

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

M.P., claiming as widow of E.P., Appellant

and

**DEPARTMENT OF JUSTICE,
ALCOHOL, TOBACCO, FIREARMS &
EXPLOSIVES, Washington, DC,
Employer**

**Docket No. 22-0832
Issued: November 18, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 5, 2022 appellant filed a timely appeal from an April 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 was causally related to a June 13, 1973 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 13, 1973 the employee, then a 41-year-old criminal investigator, sustained laceration of left eye, broken tooth, injury to multiple intrathoracic organs without open wound, adjustment disorder with depressed mood, foreign body in other and combines sites of external eye, and acquired absence of eye while in the performance of duty. In a narrative statement, the employee explained that on June 13, 1973 he was conducting an investigation concerning criminal activity of a convicted felon. During this investigation he was shot twice, with a double-barreled twelve-gauge shotgun. The first time the employee was shot in the face, mouth, and chest, resulting in damage to his face, mouth, teeth, chest, lungs, and liver. The second time he was shot in the face and head, resulting in total loss of his left eye and damage to his right eye. The employee also explained that during this episode he sustained minor injuries to his left arm and left leg. OWCP granted the employee a schedule award for 100 percent permanent loss of the left eye and paid the employee wage-loss compensation.

On November 7, 2021 appellant, the employee's widow, filed a claim for compensation by a surviving spouse and/or children (Form CA-5). Appellant indicated that the employee had died on October 29, 2021. She indicated that the nature of injury was heart failure due to the June 13, 1973 gunshot wound to the face and chest.

The November 3, 2021 death certificate indicated that the employee's October 29, 2021 death was due to, or as a consequence of, heart failure, diabetes, and hypertension.

In a November 16, 2021 attending physician's report, page 2 of the Form CA-5, Dr. Glenn Evans, a Board-certified cardiologist, noted that the employee had suffered two gunshot wounds, one to the chest and one to the face, while in the performance of duty which resulted in the loss of an eye and damage to his lungs and other internal organs. He indicated that the employee was treated for congestive heart failure and his direct cause of death was heart failure. Dr. Evans opined that the employee's death was due to his employment-related injuries. He further explained that he had treated the employee for over 10 years related to his cardiovascular issues and that the employee had asked him to go on record and verify that his cardiovascular issues are directly or indirectly related to his on-the-job injuries sustained. Dr. Evans indicated that he concurred that the employee's cardiovascular issues "are either directly or indirectly related to [the employee's] gunshot wounds." He thereafter concluded that he concurred that the employee's death "due to heart failure can be related either directly or indirectly to [the employee's] on-the-job gunshot wounds of June 13, 1973."

By decision dated April 12, 2022, OWCP denied appellant's claim for survivor's benefits, finding that she had not submitted medical evidence sufficient to establish that an employment-related condition caused or contributed to the employee's death on October 29, 2021.

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

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

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, he or she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, establishing 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

The mere showing that an employee was receiving compensation for total disability at the time of his or her death does not establish that the employee's death was causally related to the previous employment.⁵ The Board has held that it is not necessary that there be a significant contribution of employment factors to establish causal relationship.⁶ If the employment contributed to the employee's death, then causal relationship is established.⁷

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.⁸ It has the obligation to see that justice is done.⁹

ANALYSIS

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

Appellant alleged that the employee had passed away on October 29, 2021 in part from heart failure causally related to the accepted June 13, 1973 employment injury of gunshot wounds to the face and chest. In support of her claim appellant submitted a report from Dr. Evans dated November 16, 2021, who concluded that the employee's death was due to the accepted employment injury either directly or indirectly.

³ *M.L. (S.L.)*, Docket No. 19-0020 (issued May 2, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); see *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

⁴ *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019); see *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁵ *J.P. (E.P.) id.*; *W.C.(R.C.)*, *supra* note 3; *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁶ *M.L. (S.L.)*, *supra* note 3; see *T.H.(M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁷ *L.W. (K.W.)*, Docket No. 19-0569 (issued August 16, 2019).

⁸ *J.H. (A.H.)*, Docket No. 18-1143 (issued December 23, 2019); *C.W.*, Docket No. 19-0231 (issued July 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁹ *Id.*

OWCP's Federal (FECA) Procedure Manual provides guidance regarding claim development and adjudication by OWCP.¹⁰ The Board finds that OWCP has not properly developed or adjudicated appellant's claim in accordance with its procedures. If upon initial examination of a claim, it is determined that the evidence is insufficient to establish the essential elements of the claim, including causal relationship, the claims examiner should inform the claimant of the additional evidence needed. In a death claim, OWCP's procedures provide that either Form CA-1072 or a narrative letter may be used to obtain information needed to establish causal relationship.¹¹

OWCP did not send a development letter advising appellant of the deficiencies of the evidence in her survivor claim. It should have advised her that the employee's accepted employment conditions did not have to be a significant factor in his death,¹² but a contributing factor.¹³ OWCP should also have requested a supplemental rationalized opinion from Dr. Evans as to all contributing causes of the employee's death.

As OWCP did not advise appellant of the deficiencies in her claim, the Board will remand the case for further development of the medical evidence. On remand, OWCP shall also request that Dr. Evans provide a supplemental report, which provides a rationalized opinion regarding the cause of the employee's death. Following this and any other further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4c(2) (June 2011).

¹¹ *Id.* at Chapter 2.700.5f (August 1994, September 1995, November 1996).

¹² *See supra* note 6.

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Issued: November 18, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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