

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

E.P., claiming as widow of P.P., Appellant)	
)	
and)	Docket No. 22-0895
)	Issued: February 22, 2024
DEPARTMENT OF THE ARMY, U.S. ARMY)	
CORPS OF ENGINEERS, Sacramento, CA,)	
Employer)	
)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 27, 2022 appellant, through counsel, filed a timely appeal from a March 22, 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 over 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 March 28, 2018 was causally related to his accepted October 4, 2013 employment injury.

FACTUAL HISTORY

On February 14, 2014 the employee, then a 58-year-old environmental engineer, filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2013 he sustained a right hip fracture when he slipped and fell on a restroom floor, hitting his right side, while in the performance of duty. He stopped work on that date. On October 5, 2013 the employee underwent an authorized intramedullary nail fixation of right intertrochanteric hip. OWCP accepted the employee's claim for closed fracture of unspecified part of the right femur neck. It paid the employee wage-loss compensation on the supplemental rolls for disability from work during the period January 15 through December 12, 2014.

On April 10, 2018 OWCP received notice that the employee had passed away on March 28, 2018. Counsel submitted a death certificate, which noted that the employee passed away on March 28, 2018 due to the "immediate cause" of multi-system atrophy [MSA]. The certificate did not list any other contributing causes of death.

On May 3, 2019 OWCP expanded the acceptance of appellant's claim to include displaced intertrochanteric fracture of right femur, DVT of the left leg, anoxic ischemic brain damage, and pulmonary embolism. By separate decision dated May 3, 2019, OWCP denied expansion of the acceptance of the claim to include Parkinson's disease and MSA.³

In a June 8, 2020 report, Dr. Bronshvag noted that he had been contacted by appellant's counsel to produce a medical report concerning the employee's death. He advised that the employee's condition had worsened after his hip fracture, hip surgery, and pulmonary embolism. Dr. Bronshvag opined that anoxic ischemic brain damage was one of the employee's challenges above and beyond the preexisting MSA. He asserted that, absent the MSA, it was more likely than not that the employee would still be alive. Dr. Bronshvag opined that appellant's accepted pulmonary embolism condition was a compensable consequence of the hip fracture and was a "specific (partial)" cause of the employee's death.

On April 5, 2021 OWCP received a claim for survivor benefits (Form CA-5), which appellant signed on March 26, 2021, a marriage certificate, another copy of the death certificate, receipts for the employee's funeral, and proof of a Social Security Administration lump-sum payment for funeral expenses.

In an April 16, 2021 development letter, OWCP requested that appellant submit additional medical evidence in support of her claim for survivor benefits. It explained that medical evidence was required that provided a reasoned opinion addressing the connection (if any) between the

³ The May 3, 2019 decision was based on the opinion of Dr. Michael Bronshvag, a Board-certified neurologist serving as OWCP's second opinion physician on the issue of expansion.

accepted work-related conditions and the employee's death. OWCP afforded appellant 30 days to respond.

By decision dated September 15, 2021, OWCP denied appellant's claim for survivor benefits, finding that she had not submitted rationalized medical evidence relating the employee's death to an employment-related cause.

On October 14, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearing and Review.

During the February 8, 2022 hearing, appellant testified regarding the employee's physical state prior to the work injury. She noted that he had been able to walk alone and did not require assistance with his daily activities. Appellant testified that, after the work injury and related surgery, the employee never walked again without the assistance of a walker, and he never drove again. Counsel argued that the consequences of the employee's hip surgery prevented a slowing down of the progression of the condition which led to his death.

By decision dated March 22, 2022, OWCP's hearing representative affirmed OWCP's September 15, 2021 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.⁴ An award of compensation in a survivor benefits 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.⁵ 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 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.⁶ 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.⁷ The Board has held that it is not necessary that there is a significant contribution of

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

⁵ *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁶ *See R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁷ *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

employment factors to establish causal relationship.⁸ If the employment contributed to the employee's death, then causal relationship is established.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the employee's death on March 28, 2018 was causally related to his accepted October 4, 2013 employment injury.

In support of the claim for survivor benefits, appellant submitted a June 8, 2020 report, wherein Dr. Bronshvag noted that he had been contacted by counsel to produce a medical report concerning the employee's death. Dr. Bronshvag advised that the employee's condition had worsened after his hip fracture, hip surgery, and pulmonary embolism. He opined that anoxic ischemic brain damage was one of the employee's challenges above and beyond the preexisting MSA. Dr. Bronshvag asserted that, absent the MSA, it was more likely than not that the employee would still be alive. He opined that appellant's accepted pulmonary embolism condition was a compensable consequence of the hip fracture and was a "specific (partial)" cause of the employee's death. However, Dr. Bronshvag did not provide medical rationale explaining his conclusory opinion. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁰ This evidence is, therefore, insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between the employee's death on March 28, 2018 and the accepted October 4, 2013 employment injury, the Board finds that appellant has not met her burden of proof.

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employee's death on March 28, 2018 was causally related to his accepted October 4, 2013 employment injury.

⁸ See *P.G. (J.G.)*, *id.*; *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁹ *Id.*

¹⁰ See *C.B. (S.B.)*, Docket No. 19-1629 (issued April 7, 2020); *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board