

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

S.J., claiming as widow of, B.J., Appellant)	
)	
and)	
)	Docket No. 22-0507
DEPARTMENT OF AGRICULTURE,)	Issued: July 8, 2022
INSPECTIONS OPERATIONS PROGRAM,)	
Minneapolis, MN, Employer)	
)	

Appearances:
Brett Blumstein, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 23, 2022 appellant, through counsel, filed a timely appeal from a September 15, 2021 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 death on September 28, 2017 occurred in the performance of duty, as alleged.

FACTUAL HISTORY

On August 13, 2018 appellant filed a claim for compensation by widow (Form CA-5), alleging that her wife, the employee, died on September 28, 2017 of severe coronary atherosclerosis due to factors of her federal employment. On the reverse side of the claim form Dr. John W. Ellis, Board-certified in environmental and family medicine, indicated that the direct cause of death was severe coronary atherosclerosis. He noted that he had reviewed a statement by appellant dated January 20, 2019 and he checked a box marked "Yes" indicating that the employee's death was due to the factors of her federal employment as outlined in appellant's statement.

In support of her claim, appellant submitted a state health department certificate of death dated October 18, 2017, which noted that the employee's cause of death on September 28, 2017 was severe coronary atherosclerosis and atherosclerotic cardiovascular disease with marked cardiomegaly.

In a statement dated January 20, 2019, appellant asserted that the employee experienced undue physical and mental stress while working as a compliance investigator, including investigation and enforcement of a nationwide program of public health regulatory oversight related to meat, poultry, and egg products. She indicated that she worked in high-stress environments on a daily basis, where she was exposed to and dealt with unsafe and volatile products associated with detentions, civil seizures, and voluntary recalls. Appellant noted that the employee was under consistent travel demands to respond to bio-security threats and food-borne illness outbreaks, which often came on short notice due to emergency situations or special investigative requirements. The travel involved visits to meat and poultry processing plants, slaughterhouses, and warehouses, where she was required to navigate over uneven, slippery, wet, or frozen surfaces and interact with individuals who could be fearful, skeptical, uncooperative, threatening, or potentially dangerous to her. Appellant indicated that the employee was also exposed to high levels of noise and vibration, dust, dirt, blood, exposed moving parts of machinery, and contagious diseases requiring protective clothing and gear.

In a report dated February 4, 2019, Dr. Ellis reviewed appellant's January 20, 2019 statement and various medical records. He diagnosed severe coronary atherosclerosis with cardiovascular disease and marked cardiomegaly. Dr. Ellis opined that the direct cause of the employee's death was severe coronary atherosclerosis. He explained that her job duties caused frequent outpouring of stress chemicals such as epinephrine and cortisol and that these chemicals led to changes in the employee's lipid metabolism, which contributed to severe atherosclerosis. Dr. Ellis opined that the chemicals also caused coronary spasm, which contributed to death of the heart muscle and the employee's death.

In a May 13, 2019 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a separate development letter of even date, 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 dates and examples of surveillance and outbreak investigations by the employee, frequency of travel per month and year by the employee, record of any encounters between the employee and law enforcement due to threatening or dangerous individuals, and a copy of the employee's job description. OWCP afforded the employing establishment 30 days to respond.

OWCP's development letter to the employing establishment was returned by the U.S. Postal Service on May 14, 2019 as "vacant" and unable to forward.

In response to OWCP's development questionnaire, appellant, through counsel, submitted a license and certificate of marriage dated November 7, 2014 and a statement, which indicated that the employee experienced previous symptoms of high blood pressure and chest pains and took medication for diabetes, high blood pressure, and high cholesterol. The statement noted that the employee performed work duties in Houston, Texas for hurricane relief during the week prior to her death and that the employee smoked cigarettes on a daily basis and drank alcohol approximately three times per week, but did not drink during the Houston, Texas trip.

By decision dated July 29, 2019, OWCP denied appellant's claim for survivor's benefits, finding that the evidence of record was insufficient to establish that the claimed work factors occurred, as alleged.

On July 2, 2020 appellant, through counsel, requested reconsideration of OWCP's July 29, 2019 decision. In support of the request, she submitted various records from 2014 and 2015 for routine primary care, laboratory work, and treatment to the employee's left lower extremity. Appellant also submitted travel documents including: a travel itinerary for the employee for flights from Los Angeles, California to Houston, Texas on September 9, 2017 and from Houston, Texas to Los Angeles, California on September 23, 2017; receipts, which indicated that the employee stayed at hotels in Shenandoah, Texas from September 9 through 11, 2017, in Conroe, Texas from September 11 through 13, 2017, and in The Woodlands, Texas from September 13, through 23, 2017; fuel receipts dated from September 11 through 23, 2017; and baggage receipts dated September 9 and 23, 2017.

By decision dated September 15, 2021, OWCP denied modification of the July 29, 2019 decision.

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.³ 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.⁴ 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.⁵

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.⁶ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.⁷

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.⁸ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.⁹

³ 5 U.S.C. § 8133.

⁴ *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁵ *See R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁶ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

ANALYSIS

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

Appellant alleged that the employee's death was caused, precipitated, or aggravated by the physical and mental stress associated with her position as a compliance investigator, including investigation of outbreaks and biosecurity threats, regulatory oversight, enforcement activities related to meat, poultry, and egg products, frequent travel on short notice, and exposure to hazardous environments and volatile products.

In a May 13, 2019 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. By separate letter of even date, it requested that the employing establishment address the accuracy of her allegations and claims and provide additional information. The employing establishment's development letter was returned by the U.S. Postal Service on May 14, 2019 as "vacant" and unable to forward.

As discussed, OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁰ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹¹ Appellant provided a detailed response to OWCP's development letter, along with supporting documentation of the employee's work travel during a hurricane response from September 9 through 23, 2017. However, no response was received from the employing establishment and the record reflects that OWCP's development letter to the employing establishment was returned as not deliverable and was not resent to a valid and proper address. OWCP then denied appellant's claim for survivor's benefits, finding that the evidence was insufficient to establish that the claimed work factors occurred, as alleged.

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.¹² Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.¹³

¹⁰ *Supra* notes 8 and 9.

¹¹ *Id.*; *see also* *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

¹² *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

¹³ *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *R.A.*, Docket No. 17-1030 (issued April 16, 2018).

This case must, therefore, be remanded to OWCP for further development of the evidence regarding appellant's claim for survivor's benefits.¹⁴ It shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding her allegations, including information regarding the employee's alleged work factors. 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 September 15, 2021 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: July 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ See *R.D., id.; V.H.*, Docket No. 18-0273 (issued July 27, 2018).