

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 May 9, 2019 was causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 8, 2019 appellant filed a claim for compensation by widow (Form CA-5), alleging that her husband, the employee, passed away on May 9, 2019 due to an employment-related cardiac arrhythmia, cardiomegaly, and left ventricular hypertrophy. The employee, then a 48-year-old management and program analyst, was on temporary-duty travel status when he was found deceased in his hotel room on May 9, 2019.

The accepted facts of this case indicate that on May 8, 2019, the employee and his coworkers returned to their hotel after a work-related training session and then dining together at a nearby restaurant. During dinner, the employee consumed alcohol. Upon returning to the hotel, the employee and his coworkers spent time by the pool where the employee continued to consume alcohol. Sworn statements indicate that the employee entered the pool fully clothed and his coworkers then decided to help him back to his room as he appeared to be inebriated. S.A., a coworker, indicated that he stayed with the employee in his hotel room and managed to get him into bed, still fully clothed. The employee vomited in bed, which S.A. cleaned up. S.A. indicated that he then placed a clean towel under the employee's head and pillows behind the employee's back to prevent him from rolling. He also placed the door bolt in such a position so the employee could be checked on. The next morning, S.A. found the employee in the same position unresponsive in bed. The record also contains a May 17, 2019 crime scene report and the May 9, 2019 Moline Police Department Incident/Investigation Report and reporting officer narrative.

In a June 13, 2019 autopsy report, Dr. Mark Peters, a forensic pathologist, opined that the immediate cause of the employee's death was a cardiac arrhythmia caused by cardiomegaly resulting from left ventricular hypertrophy. Toxicology results indicated a blood ethanol level of 295 mg/dL and positive findings for caffeine and cotinine. The employee's June 14, 2019 death certificate indicated the cause of death as a cardiac arrhythmia caused by cardiomegaly resulting from left ventricular hypertrophy.

In an August 12, 2019 report, Dr. David I. Krohn, a Board-certified internist serving as OWCP's district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical records. He disagreed with Dr. Peters' determination of cardiac arrhythmia as the cause of death, noting there was no objective way to demonstrate that the employee's death was due to cardiac arrhythmia because the employee's body was in complete and fixed rigor mortis at the time of autopsy. Dr. Krohn further noted that Dr. Peters did not refer to, and likely may not have had access to, the employee's medical history to show symptoms suggestive of cardiac arrhythmia while alive, and that Dr. Peters neither mentioned the significantly-elevated blood alcohol level or the events of the evening prior to the employee's death. He opined that the more likely cause of the employee's death was death due to coma and respiratory depression caused by acute alcohol poisoning unrelated to his employment. Dr. Krohn noted there was no past history of alcoholism or evidence in the record to suggest that a trigger to either alcohol ingestion or an arrhythmia resulted from work-related training activities.

In an October 21, 2019 letter, OWCP informed appellant of the deficiencies of her survivor benefits claim. It advised her of the type of evidence needed and afforded her 30 days to submit the requested information. No additional evidence was received.

By decision dated December 3, 2019, OWCP denied appellant's survivor benefits claim. It found that the weight of the evidence rested with the DMA, who provided a well-rationalized medical explanation, based on the factual and medical background of the employee, that the employee's death was not caused, precipitated, or aggravated by factors of his federal employment.

On December 24, 2019, appellant, through counsel, requested reconsideration. Counsel argued that there was an unresolved conflict in medical opinion regarding the cause of the employee's death. No additional evidence was received.

By decision dated March 13, 2020, OWCP modified its December 3, 2019 decision and denied appellant's claim for survivor benefits as the employee's death on May 9, 2019 did not occur in the performance of duty. It found that the employee had deviated from his assigned duties and had engaged in personal conduct, which was not incidental to his work, and which was the proximate cause of his death.

On May 7, 2020, appellant, through counsel, requested reconsideration. Counsel argued that the employee was in travel status when he died, had not deviated from his assignment, and was engaged in a recreational or social activity incidental to or part of his duties.

By decision dated August 4, 2020, OWCP denied modification of its prior decision

On September 18, 2020, appellant, through counsel, requested reconsideration. Counsel argued that OWCP could not invoke the affirmative defense of intoxication, as it had not done so in the initial decision denying the claim, and that it failed to consider the human instincts doctrine.

By decision dated December 17, 2020, OWCP denied modification of its prior decision.

On May 18, 2021, appellant, through counsel, requested reconsideration.

In a March 13, 2021 letter, a county coroner, Bryan W. Gustafson, R.N., disagreed with the DMA's opinion regarding the cause of the employee's death, maintaining that the employee died as a result of a cardiac arrhythmia. He explained that many individuals are asymptomatic when suffering from cardiomegaly and left ventricular hypertrophy and noted that Dr. Peters would have mentioned the employee's blood alcohol level if it had been a relevant factor in the employee's death. The coroner opined that the employee was in heart failure from his "alleged walk" from the pool to his hotel room and that "competent observers" should have called 911 for assistance. He also confirmed with Dr. Scott Denton, a Board-certified forensic pathologist, that blood alcohol levels remained at the same level at the time of death and do not decrease post-mortem regardless of when an autopsy was conducted.

In a March 24, 2021 report, Dr. Peters agreed with Mr. Gustafson's assessment of the employee's cause of death.

In a February 17, 2022 amended report, Dr. Krohn, the DMA, reviewed the SOAF and the medical record, along with the March 13, 2021 report from Mr. Gustafson's and Dr. Peters' March 24, 2021 report. He concurred with Dr. Peters' opinion that left ventricular hypertrophy was a risk factor for sudden cardiac death as well as overall cardiovascular mortality. However, the DMA noted that Dr. Peters did not provide the weight of the left ventricle from the autopsy and found the degree of left ventricular hypertrophy "mild," which was the basis of his conclusion that the employee's death was caused by an arrhythmia. Based on the factual evidence of record that appellant was in possible respiratory distress at the time he was last observed and that he had signs of severe ethanol intoxication, the DMA again opined that the employee's death was more likely caused by respiratory depression secondary to alcohol. He noted that additional information from Dr. Peters, such as an estimate of the weight of the left ventricle post-mortem and rationale for his opinion that the cause of death was due to an arrhythmia, might help to clarify the cause of the employee's death.

In a March 15, 2022 letter, OWCP requested that Dr. Peters provide a narrative explanation as to the factors that caused him to assign the employee's cause of death as arrhythmia. It also requested an estimate of the weight of the left ventricle post-mortem and rationale as to why he believed the employee's death was not caused by respiratory depression secondary to alcohol.

In an April 5, 2022 response, Dr. Peters indicated that he did not weigh the employee's left ventricle or have an estimate of it explaining that, due to his experience of dissecting over 10,000 hearts in his career, the left ventricular hypertrophy was apparent to him without having to weigh the ventricle separately. He explained that a fatal cardiac arrhythmia caused by left ventricular hypertrophy was a common cause of natural death determined after autopsy. Dr. Peters indicated that it was rare for death to result from respiratory depression caused by alcohol intoxication, noting that Dr. Krohn's opinion was speculative in that regard.

OWCP declared a conflict in medical opinion between Dr. Peters and Dr. Krohn, regarding the employee's cause of death. It referred the employee's medical record along with a series of questions, and an updated SOAF, dated June 23, 2022, to Dr. Francisco J. Diaz, a Board-certified cardiologist/pathologist, serving as the impartial medical examiner (IME).

In a February 25, 2023 report, Dr. Diaz, the IME, reviewed the medical record and SOAF. He agreed with Dr. Peters that the employee's cause of death was due to cardiomegaly (enlargement of the heart). Dr. Diaz indicated that the weight of the employee's heart at 580 grams was nearly double the size for an adult male and that cardiomegaly was known, by itself, to induce irregular rhythm of the heart and sudden death. He also opined that the alcohol level in the employee's blood was not sufficient to ascribe the death solely as alcohol intoxication, noting that a lethal level was usually above 400 mg/dL and the pathologist had to take into account several factors such as if the decedent was a naïve user, noting that his textbook which he co-authored discussed other factors/symptoms. Dr. Diaz further explained that there are no changes in blood alcohol levels until putrefaction (decomposition). Thus, he opined that the employee's death was due to irregular rhythm of the heart due to a significantly enlarged heart and, therefore, the manner of death was natural.

By decision dated March 16, 2023, OWCP denied modification of its prior decision. It found that regardless of whether the employee was in the performance of duty at the time of his

death, there was no evidence to establish that his death was causally related to factors of his employment.

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.³ 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.⁴ 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.⁵ 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.⁶ The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.⁷ If the employment contributed to the employee's death, then causal relationship is established.⁸

ANALYSIS

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

OWCP, in determining the cause of the employee's death, found a conflict in medical opinion evidence between Dr. Peters, the attending pathologist, who opined that the employee's death was cardiac arrhythmia caused by cardiomegaly resulting from left ventricular hypertrophy, and the DMA, Dr. Krohn, who opined that, because the employee was in possible respiratory distress at the time he was last observed and had signs of severe ethanol intoxication, the employee's death was more likely caused by respiratory depression secondary to alcohol. It properly referred the employee's case file to Dr. Diaz to resolve the conflict regarding the cause of the employee's death, pursuant to 5 U.S.C. § 8123(a).

³ 5 U.S.C. § 8133.

⁴ *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁵ *See G.B. (M.B.)*, Docket No. 22-0446 (issued November 22, 2024); *R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R.(E.R.)*, 58 ECAB 369 (2007).

⁶ *G.B. (M.B.)*, *id.*; *P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020); *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁷ *See P.G. (J.G.)*, *id.*; *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁸ *Id.*; *see also G.B. (M.B.)*, *supra* note 6.

In his February 25, 2023 report, Dr. Diaz, the IME, opined that the employee's death was due to an arrhythmia of the heart due to a significantly enlarged heart and, therefore, the manner of death was natural. He explained that the employee's heart weighed nearly double the size for an adult male and that cardiomegaly was known, by itself, to induce irregular rhythm of the heart and sudden death. Dr. Diaz also explained that the alcohol level in the employee's blood was not alone sufficient to have caused the death. However, Dr. Diaz did not address whether the accepted factors of the employee's federal employment contributed to his death by either causation, aggravation, and/or precipitation.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁹ It has an obligation to see that justice is done.¹⁰ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹¹ As it undertook development of the evidence by referring appellant to Dr. Diaz, it had the duty to secure a sufficiently-rationalized report to resolve the relevant issue.

In a situation where OWCP secures an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, it has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹² The case shall therefore be remanded to OWCP for referral to Dr. Diaz for a supplemental opinion regarding whether the employee's death was causally related to the accepted factors of his federal employment. If Dr. Diaz is unable or unwilling to clarify his opinion, or if his requested supplemental report is lacking rationale, OWCP shall refer appellant to a new IME for the purpose of obtaining a rationalized medical opinion.¹³ Following 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.

⁹ See, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁰ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹¹ See *P.H.*, Docket No. 24-0897 (issued November 20, 2024); *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

¹² *Id.*; see also *F.H.*, Docket No. 17-1924 (issued January 25, 2019); *Talmdage Miller*, 47 ECAB 673 (1996).

¹³ *S.C.*, Docket No. 24-0582 (issued September 16, 2024); *L.R.*, Docket No. 21-1312 (issued March 6, 2023); *Harold Travis*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 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: March 17, 2025
Washington, DC

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

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

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