

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

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<b>H.C., claiming as widow of P.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0077</b>
	)	<b>Issued: April 3, 2024</b>
<b>U.S. POSTAL SERVICE, READING POST OFFICE, Reading, MA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 5, 2023 appellant filed a timely appeal from a September 18, 2023 merit decision and an October 24, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that the employee's death on July 23, 2018 was causally related to his accepted May 13, 1977 employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 15, 1977 the employee, then a 45-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 1977 he experienced left shoulder pain when he unloaded mail and parcels from a postal truck while in the performance of duty.<sup>2</sup> The employee stopped work on May 31, 1977 and returned to modified duty on February 10, 1979. OWCP accepted the employee's claim for neck sprain, displacement of cervical intervertebral disc without myelopathy, aggravation of spondylosis at C5, C6, and C7, cervical disc disease, back strain, and nerve root compression on the left. On January 3, 1983 the employee stopped work again and did not return. OWCP paid him wage-loss compensation on the supplemental rolls, and placed him on the periodic rolls, effective June 16, 2002.

On July 26, 2018 appellant notified OWCP that the employee had passed away on July 23, 2018. OWCP terminated the employee's wage-loss compensation benefits, effective July 23, 2018.

Appellant submitted a July 25, 2018 death certificate, which indicated that the employee's death on July 23, 2018 was due to asystole as a consequence of acute hypoxic respiratory failure secondary to congestive heart failure, and acute renal failure secondary to tubular necrosis.

On November 13, 2018 appellant, the employee's widow, filed a claim for compensation by a surviving spouse and/or children (Form CA-5) requesting survivor's benefits. She indicated that the employee had died on July 23, 2018. Appellant reported that the nature of the injury, which caused the death was "see death cert."

In an attached statement, appellant explained that she was the spouse of the employee. She reported that on June 23, 2018 the employee was found on the floor of his nursing home and was bleeding from his head. Appellant indicated that since that incident appellant did not eat or talk. She alleged that the accident caused the employee's death sooner than it otherwise would have occurred because of the effects of the fall.

In an October 29, 2018 attending physician's report, page 2 of the Form CA-5, Dr. Khether Raby, a Board-certified cardiologist, indicated that there was a fall on June 23, 2018 and that the employee had altered mental status, aspiration, and respiratory failure. He reported that appellant was treated for cardiac amyloidosis, aortic stenosis, atrial fibrillation, and systolic heart failure. Dr. Raby noted that the direct cause of death was "cardiac arrest from respiratory failure." He explained that the contributory causes of death were "fall on [June 23, 2018], post fall altered mental status, ... aspiration, [and] respiratory failure." Dr. Raby reported that appellant had advanced systolic heart failure due to cardiac amyloidosis and aortic stenosis, not improved after aortic valve replacement. He opined that the fall on June 23, 2018 with altered mental status

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<sup>2</sup> The employee had a previously accepted traumatic injury claim under OWCP File No. xxxxxx265 for strains of the neck, shoulders, and right hip causally related to a December 16, 1972 employment injury. OWCP has administratively combined OWCP File No. xxxxxx265 and OWCP File No. xxxxxx110 with the latter claim as the master file.

caused aspiration, accompanied by more aspiration from epistaxis, that resulted in respiratory failure.

Appellant also submitted a marriage certificate dated September 25, 1963 and funeral expenses dated August 8, 2018.

In a March 19, 2019 development letter, OWCP informed appellant that a claim for survivor benefits may be payable to eligible dependents if the death of the employee resulted from a job-related injury. It advised her of the factual and medical evidence necessary to establish her claim. OWCP provided appellant 30 days to provide the requested information.

In an April 9, 2019 response to OWCP's development letter, appellant explained that the employee passed away on July 23, 2018. She noted that at the time of the employee's death, he was on disability for OWCP due to his May 13, 1977 employment injury. Appellant indicated that the employee suffered for many years with pain and disability and that his heart disease occurred in the latter part of his life.

By decision dated November 25, 2022, 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 May 13, 1977 employment injury.

On January 18, 2023 appellant requested reconsideration. In a January 6, 2023 statement, she alleged that there were two different causes of her husband's death, *i.e.*, his work injury and his heart condition. Appellant described the May 13, 1977 employment injury, and noted that the employee had major surgery following his fall at work. She explained that she had to care for her husband, and perform all household care after the employee's surgery because he showed no improvement. She noted that she cared for him from 1977 until his death in July 2018. Appellant requested compensation for "the emotional toll caused by my husband's long duration of care due to his work injury." She asserted that her husband could have lived longer if he had never been injured in 1977. Appellant indicated that her monthly widow's pension from OWCP was insufficient for her to live on.

By decision dated March 7, 2023, OWCP denied modification of its prior decision.

In a May 22, 2023 letter, appellant requested that OWCP review her husband's hospital records dated from 1977 through 2018. She explained that after her husband's May 13, 1977 employment injury, he underwent a laminectomy but the procedure did not resolve the problem. Appellant reported that after the procedure her husband experienced increasing pain from 1977 through 2018 and was forced to retire on a disability pension in 1985. She indicated that during the entire period from 1977 through 2018, she had to care for her husband because he was physically unable to perform self-care. Appellant argued that she should be compensated for the long period that her husband was disabled, and that she was his sole caretaker.

Appellant submitted the employee's laboratory test results dated August 19 and 25, 2015, various insurance statements, medical bills, and diagnostic test order reports dated from 2015, and hospital registration and admission documents dated August 14, 20, and 25, and October 9, 2015.

OWCP also received several diagnostic reports. An August 14, 2015 ultrasound of the employee's left arm and hand revealed no evidence of deep vein thrombosis (DVT) in the left upper extremity. An August 25, 2015 electromyogram and nerve conduction velocity (EMG/NCV) study showed moderate delay of bilateral median distal motor latencies, mild decrement and slowing of the left ulnar conduction across the cubital tunnel, normal sensory conduction, and acute denervation of the left deltoid, left biceps, and left supraspinatus and infraspinatus. An October 9, 2015 cervical radiology report revealed spondylosis with myelopathy in the cervical region. An October 9, 2015 computerized tomography (CT) scan demonstrated multilevel degenerative disc disease, postoperative sequelae from prior laminectomies, and multilevel facet and uncovertebral joint hypertrophy.

On August 9, 2023 appellant requested reconsideration. In an attached statement, she noted that she had previously submitted a copy of her husband's hospital medical records from 1977 through 2018. Appellant also indicated that in addition to the pain and suffering that her husband endured, they also had to pay for all of the expenses of traveling to and from the hospital and had to pay for many of his prescriptions.

By decision dated August 16, 2023, OWCP denied modification of its prior decision.

On September 5, 2023 appellant requested reconsideration. In a statement dated August 27, 2023, she indicated that she wanted to clarify the nature of her claim. Appellant explained that she was not alleging that her husband's death was due to his work-related injury. She indicated that she was requesting compensation because her husband was in chronic pain due to his work-related injury in 1977, and she was his sole caretaker during this entire period. Appellant reported that she received a monthly amount of \$1,425.84 from OWCP and the Social Security Administration (SSA) and that this amount was not enough money to live on.

By decision dated September 18, 2023, OWCP denied modification of its prior decision.

On October 18, 2023 appellant requested reconsideration.

In a statement dated October 10, 2023, appellant indicated that she had cared for her husband for the entire period from 1977 through 2018 with no additional help from others. She noted that it was extremely difficult for her, and that she was 94 years old. Appellant alleged that the employing establishment post office showed no respect for her husband's fall and injury due to their negligence. She contended that the employing establishment was negligent for not treating the ice on the loading dock, which caused her husband's fall. Appellant requested "compensation for wage loss and permanent impairment." She indicated that she could not live solely on the amount of OWCP pension and SSA benefits.

By decision dated October 24, 2023, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

## LEGAL PRECEDENT -- ISSUE 1

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 or 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>

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the employee's death on July 23, 2018, was causally related to his accepted May 13, 1977 employment injury.

OWCP accepted the employee's claim for neck sprain, displacement of cervical intervertebral disc without myelopathy, aggravation of spondylosis at C5, C6, and C7, cervical disc disease, back strain, and nerve root compression on the left. The employee passed away on July 23, 2018, and his death certificate noted the cause of death as asystole as a consequence of acute hypoxic respiratory failure, secondary to congestive heart failure. Appellant filed a Form CA-5 claiming survivor benefits.

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

<sup>4</sup> *B.M. (H.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. 22-0288 (issued February 9, 2023); *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>6</sup> See *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

<sup>7</sup> See *M.P. (E.P.)*, Docket No. 22-0832 (issued November 18, 2022); *M.L. (S.L.)* Docket No. 19-0020 (issued May 2, 2019); *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

<sup>8</sup> *M.H. (M.H.)*, Docket No. 23-0286 (issued May 10, 2023); *L.W. (K.W.)*, Docket No. 19-0569 (issued August 16, 2019).

Dr. Raby completed the attending physician's report, page 2 of the Form CA-5, dated October 29, 2018. He described a fall on June 23, 2018, and that the employee had altered mental status, aspiration, and respiratory failure. Dr. Raby reported that the direct cause of death was "cardiac arrest from respiratory failure." He opined that the fall on June 23 with altered mental status caused aspiration, accompanied by more aspiration from epistaxis, that resulted in respiratory failure. The Board notes that none of the medical conditions noted by Dr. Raby have been accepted by OWCP as work related. The Board has found that for conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.<sup>9</sup> Dr. Raby did not provide any opinion as to whether the employee's cardiac arrest and respiratory failure were caused or aggravated by the accepted May 13, 1977 employment injury prior to his death.<sup>10</sup> His opinion, therefore, is insufficient to establish appellant's claim for survivor benefits.

Appellant also submitted various hospital records, including laboratory test results, and diagnostic test order reports, and diagnostic imaging reports dated from August 4 through October 9, 2015. These medical documents, however, predate the employee's death and do not offer an opinion regarding the employee's death. Accordingly, they are insufficient to meet appellant's burden of proof.<sup>11</sup>

As appellant has failed to submit medical evidence containing a rationalized medical opinion that the employee's accepted May 13, 1977 injuries contributed to his July 23, 2018 death, she has not met her burden of proof to establish her claim.<sup>12</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>13</sup>

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<sup>9</sup> *R.G. (O.G.)*, Docket No. 17-0916 (issued September 6, 2017); *P.J. (S.J.)*, Docket No. 15-686 (issued June 15, 2015); *E.C.*, Docket No. 10-1554 (issued April 1, 2011); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>10</sup> *R.G. (O.G.)*, *id.*

<sup>11</sup> *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *C.B. (S.B.)*, Docket No. 19-1629 (issued April 7, 2020).

<sup>12</sup> *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *J.P. (T.P.)*, Docket No. 17-0563 (issued June 20, 2018).

<sup>13</sup> 5 U.S.C. § 8128(a); *see A.N.*, Docket No. 20-1487 (issued March 19, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>14</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>15</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>16</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>17</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In connection with her October 18, 2023 reconsideration request, appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered by OWCP. Appellant reiterated her contention from previous statements that she should receive compensation because she was her husband's sole caretaker due to his work-related injury. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>18</sup>

Appellant did not submit any evidence to support her October 18, 2023 reconsideration request. Because appellant has not provided relevant and pertinent new evidence, she was not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>19</sup>

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<sup>14</sup> 20 C.F.R. § 10.606(b)(3); *see S.K.*, Docket No. 22-0248 (issued June 27, 2022); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>15</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>16</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>17</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>18</sup> *Id.* at § 10.606(b)(3); *M.L.*, Docket No. 22-0120 (issued May 12, 2022); *G.K.*, Docket No. 20-1026 (issued December 11, 2020).

<sup>19</sup> *See D.H.*, Docket No. 22-0875 (issued December 5, 2022); *D.J.*, Docket No. 21-0371 (issued November 24, 2021).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that the employe's death on July 23, 2018, was causally related to his accepted May 13, 1977 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18 and October 24, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 3, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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