

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 injury.

FACTUAL HISTORY

This case has previously been before the Board on appeal.³ 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.⁴ The employee stopped work on August 12, 1981. OWCP accepted that he sustained chronic anxiety, myofascial pain dysfunction syndrome with temporomandibular joint dysfunction and transitory episode of anxiety. It 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 (OCPD).

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

³ Docket No. 23-0723 (issued December 5, 2023); Docket No. 22-0671 (issued September 20, 2022); 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.

to cardiopulmonary arrest and as a secondary cause, recent left lower leg open reduction and internal fixation.

In a March 4, 2021 report, Dr. Eric Bishop, a psychiatrist, related that the employee died of a suspected myocardial infarction on February 20, 2021. He further related that he had provided treatment for work-related PTSD. Dr. Bishop opined that PTSD was known to double the risk of death from heart disease and likely contributed to his death.

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. Bishop completed the medical portion of the CA-5 form listing the employee's accepted conditions of PTSD, unspecified anxiety disorder, and OCPD. 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, through her counsel, repeatedly requested reconsideration. In support of her requests, she submitted the employee's medical records dated July 13, 1995 through February 18, 2021. In February 20, 2021 notes and an August 12, 2021 report, Dr. Richard Hilliard, an osteopath, related that the employee experienced difficulties breathing and that the cause of death appeared to be a sudden cardiovascular collapse. He listed the employee's known conditions as COPD, diabetes, hypertension, PTSD, ischemic heart disease, and potential heart failure as contributing to his death resulting in a fatal arrhythmia. Dr. Hilliard related that PTSD was known to exacerbate these conditions.

Dr. Jerrold J. Weinstock, a psychiatrist, completed a January 3, 2022 report attributing the employee's death to PTSD and hyperglyceridemia through narrowing of the arteries and arrhythmia.

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 appellant 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.⁵

⁵ Docket No. 22-0671 (issued September 20, 2022).

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. No additional evidence was received.

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 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 a 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.

Appellant, through her counsel, appealed the March 28, 2023 decision to the Board. By decision dated December 5, 2023, the Board set aside the March 28, 2023 decision, finding that

the case was not in posture for a decision.⁶ The Board determined that the DMA did not properly rely on the SOAF when providing an opinion regarding the contribution of the accepted conditions to the employee's death and remanded for further review by a new DMA and a *de novo* decision.

On January 18, 2024 OWCP again referred a SOAF and the medical evidence of record to Dr. Barnhart, the DMA. In his January 30, 2024 report, Dr. Barnhart disagreed with Dr. Weinstock that PTSD was associated with a "doubled risk of heart disease" and instead opined that there was a relationship of correlation not causation. He related that the employee was a man with a myriad of medical comorbidities including inactivity from chronic pain, chronic hypertension, emphysema, and the effects of diabetes on the vascular system that could have hypothetically contributed to his cardiac arrest, but that the most likely cause was not his chronic anxiety or post-traumatic symptoms. Dr. Barnhart further determined that the employee likely suffered a pulmonary embolus as the sequelae of a compound fracture of a large leg bone. He found, "PTSD, if still active at all, or his chronic anxiety may not be totally excluded as factors ... but in the opinion of this reviewer, were factors far less significant than the others...."

By decision dated January 31, 2024, 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.

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.⁷ 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.⁸ 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.⁹ The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal

⁶ Docket No. 23-0723 (issued December 5, 2023).

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

⁸ 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).

⁹ See *R.G., id.*; *B.M. (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *L.R. (E.R.)*, 58 ECAB 369 (2007).

relationship.¹⁰ If the employment contributed to the employee's death, then causal relationship is established.¹¹

ANALYSIS

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

OWCP accepted that the employee sustained chronic anxiety, myofascial pain dysfunction syndrome with temporomandibular joint dysfunction, transitory episode of anxiety, 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 OCPD due to factors of his federal employment.

OWCP referred the employee's medical records to Dr. Barnhart as a DMA to determine whether his death was related to his accepted employment injuries. The Board finds that his reports are internally inconsistent. In his January 30, 2024 report, Dr. Barnhart related that the employee was a man with a myriad of medical comorbidities including inactivity from chronic pain, chronic hypertension, emphysema, and the effects of diabetes on the vascular system that could have hypothetically contributed to his cardiac arrest, but that the most likely cause was not his chronic anxiety or post-traumatic symptoms. He found, "PTSD, if still active at all, or his chronic anxiety may not be totally excluded as factors ... but in the opinion of this reviewer, were factors far less significant than the others." The SOAF provided to Dr. Barnhart related that PTSD was an accepted condition. Dr. Barnhart suggested both that this condition was not present, and in the alternative if it was present, was not a "significant" factor in contributing to the employee's death. As noted above, the Board has held that it is not necessary that there is a significant contribution of employment conditions to establish causal relationship.¹² If the employment contributed to the employee's death, then causal relationship is established.¹³ As Dr. Barnhart's report is internally inconsistent and inconsistent with Board precedent, it is of diminished probative value.¹⁴

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.¹⁵ 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

¹⁰ See *M.F. (E.F.)*, Docket No. 24-0518 (issued June 21, 2024); *R.G. (O.G.)*, Docket No. 17-0916 (issued September 6, 2017); *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

¹¹ See *M.F. (E.F.)*, *id.*; *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020).

¹² *Supra* note 8.

¹³ *Supra* note 9.

¹⁴ *C.C.*, Docket No. 18-1229 (issued March 8, 2019); *S.K.*, Docket No. 18-0836 (issued February 1, 2019); *E.D.*, Docket No. 17-1064 (issued March 22, 2018).

¹⁵ See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

addressing the relevant issues.¹⁶ Dr. Barnhart, the DMA, did not provide an internally consistent report and a report consistent with Board precedent.

The Board, therefore, finds that the case must be remanded to OWCP for further development.¹⁷ 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 death on February 20, 2021 was causally related to his accepted employment injuries. 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 a decision.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2024 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: February 3, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *S.S.*, Docket No. 16-1792 (issued January 27, 2017); *Kathleen W. Moore*, Docket No. 05-0372 (issued July 7, 2005); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹⁷ *L.N.*, Docket No. 24-0690 (issued November 4, 2024); *J.K.*, Docket No. 24-0307 (issued June 13, 2024).