and that no evidence from the employee’s treating psychiatrist were requested or that the psychiatrist’s contact information was provided to OWCP.

In an April 10, 2019 developmental letter, OWCP requested further information from appellant. This included the name and contact information of the employee’s treating psychiatrist, the medical records from the employee’s treating psychiatrist, a written statement from appellant and her daughter concerning the daughter’s 911 statement and the police report, and contact information for appellant’s daughter.

In a May 2, 2019 statement signed May 3, 2019, appellant denied that there was an argument between the employee and herself preceding his death. She provided all other requested information. Appellant noted that Dr. Khan Sadaqat,⁸ a Board-certified psychiatrist, refused to release the employee’s records to her.

OWCP also received an April 16, 2019 statement from J.P., appellant’s daughter.⁹

In a June 11, 2019 development letter, OWCP requested “Dr. Sadaqat” provide copies of the employee’s medical treatment records related to the treatment of his emotional state. Dr. Khan was afforded 30 days to provide the information. No response was received.

On June 11, 2019 OWCP also prepared a SOAF and a series of questions for peer review by a neurologist. The SOAF indicated that the claim was only accepted for bilateral carpal tunnel syndrome.

In a July 5, 2019 report, Dr. Joseph Jares, a Board-certified neurologist, conducted a neurology peer review of the employee’s medical files. He opined that the diagnoses of right carpal tunnel syndrome, neuropathic pain, and CRPS were causally related to the accepted employment injury and employment factors. Dr. Jares explained that the employee’s employment

⁶ The January 17, 2016 police report indicated that appellant was initially uncooperative and the 911 call report from appellant’s daughter had advised that there was some type of spousal argument or domestic issue prior to the suicide, which was described as an accidental shooting in the 911 record. The reporting of the incident was noted to conflict with appellant’s testimony that there were no family issues and that the employee was in extreme pain prior to the suicide.

⁷ *Id.*

⁸ The Board notes that the name of the employee’s psychiatrist is Dr. Sadaqat Khan.

⁹ J.P. clarified that no fight occurred between her parents that night and that when she called 911 she was unsure of what had occurred.

injury caused the employee to develop right carpal tunnel syndrome due to the repetitive nature of his occupation as a mail sorter/letter carrier. The aggravation was permanent and led to the development of CRPS/ neuropathic pain of the right upper extremity, which was unresolved at the time of the employee's death. Dr. Jares indicated that, when the employee died, he had persistent symptoms of neuropathic pain/RSD as evidenced in the reports of the employee's various pain management and orthopedic providers.

By decision dated September 16, 2019, OWCP denied appellant's claim for survivor's benefits. It found that, although Dr. Jares opined that the employee's CRPS was causally related to the accepted employment injury and that the condition had not resolved at the time of the suicide, the necessary medical records regarding the employee's emotional condition had not been received. Thus, it concluded that the evidence of record did not support an unbroken chain of causation between the January 17, 2016 suicide and the accepted employment-related injury.

On September 26, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 6, 2019, an OWCP hearing representative conducted a preliminary review and set aside the September 16, 2019 decision. It noted that, while the employee's psychiatrist, "Dr. Sadaquat Khan," refused to release the employee's psychiatric treatment records to appellant, there was no indication that such treatment was claimed as employment related. Further, the letter sent to Dr. Khan provided little explanation as to the essential need for his records and the chain of causation test, as procedurally required. Given the collective medical evidence from appellant's physicians, which clearly documented the employee's increasing chronic pain complaints and the timing of being weaned from pain controlling narcotics, the hearing representative remanded the case for a more detailed development in an attempt to obtain the treatment records from Dr. Khan and a rationalized medical opinion concerning the relationship between the suicide and the employment-related injury from Dr. Khan or a second opinion specialist.

On remand OWCP issued a new SOAF dated December 20, 2019, which noted the case was accepted for bilateral carpal tunnel syndrome and CRPS.

On December 20, 2019 OWCP provided a detailed letter to "Dr. Khan Sadaquat" along with the December 20, 2019 SOAF explaining why the employee's medical records were necessary for appellant's survivor's claim. It noted that, if the physician was unwilling to provide either the employee's records or his medical opinion, then he should provide a response as to why the request could not be met in order to document the record. OWCP afforded the physician 30 days to respond. No response was received.

By decision dated January 31, 2020, OWCP denied appellant's claim for survivor's benefits. It found that, since the requested information on which the claim hinged had not been received, the medical evidence of record did not support an unbroken chain of causation between the employee's January 17, 2016 suicide and the accepted employment-related injury.

LEGAL PRECEDENT

A claimant for survivor benefits has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to his or her employment.¹⁰ To establish his or her claim that a deceased employee sustained stress in the performance of duty, which precipitated his or her death, a claimant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition; (2) rationalized medical evidence establishing that his or her death was due to or aggravated by an emotional reaction; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her death.¹¹

Appellant has the burden of proof to establish by a preponderance of the reliable, probative, and substantial evidence the existence of causal relationship between the employee's death by suicide and factors of his or her federal employment.¹² The suicide itself must arise out of the employee's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.¹³ In determining whether an employee's suicide is causally related to factors of his or her federal employment, OWCP has adopted the chain of causation test.¹⁴

OWCP's Federal (FECA) Procedure Manual provides instructions relating to the development of the evidence and the adjudication of such a claim and further notes that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)¹⁵ providing, "[C]ompensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee's domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide.¹⁶ Under the chain of causation test, OWCP's Federal (FECA) Procedure Manual provides that, if the injury and its consequences directly resulted in a mental disturbance, or physical condition, which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgment so as to control that compulsion, then the test is satisfied and the suicide is compensable.¹⁷ OWCP's Federal (FECA) Procedure Manual adds that,

¹⁰ *C.S. (K.S.)*, Docket No. 18-1733 (issued May 24, 2019); *L.B. (A.V.)*, Docket No. 17-1671 (issued November 6, 2018); *L.R. (E.R.)*, 58 ECAB 369 (2007).

¹¹ *C.S. (K.S.)*, *id.*; see also *Martha L. Watson*, 46 ECAB 407 (1995).

¹² *C.S. (K.S.)*, *id.*; *Rosita Mahana (Wayne Mahana)*, 53 ECAB 503 (2002).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 8102(a)(2) of FECA precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee's intention to bring about the injury or death of himself, herself, or another. See 5 U.S.C. § 8102(a)(2).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

¹⁷ *Id.* at Chapter 2.804.15b(2).

for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.¹⁸

ANALYSIS -- ISSUE 1

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

On June 3, 2016 appellant filed a claim for compensation in her capacity as a widow of the deceased employee. She claimed that the employee's CRPS and chronic pain along with being weaned from pain controlling narcotics caused or contributed to the employee's suicide.

OWCP's Federal (FECA) Procedure Manual provides guidance regarding claim development and adjudication by OWCP in developing a claim involving a suicide.¹⁹ The Board finds that OWCP has not properly adjudicated appellant's claim in accordance with its procedures. In developing a claim involving a suicide, the procedures require that the claims examiner obtain statements from the employee's family, supervisor, coworkers, and other associates who might have pertinent knowledge or information concerning the circumstances surrounding and leading to the employee's death, in addition to requesting all investigation reports from local authorities. OWCP is further required to obtain a rationalized medical opinion concerning the relationship between the suicide and the employment-related injury from either the employee's attending physician or a second opinion specialist. Its decision as to whether to accept or deny a suicide case must be made by the District Director or a higher authority.²⁰

OWCP had referred the medical record to Dr. Conciatori-Vaglica, a psychiatrist, to determine whether the employee's death was causally related to the accepted employment injury. In an April 24, 2018 report, Dr. Conciatori-Vaglica opined that the employee's suicide death was the direct result of the accepted employment-related injury. Specifically, the employee developed anxiety and depression as a result of chronic pain due to carpal tunnel of his right hand and its complications, including CRPS of the right hand.

In the decision dated April 3, 2019, OWCP's hearing representative found that referral to Dr. Conciatori-Vaglica for a psychiatric peer review was premature as the adjudication of whether the additional claimed conditions of RSD and chronic pain were causally related to the April 1, 2006 employment injury had not been resolved. The hearing representative also noted that there were several factual inconsistencies with regard to the suicide that must also be resolved prior to addressing the chain of causation.²¹ The hearing representative, therefore, found that

¹⁸ *Id.* at Chapter 2.804.15b(3).

¹⁹ *See id.* Chapter 2.804.15.

²⁰ *Id.* at Chapter 2.804.15(c)(5).

²¹ The January 17, 2016 police report indicated that appellant was initially uncooperative and the 911 call report from appellant's daughter had advised that there was some type of spousal argument or domestic issue prior to the suicide, which was described as an accidental shooting in the 911 record. The reporting of the incident was noted to conflict with appellant's testimony that there were no family issues and that the employee was in extreme pain prior to the suicide.

Dr. Conciatori-Vaglica's report was not based on a complete history as it failed to reference the factual discrepancies in the January 17, 2016 police report.²²

After further development of the record, on December 20, 2019 OWCP prepared a new SOAF, which indicated that CRPS was an accepted condition. Furthermore, it received additional witness statement clarifying the previously noted discrepancies in the police report. OWCP, however, failed to request that Dr. Conciatori-Vaglica supplement her April 24, 2018 report based upon the new evidence of record.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²³ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.²⁴ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.²⁵

On remand OWCP should refer the updated SOAF and the case record, to Dr. Conciatori-Vaglica for a supplemental opinion based upon all of the evidence of record, including the police report, new statements from appellant and her daughter, and the acceptance of the CRPS condition, regarding the chain of causation test and whether the employee's suicide was causally related to his employment-related conditions. After such further development as necessary, OWCP shall issue a *de novo* decision, containing adequate findings of fact and a statement of reasons, with respect to appellant's claim for survivor's benefits on behalf of the deceased employee.

CONCLUSION

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

²² *Id.*

²³ *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

²⁴ 20 C.F.R. § 10.121.

²⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 23, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board