

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

D.T., claiming as widow of W.T., Appellant	)	
	)	
and	)	Docket No. 23-0723
	)	Issued: December 5, 2023
DEPARTMENT OF TRANSPORTATION,	)	
FEDERAL AVIATION ADMINISTRATION,	)	
PHILADELPHIA INTERNATIONAL	)	
AIRPORT, PA, Employer	)	
	)	

*Appearances:*  
Capp P. Taylor, Esq., for the appellant<sup>1</sup>  
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 April 13, 2023 appellant, through counsel, filed a timely appeal from a March 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 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 injury.

## FACTUAL HISTORY

This case has previously been before the Board on appeal.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions 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.<sup>4</sup> The employee stopped work on August 12, 1981. OWCP subsequently accepted that he sustained chronic anxiety, myofascial pain dysfunction syndrome with temporomandibular joint dysfunction and transitory episode of anxiety. It paid the employee 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 January 23, 2019 OWCP referred the employee, a statement of accepted facts (SOAF) and a list of questions to Dr. Jared T. Ritter, a Board-certified psychiatrist, for a second opinion evaluation. In his February 11, 2019 report, Dr. Ritter reviewed the SOAF and the medical record, noted that the employee had stopped work on October 13, 2019 and listed the accepted conditions. He noted that the employee recounted difficulties with sleep and avoidance of triggers. Dr. Ritter diagnosed anxiety disorder, unspecified, and PTSD, chronic, related to the accepted employment injury. He opined that the employee continued to meet the criteria for anxiety disorder and PTSD based on severe anxiety and mild residual PTSD symptoms. Dr. Ritter found that the anxiety disorder symptoms appeared to be more significant and impairing than the PTSD symptoms. He found that the employee was totally disabled from work.

On March 2, 2021 appellant notified OWCP that the employee had passed away on February 20, 2021. She submitted the death certificate attributing the employee's cause of death to cardiopulmonary arrest and as a secondary cause, recent left lower leg open reduction and internal fixation.

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<sup>3</sup> Docket No. 22-0671 (issued September 20, 2022); Docket No. 93-810 (issued April 26, 1994).

<sup>4</sup> 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.

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 that 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.

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.

Appellant repeatedly requested reconsideration. By decisions dated September 2, 2021 and February 9, 2022, OWCP denied modification of its prior decisions.

Appellant, through her counsel, appealed the February 9, 2022 decision to the Board. By decision dated September 20, 2022, the Board set aside the February 9, 2022 decision, finding that the case was not in posture for a decision as OWCP failed to advise her of the additional specific medical evidence necessary to establish her claim and affording her the requisite 30 days, in accordance with its regulations, to comply. The Board remanded the case for further development by OWCP.<sup>5</sup>

In an October 25, 2022 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed and afforded her 30 days to respond. Appellant did not provide additional evidence.

By decision dated December 22, 2022, OWCP denied appellant's claim for survivor's benefits, finding that the evidence of record was insufficient to establish that an employment-related condition caused or contributed to the employee's death on February 20, 2021.

OWCP continued to receive medical evidence. In a January 29, 2023 report, Dr. Robert R. Reppy, an osteopath, opined that the employee's accepted PTSD contributed to his death as it was a subcategory of the class of anxiety disorders. He explained that anxiety sped up the heart rate, pumped adrenalin into the system, and sent more blood out to the muscles in preparation for "flight or fight." Dr. Reppy related that, in chronic anxiety disorders, these impacts were unrelenting, with a constant racing heart and high blood pressure which forced the heart to work harder and wore it out faster, effectively aging it, thus contributing to the employee's early death. He also recounted that the employee's accepted cervical, lumbar, and shoulder conditions which enforced a sedentary lifestyle and prevented physical exercise which was effectively the only way to avoid hyperlipidemia and arterial plaque buildup. Dr. Reppy concluded that an uninterrupted chain of

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<sup>5</sup> Docket No. 22-0671 (issued September 20, 2022).

causation could be drawn from the employee's work-related injuries, to his forced lack of exercise, to his ischemic heart disease, to his death from cardiac failure aggravated by the perpetually rapid heart rate, and high blood pressure caused by the PTSD.

On February 1, 2023 appellant, through counsel, requested reconsideration.

On March 16, 2023 OWCP referred a SOAF and the medical evidence of record to Dr. Charles Barnhart, Jr., a Board-certified psychiatrist, serving as district medical adviser (DMA), to address whether the accepted employment injuries contributed to the employee's death on February 20, 2021. In his March 23, 2023 report, Dr. Barnhart reviewed Dr. Ritter's February 11, 2019 report and Dr. Reppy's January 27, 2023 report. He opined that the employee's accepted conditions of temporary aggravation of asthma, temporary aggravation of diabetes, temporary aggravation of triglycerides, and mental health conditions were significant risk factors for cardiac death. The DMA found that the accepted physical conditions likely contributed to the employee's death. He opined that the accepted emotional conditions were much less clear as to causation. The DMA consulted the medical literature and found studies which determined that cardiac disease and PTSD were covariants, but that causation was not established. He determined that the record did not include a history of trauma that would meet the criteria of PTSD and that Dr. Ritter excluded many of the symptoms expected with PTSD. The DMA found that, notwithstanding the SOAF, the employee's symptoms did not meet the criteria for PTSD.

By decision dated March 28, 2023, OWCP denied modification.

### **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>6</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>7</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, she 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>8</sup>

### **ANALYSIS**

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

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<sup>6</sup> 5 U.S.C. § 8133 (compensation in case of death).

<sup>7</sup> See *R.G. (K.G.)*, Docket No. 22-0288 (issued February 9, 2023); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

<sup>8</sup> See *R.G., id.*; *B.M. (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *L.R. (E.R.)*, 58 ECAB 369 (2007).

OWCP referred the employee's medical record and a SOAF to the DMA, Dr. Barnhart, for a determination as to whether the employee's death was causally related to his accepted employment injuries. The March 16, 2023 SOAF listed the accepted conditions including anxiety state, PTSD, asthma, diabetes, and hyperglycemia. Dr. Barnhart in his March 23, 2023 report, found that, notwithstanding the SOAF, the employee's symptoms did not meet the criteria for PTSD. He therefore determined that this condition had not caused or contributed to the employee's death.

It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.<sup>9</sup>

OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>10</sup> In the present case, OWCP erred in relying on Dr. Barnhart's report as he disregarded the accepted condition listed in the SOAF when providing an opinion regarding the contribution of the accepted conditions to the employee's death.<sup>11</sup> As the DMA did not use the SOAF as the framework in forming his opinion, his opinion is of diminished probative value.<sup>12</sup>

Proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.<sup>13</sup> Once OWCP undertook development of the evidence by referring the employee's records to a DMA, it had the duty to secure an appropriate report addressing the relevant issues.<sup>14</sup> As Dr. Barnhart, the DMA, did not base his report on an accurate factual history, the case shall be remanded to OWCP for further development of the medical evidence.

On remand OWCP shall refer the case record, along with a SOAF, to a new DMA for an opinion regarding whether appellant has met her burden of proof to establish that the employee's

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<sup>9</sup> *K.S.*, Docket No. 22-1011 (issued January 5, 2023); *D.T.*, Docket No. 21-1168 (issued April 6, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

<sup>10</sup> *J.Z.*, Docket No. 22-0829 (issued December 9, 2022); *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

<sup>11</sup> *O.M.*, Docket No. 21-1383 (issued March 1, 2023).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *id.*; *see also Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

<sup>13</sup> *See J.Z., M.H., supra* note 10; *D.M.*, Docket No. 19-1181 (issued December 2, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>14</sup> *R.B.*, Docket No. 21-0044 (issued November 4, 2022); *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).

death on February 20, 2021 was causally related to his accepted employment injury. After 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 March 29, 2023 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: December 5, 2023  
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