



## **FACTUAL HISTORY**

On April 13, 2021 appellant filed a claim for compensation by a surviving spouse and/or children (Form CA-5) in his capacity as spouse of the deceased employee,<sup>2</sup> a former housekeeping aide, who passed away on January 28, 2021. He indicated that the employee died due to respiratory failure.

Appellant submitted a death certificate for the employee dated February 5, 2021, which noted a date of death of January 28, 2021. It listed the causes of death as respiratory failure and COVID-19 pneumonia. The death certificate also noted chronic obstructive pulmonary disease (COPD) and diabetes as other significant contributions to death.

OWCP received hospital records dated January 2 through 30, 2021. A discharge summary report dated January 30, 2021 noted diagnoses of acute hypoxic respiratory failure, pneumonia due to COVID-19, history of COPD, emphysema, and atrial fibrillation with rapid ventricular response (RVR).

In a January 2, 2021 report, Dr. Nathan R. Heckerson, a Board-certified internist, indicated that the employee was evaluated in the emergency room for complaints of shortness of breath and increasing respiratory symptoms for the past six days. He noted that she had tested positive for COVID-19 on December 27, 2020 and also had a history of COPD, atrial fibrillation, asthma, emphysema, and diabetes mellitus. Dr. Heckerson noted bilateral crackles on respiratory examination. He indicated that appellant was admitted to the hospital due to respiratory problems.

OWCP referred the case, including a statement of accepted facts (SOAF) to Dr. David I. Krohn, a Board-certified internist, serving as an OWCP district medical adviser (DMA), to provide an opinion regarding whether the employee's death was a result of her work-related condition. In a report dated June 8, 2021, Dr. Krohn noted that the employee's claim was accepted for aggravation of asthma due to chemical exposure. He indicated that the employee's death certificate and hospital discharge summary report did not note the accepted condition of aggravation of asthma as diagnoses or as causes of death. Dr. Krohn referenced a medical compendium and reported that asthma was only recognized as a "possible" risk factor for severe COVID-19. He concluded that the employee's death was not a result of her work-related condition.

On August 25, 2021 OWCP referred the case to Dr. Akshay Sood, a Board-certified internal medicine and pulmonary disease specialist, for a second opinion evaluation regarding whether the employee's accepted condition caused or contributed to her death. In a report dated September 4, 2021, Dr. Sood noted his review of the SOAF and that the employee's claim was accepted for aggravation of asthma due to chemical exposure. He discussed appellant's job duties

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<sup>2</sup> OWCP accepted the employee's February 21, 2001 occupational disease claim (Form CA-2) for aggravation of asthma due to chemical exposure as a result of her federal employment. The employing establishment indicated that the employee was last exposed to the conditions alleged to have caused her disease or illness on February 21, 2001. Following the acceptance of the employee's claim, she returned to work on February 24, 2002. On August 11, 2003 OWCP granted the employee a schedule a ward for 50 percent permanent impairment of her bilateral lungs. The award ran for 78 weeks from July 8, 2003 to January 3, 2005.

and medical history. Dr. Sood indicated that appellant was admitted to the hospital on January 2, 2021 due to worsening of shortness of breath and died on January 28, 2021. He noted that the immediate cause of death was respiratory failure as a consequence of COVID-19 pneumonia and other contributory causes was COPD and diabetes. Dr. Sood opined that it was “not at least as likely as not the claimant’s accepted work[-]related exposure to cleaning chemicals ... which resulted in an aggravation of asthma, cause[d] or contribute[d] to the claimant’s death on January 28, 2021.” He further explained that the evidence for asthma as a risk factor for COVID-19 was mixed. Dr. Sood also reported that there was no evidence that exposure to cleaning chemicals was a risk factor for COVID-19.

By decision dated November 19, 2021, OWCP denied appellant’s claim for survivor benefits based on the September 4, 2021 report of Dr. Sood, who determined that the employee’s death was not causally related to the employee’s accepted condition.

### **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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.<sup>7</sup> If the employment contributed to the employee’s death, then causal relationship is established.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. § 8133 (compensation in case of death).

<sup>4</sup> *B.M.*, Docket No. 20-0741 (issued September 30, 2021); *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

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

<sup>6</sup> *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

<sup>7</sup> *See R.G. (O.G.)*, Docket No. 17-0916 (issued September 6, 2017); *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

<sup>8</sup> *See P.G.*, *supra* note 6.

## ANALYSIS

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

OWCP referred the case to Dr. Sood for a second opinion evaluation. In his report dated September 4, 2021, Dr. Sood noted that the employee's claim was accepted for aggravation of asthma due to chemical exposure and discussed her medical records. He indicated that appellant died on January 28, 2021 and noted that the immediate cause of death was respiratory failure as a consequence of COVID-19 pneumonia and other contributory causes were COPD and diabetes. Dr. Sood opined that it was "not at least as likely as not" that the employee's accepted work-related exposure to cleaning chemicals and condition of aggravation of asthma caused or contributed to her death on January 28, 2021. The Board finds, however, that Dr. Sood's opinion regarding causal relationship was vague and equivocal and lacks sufficient medical rationale to resolve the issue in this case.<sup>9</sup> Dr. Sood did not definitively state whether employee's accepted conditions caused or contributed to her death, but merely noted that it was "not at least as likely as not."

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>10</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>11</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>12</sup> Therefore, the Board finds that the case must be remanded for a rationalized opinion from Dr. Sood as to whether the employee's accepted condition caused or contributed to her death on July 28, 2021. If he is unable to clarify or elaborate on his previous report, or if the supplemental report is also vague, speculative, or lacking rationale, OWCP must submit the case record and an updated SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue. After this and such other 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.

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<sup>9</sup> See *N.W.*, Docket No. 21-0653 (issued September 30, 2021); *Deborah T. Lyon*, Docket No. 05-116 (issued December 9, 2005).

<sup>10</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>11</sup> *Id.*; see also *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>12</sup> *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 19, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: October 24, 2022  
Washington, DC

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

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

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