

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

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<b>J.T., claiming as widow of J.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0124</b>
	)	<b>Issued: April 7, 2025</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE</b>	)	
<b>DEPOT, Memphis, TN, Employer</b>	)	

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*Appearances:* *Case Submitted on the Record*  
*Wayne Johnson, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

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

On November 9, 2024, appellant, through counsel, filed a timely appeal from a May 13, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0124.

This case has previously been before the Board.<sup>2</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 July 25, 1991, the employee, then a 42-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 1991 he injured his left leg when he tripped on carpet and fell in his office. OWCP accepted the claim for a left ankle sprain. It subsequently expanded its acceptance of the claim to include causalgia of the left and right lower limbs, cellulitis

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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 an 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> Docket No. 16-0731 (issued May 11, 2017); Docket No. 23-0863 (issued December 29, 2023).

of the right and left lower limb, cellulitis of an unspecified part of limb, chronic pain syndrome, complex regional pain syndrome (CRPS) of the lower limbs, displacement of a lumbar intervertebral disc without myelopathy, dry mouth, other cysts of the oral region, partial loss of teeth due to periodontal diseases, and lumbar spondylolisthesis. The employee stopped work on July 24, 1991 and did not return. OWCP paid him wage-loss compensation on the periodic rolls.

The case record indicates that the employee passed away on April 12, 2019. OWCP received a death certificate dated May 9, 2019, which noted CRPS as the cause of the employee's April 12, 2019 death, with underlying causes of atrial fibrillation, Parkinson's disease, and type 2 diabetes mellitus.

On June 10, 2019, appellant filed a Form CA-5 claim for survivor's benefits. A physician assistant completed the medical portion of the CA-5 form and listed the employee's death as CRPS with contributory causes of severe and relapsing cellulitis, atrial fibrillation, Parkinson's disease, multiple injuries to the lumbar vertebrae, Type 2 diabetes mellitus, hypothyroidism, benign paroxysmal position vertigo, restless leg syndrome, cataracts, and severe dry mouth. The physician assistant related that after the employee's last back surgery in 2016 he developed cellulitis, sepsis, and organ failure and was diagnosed with CRPS, which accelerated his health problems.

By decision dated January 16, 2020, 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 February 13, 2020, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 31, 2020, OWCP's hearing representative affirmed the January 16, 2020 decision.

On August 31, 2021, appellant, through counsel, requested reconsideration. (RD 8-31-21) She submitted a September 5, 2020 report, wherein Dr. Sailaja Raju, who specializes in family medicine, related that CRPS accelerated the employee's death.

By decision dated November 29, 2021, OWCP denied modification of its August 31, 2020 decision.

On December 4, 2022, appellant, through counsel, requested reconsideration.

By decision dated December 13, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that she had submitted new medical evidence but found that new medical evidence was not considered in clear evidence of error determinations, and that she had therefore not established clear evidence of error.

Appellant appealed to the Board. By decision dated December 29, 2023, the Board affirmed in part the December 13, 2022 decision, finding that appellant's December 4, 2022 request for reconsideration was untimely filed. However, the Board also set aside the December 13, 2022 decision in part, finding that the case was not in posture for decision with

regard to whether appellant's request for reconsideration failed to demonstrate clear evidence of error as OWCP had summarily denied reconsideration without explaining the basis for its finding. The Board remanded the case for an appropriate decision on appellant's untimely reconsideration request which addressed the legal arguments raised by counsel

On April 1, 2024, OWCP requested that a district medical adviser (DMA) review the evidence and address whether the employee's repeated back surgeries and complications accelerated his nonemployment-related conditions and death. A DMA provided an opinion on May 6, 2024 finding that the employee's death was "not directly related" to the accepted employment injury.<sup>3</sup>

By decision dated May 13, 2024, OWCP again denied appellant's request for reconsideration, finding that it was untimely filed and did not demonstrate clear evidence of error.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

On remand, following the Board's December 29, 2023 decision, OWCP undertook further development of the medical evidence by referring the record to a DMA for an opinion on the underlying issue of whether the employee's death was causally related to his accepted employment injury or medical treatment incurred as a result of his injury. OWCP, however, failed to consider the DMA's report in relation to the merits of the survivor's benefits claim. Instead, it issued a nonmerit decision denying appellant's request for reconsideration as untimely and insufficient to demonstrate clear evidence of error.

Once OWCP undertakes further development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>4</sup> Accordingly, the Board finds that the case must be remanded for consideration of the May 6, 2024 report of the DMA in relation to the merits of the claim. Following this and other such further development as deemed necessary, it shall issue a *de novo* merit decision regarding appellant's claim for survivor's benefits.

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<sup>3</sup> The Board notes that under FECA, the work-related condition does not have to be a significant or direct factor in the employee's death but rather is compensable if it is a contributing factor. *See L.W. (K.W.)*, Docket No. 19-0569 (issued August 16, 2019); *M.L. (S.L.)*, Docket No. 19-0020 (issued May 2, 2019).

<sup>4</sup> *See Order Remanding Case, C.S.*, Docket No. 23-0732 (issued August 24, 2023); *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *D.S.*, Docket No. 19-0292 (issued June 21, 2019).

**IT IS HEREBY ORDERED THAT** the May 13, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 7, 2025  
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