

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

D.T., claiming as widow of W.T., Appellant)	
)	
and)	Docket No. 22-0671
)	Issued: September 20, 2022
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
PHILADELPHIA INTERNATIONAL)	
AIRPORT, PA, Employer)	
)	
)	

Appearances:
Capp Taylor, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 2, 2022 appellant, through her representative, filed a timely appeal from a February 9, 2022 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 to consider 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 February 20, 2021 was causally related to his accepted employment conditions.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 13, 1981 the employee, then a 33-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 1981 he developed extreme stress from continuous exposure to a tense and confusing work environment while in the performance of duty. He described his symptoms as light-headedness, ringing in the ears, tension, weakness in legs and a short period of numbness in the left arm.⁴ The employee stopped work on August 12, 1981. OWCP subsequently accepted that he sustained chronic anxiety, myofascial pain dysfunction syndrome with temporomandibular joint dysfunction (TMJ) and transitory episode of anxiety. It paid him wage-loss compensation on the periodic rolls commencing December 3, 1984. OWCP subsequently expanded the acceptance of the claim to include additional conditions such as post-traumatic stress disorder (PTSD), temporary aggravation of asthma, temporary aggravation of diabetes, temporary aggravation of reflux disease, temporary aggravation of triglycerides, bilateral shoulder rotator cuff tears, and obsessive compulsive personality disorder (OCD).

On March 2, 2021 appellant notified OWCP that the employee had passed away on February 20, 2021.

By letter dated May 4, 2021, OWCP advised appellant of the type of medical evidence needed to establish that the employee's accepted employment injuries contributed to his death. It provided her with a claim form for compensation by surviving spouse and/or children (Form CA-5) requesting survivor's benefits.

On May 11, 2021 appellant filed a Form CA-5 requesting survivor's benefits. She noted the nature of injury, which caused the employee's death, as cardiac pulmonary arrest and acute and chronic anxiety. Dr. Eric Bishop, a psychiatrist, completed the medical portion of the CA-5 form listing the employee's accepted conditions of PTSD, unspecified anxiety disorder, and OCD. He opined that the direct cause of death was a presumed myocardial infarction. Dr. Bishop explained that patients with PTSD had double the risk of death from heart disease per a Department of Veterans Affairs study.

³ Docket No. 93-810 (issued April 26, 1994).

⁴ The Board notes that the employee initially filed an occupational disease claim (Form CA-2) on August 10, 1981 alleging that he developed acute and chronic anxiety due to factors of his federal employment. The employee noted that he first became aware of his condition and its relation to his federal employment on approximately July 29, 1981. On the reverse side of the form the employing establishment noted that the employee stopped work on August 12, 1981.

Appellant also submitted a marriage certificate dated March 27, 1971 and the employee's death certificate dated February 20, 2021, attributing his death to cardiopulmonary arrest and as a secondary cause, left lower leg open reduction and internal fixation.

Appellant also resubmitted a note dated October 19, 2015 from Dr. Stephen S. Oh, a Board-certified psychiatrist, diagnosing work-related PTSD, dysthymic disorder, OCD, and generalized anxiety disorder and finding that appellant was totally disabled.

In a March 4, 2021 report, Dr. Bishop noted that the employee died of a suspected myocardial infarction. He related that he had treated the employee for PTSD resulting from a traumatic incident at work. Dr. Bishop again reported that PTSD was known to double the risk of death from heart disease and likely contributed to the employee's death.

By decision dated June 15, 2021, OWCP denied appellant's claim for survivor's benefits, finding that the medical evidence of record was insufficient to establish causal relationship between the employee's death and his accepted employment injury.

On July 23, 2021 appellant requested reconsideration. She resubmitted a March 16, 2005 report from Dr. Odalys Brito, a Board-certified psychiatrist, and June 9 and August 22, 2006, August 13, 2007, and June 26, 2008 reports from Dr. Elizabeth Gunther, an osteopath specializing in family medicine, who diagnosed asthma, high triglycerides, diabetes, reflux, shoulder conditions, lumbar and cervical conditions, and rashes as a consequence of the accepted employment exposures.

On September 12, 2019 Dr. Richard D. Goulah, a Board-certified cardiologist, examined the employee due to hypertension, diabetes, hyperlipidemia, and a negative sleep study. He noted the history of anxiety syndrome and OCD as well as a cardiac catheterization in 2017, which revealed clean coronary arteries.

In an August 27, 2020 narrative report, Dr. Davis repeated his diagnoses of OCD, PTSD, anxiety, TMJ, asthma, diabetes, and reflux disease due to the employee's accepted employment exposures. He found that he was totally disabled from work. Dr. Davis noted his concerns about the employee's cardiac health and uncontrolled hypertension.

Dr. Richard Hilliard, an osteopath and a Board-certified internist, completed a note on August 12, 2021, indicating that the employee was transported to the hospital emergency room due to difficulty breathing and was pronounced dead shortly after his arrival. He attributed the employee's death to sudden cardiovascular collapse due to chronic obstructive pulmonary disease (COPD), diabetes, hypertension, PTSD, ischemic heart disease, and potentially heart failure. Dr. Hilliard noted that the employee's PTSD was employment related and found that PTSD was known to exacerbate his other conditions. The accompanying medical records indicated that the employee was a former smoker and chewed tobacco.

By decision dated September 2, 2021, OWCP denied modification of its prior decision.

On January 10, 2022 appellant, through her representative, requested reconsideration. In support thereof, appellant's representative provided a January 3, 2022 report from Dr. Jerrold J. Weinstock, a psychiatrist who reviewed the employee's accepted conditions and medical

treatment. Dr. Weinstock noted that the accepted condition of PTSD was a form of anxiety and that the accepted condition of hyperglyceridemia was fat in the blood. Dr. Weinstock explained that fat in the blood from the accepted hyperglyceridemia narrowed the arteries creating higher blood pressure within the arteries. He also explained that PTSD caused abnormal or increased heart rhythm or arrhythmia. Dr. Weinstock found that these two conditions caused the employee's death from cardiovascular collapse on February 20, 2021 described by Dr. Hillard.

On February 5, 2022 appellant, through her representative, again requested reconsideration.

By decision dated February 9, 2022, OWCP denied modification of its prior 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.⁵ 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.⁶ 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.⁷ 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.⁸ The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.⁹ If the employment contributed to the employee's death, then causal relationship is established.¹⁰

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

⁶ *B.M., (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁷ *See B.M., (H.M.), id.; R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁸ *See B.M., (H.M.), id.; P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁹ *See B.M., (H.M.), id.; P.G. (J.G.), id.; T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

¹⁰ *Id.*

ANALYSIS

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

Appellant filed a Form CA-5 claim for survivor's benefits on May 11, 2021 due to the employee's February 20, 2021 death and provided medical evidence. If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required.¹¹ Following the receipt of appellant's claim and the accompanying medical evidence, OWCP did not provide her with a request for the additional specific medical evidence necessary to establish her claim and afford her 30 days in accordance with section 10.121 of its regulations.¹² It is well established that proceedings under FECA are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.¹³ Instead of providing appellant with the required notification and 30 days to respond, it issued the June 15, 2021 denial of her claim. The Board finds that this does not comply with OWCP's regulations.¹⁴

The case must, therefore, be remanded for further development. On remand, OWCP shall provide appellant with a development letter informing her of the additional evidence needed and afford her 30 days to submit the necessary evidence. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹¹ 20 C.F.R. § 10.121; *see S.W.*, Docket No. 21-1171 (issued February 24, 2022).

¹² *Id.*

¹³ *See S.S.*, Docket No. 16-1792 (issued January 27, 2017); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2022 merit 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: September 20, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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