

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

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|--------------------------------------|---|---------------------------------|
| G.Y., Appellant |) | |
| (sister of K.H., deceased) |) | |
| |) | |
| and |) | Docket No. 21-0106 |
| |) | Issued: October 21, 2021 |
| DEPARTMENT OF HEALTH & HUMAN |) | |
| SERVICES, INDIAN HEALTH SERVICES, |) | |
| NAVAJO AREA OFFICE, Window Rock, AZ, |) | |
| Employer |) | |
| |) | |

Appearances:
Jake Yazzie, Jr., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 26, 2020 appellant, through a representative, filed a timely appeal from an October 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 21-0106.

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 an 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 The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On July 29, 2020 the employing establishment submitted an official supervisor's report of employee's death (Form CA-6). It listed the date of injury and death as June 7, 2020 following a fall, and indicated that the employee was in the performance of duty.

In a development letter dated August 31, 2020, OWCP informed appellant, the employee's sister, that it was unclear whether she was claiming survivor benefits. It requested that she provide factual and medical documentation supporting the claim if she was claiming survivor benefits. OWCP also provided appellant with a survivor's claim for death benefits (Form CA-5) for her completion. It informed her that any claim for survivor benefits must be filed within three years following the date of death.

By decision dated October 2, 2020, OWCP disallowed appellant's claim. It noted, "We provided you 30 days to respond. However, we did not receive a response from you. Therefore, the case is now closed."

The Board has duly considered this matter and notes that in cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.³ The three-year limit on filing a claim for compensation does not apply in the following limited circumstances: (1) the employee's direct supervisor had actual knowledge that created reasonable notice of an on-the-job injury or death within 30 days;⁴ (2) an employee or survivor gave formal written notice within 30 days of becoming aware that the injury or death was causally related to the federal employment;⁵ (3) the employee filed a timely disability claim for a work-related injury or disability and the employee's death is based on the same injury;⁶ and (4) the claimant is under 21 years old, the claimant is incompetent and has no legal representative, or the claimant is prevented from giving notice by exceptional circumstances.⁷

As appellant had not filed a claim for survivor benefits, the October 2, 2020 decision was premature. Thus, the Board finds that the October 2, 2020 decision was improperly issued.

³ 5 U.S.C. § 8122(a); *D.D.*, Docket No. 19-0548 (issued December 16, 2019).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Death Claims*, Chapter 2.700.5.b (November 1996).

⁵ 5 U.S.C. § 8122(a), (b); Federal (FECA) Procedure Manual, *id.* at Chapter 2.700.5.b(1).

⁶ *Id.* at § 8122(c).

⁷ *Id.* at § 8122(d).

IT IS HEREBY ORDERED THAT the October 2, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 21, 2021
Washington, DC

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

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

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