

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

V.A., claiming as widow of J.A., Appellant

and

DEPARTMENT OF THE ARMY, CORPUS
CHRISTI ARMY DEPOT, Corpus Christi, TX,
Employer

Docket No. 25-0403

Issued: May 6, 2025

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 21, 2025 appellant, through counsel, filed a timely appeal from a March 7, 2025 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 was causally related to his accepted April 4, 2022 employment injury.

FACTUAL HISTORY

On April 6, 2022 the employee, then a 52-year-old metallizing equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2022, he experienced low back pain when transferring a 30-pound nozzle from a roller cart to his desk while in the performance of duty. OWCP accepted the employee's claim for sprain of ligaments of the lumbar spine, lumbar radiculopathy, and lumbar spinal stenosis without neurogenic claudication. It paid the employee wage-loss compensation on the supplemental rolls from May 27 through September 25, 2022.

On September 20, 2022 the employee underwent outpatient OWCP-approved bilateral decompressive laminectomies at L3 and L4 and bilateral decompressive foraminectomies at L3-4 and L4-5.

On November 4, 2022 appellant, the employee's widow, notified OWCP that the employee had passed away, confirming that his death occurred on October 4, 2022.

In a January 13, 2023 development letter, OWCP informed appellant that a claim for survivor's benefits may be payable to eligible dependents if the death of the employee resulted from a job-related injury. It provided a claim for compensation by a surviving spouse and/or children (Form CA-5) for her completion and advised her of the type of factual and medical evidence needed to establish such a claim.

On March 27, 2023 appellant, the employee's widow, filed a completed Form CA-5 requesting survivor's benefits.

In an April 27, 2023 attending physician's report, Dr. Khalid Sherani, Board-certified in internal medicine and critical care, indicated that the employee's direct causes of death were aspiration pneumonia, COVID-19 pneumonia, new onset seizure, and acute renal failure, while a contributory cause of death was a clonic seizure to the right side of the brain. He noted that the history of injury or employment-related disease given to him was cardiac arrest. Dr. Sherani stated that the employee's laboratory results were poor prior to his back surgery but were overlooked when he was cleared for back surgery. He checked a box indicating that the employee's death was due to cardiac arrest, noting that the employee seized a week after back surgery.

Appellant also submitted an October 25, 2022 death certificate, which indicated that the employee's death on October 4, 2022 was caused by aspiration pneumonia. The death certificate also listed other significant conditions contributing to death but not resulting in its underlying cause: new onset seizures, acute renal failure, and COVID-19 pneumonia. The manner of death was noted as natural.

A nasopharyngeal swab test for differentiating between COVID-19, influenzas A and B, and respiratory syncytial virus obtained on October 2, 2022 at 7:28 a.m. was positive for COVID-19. A nasal swab test for COVID-19 antigen obtained on the same date and at the same time was negative for COVID-19.

In a report dated October 3, 2022, Dr. Rajeev Narang, Board-certified in internal medicine and critical care, noted that the employee presented to the emergency room (ER) on October 2, 2022 *via* emergency medical services (EMS). He noted appellant's family members indicated earlier that evening that the employee had a possible clonic seizure, but when EMS arrived, the employee was alert and oriented with stable vital signs and refused treatment. Hours later, the employee became unresponsive with another episode of possible clonic seizures, and was transported to an emergency room, at which time he was found to be in fine ventricular fibrillation.

In a report dated October 4, 2022, Dr. Narang related that the employee had died on that date at 2:23 p.m. The critical care diagnoses included ventricular fibrillation (cardiac arrest), requiring mechanical ventilation, acute malignant hyperkalemia, acute kidney injury or chronic kidney disease, high anion gap metabolic acidosis; aspiration pneumonia, septic shock, acute anemia, and new onset clonic seizures. The noncritical care diagnoses included hypertension, hyperlipidemia, diabetes, chronic kidney disease, and lumbar stenosis status post L4-5 laminectomy.

In a letter dated December 20, 2023, counsel recounted that on September 20, 2022, the employee underwent an OWCP-authorized bilateral laminectomy. He argued that as a result of that surgery, the employee developed pneumonia, which ultimately caused his death; and that as such, appellant should be eligible for compensation.

In a July 29, 2024 letter, OWCP informed appellant of the deficiencies of her survivor's benefits claim. It advised her of the type of evidence needed.

OWCP prepared a statement of accepted facts (SOAF) on September 30, 2024, wherein it listed the employee's accepted work-related conditions and his course of treatment for the accepted conditions, including bilateral L3 and L4 decompressive laminectomies and bilateral decompressive foraminectomies at L3 and L4-5, performed on September 20, 2022. The SOAF noted that the employee died on October 4, 2022 from aspiration pneumonia.

On September 30, 2024 OWCP referred the SOAF and the employee's medical record to Dr. Franklin Epstein, Board-certified in internal medicine and neurosurgery, serving as the district medical adviser (DMA), for an opinion on whether the employee's death was causally related to the accepted April 4, 2022 employment injury.

In an October 2, 2024 report, Dr. Epstein reviewed the employee's history of injury and medical treatment. He opined that his death was not related to the April 4, 2022 traumatic injury. Dr. Epstein stated that the employee suffered either acute onset of generalized seizures leading to cardiac arrest, or a spontaneous cardiac arrest manifested by acute onset of seizure activity as a result of lack of blood and oxygen flow to the brain. He opined that the cardiac arrest was a result of the employee's underlying and preexisting multiple major medical infirmities. Dr. Epstein stated that the prolonged cardiac arrest, seizure activity, and vomiting resulted in all the subsequent complications reported in the hospital's intensive care unit. He further opined that there was nothing in the medical records that would implicate the routine and uncomplicated September 20, 2022 lumbar laminectomy, following which he was discharged the same day, with the cardiac arrest that occurred on October 2, 2022. In particular, Dr. Epstein noted that aspiration pneumonia could not be rationally attributed to the September 20, 2022 lumbar laminectomy by any plausible causal physiological mechanism.

By decision dated October 29, 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 April 4, 2022 employment injury, including the authorized surgical procedure of September 20, 2022.

On November 5, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 22, 2025. Counsel stated that the employee's COVID-19 pneumonia led to his aspiration pneumonia, the direct cause of the employee's death. He argued that the employee acquired COVID-19 pneumonia as a direct result of his September 20, 2022 authorized surgery, because he tested negative for COVID-19 at the time of the authorized surgery and tested positive for COVID-19 when, on October 2, 2022, he arrived at the hospital in an unconscious state. Counsel contended that the employee's surgical procedure on September 20, 2022 led to his exposure to COVID-19 and that the exposure to COVID-19 led to aspiration pneumonia, causing the employee's death. The hearing representative held the record open for 30 days to submit additional evidence. No further medical evidence was received.

By decision dated March 7, 2025, OWCP's hearing representative affirmed the October 29, 2024 decision denying appellant's claim for survivor's benefits.

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, he or 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.⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the employee's death was causally related to his accepted April 4, 2022 employment injury.

In an April 27, 2023 attending physician's report, Dr. Sherani indicated that the employee's direct causes of death on October 4, 2022 were aspiration pneumonia, COVID-19 pneumonia, new onset seizure, and acute renal failure, while a contributory cause of death was a clonic seizure to

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

⁴ 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).

⁵ See *R.G., id.*; *B.M. (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *L.R. (E.R.)*, 58 ECAB 369 (2007).

the right side of the brain. He stated that the employee's laboratory results were poor prior to his back surgery but were overlooked when he was cleared for back surgery. Dr. Sherani checked a box indicating that the employee's death was due to cardiac arrest, noting that the employee had seized a week after back surgery. His April 27, 2023 report mentions poor laboratory results before surgery, but does not explain with medical rationale how the authorized September 20, 2022 lumbar surgery caused or contributed to the employee's death. In a claim for death benefits under FECA, the claimant for benefits has the burden of proof to establish the necessary elements of her claim. The claimant must prove by the weight of the reliable, probative, and substantial evidence the existence of a causal relationship between an employee's death and the accepted employment injury.⁶ Dr. Sherani's did not explain with medical rationale how the employee's accepted employment injury and authorized surgery to treat the accepted injury caused or contributed to his death.⁷

Further, while counsel argues that the employee's death was due to COVID-19 pneumonia, the medical evidence of record is devoid of evidence that the employee sustained a COVID-19 infection causally related to his authorized outpatient surgery on September 20, 2022. The Board has held that lay opinions have no probative value on medical issues.⁸ Thus, counsel's contention is insufficient to establish appellant's claim.

OWCP referred the medical record to Dr. Epstein, serving as DMA, to determine whether the accepted April 4, 2022 employment injury was causally related to the employee's death. In his October 2, 2024 report, Dr. Epstein opined that the employee's death was not related to the April 4, 2022 traumatic injury. He stated that the employee suffered either acute onset of generalized seizures leading to cardiac arrest or a spontaneous cardiac arrest manifested by acute onset of seizure activity as a result of lack of blood and oxygen flow to the brain. Dr. Epstein opined that the cardiac arrest was a result of the employee's underlying and preexisting multiple major medical infirmities. He stated that the prolonged cardiac arrest, seizure activity, and vomiting resulted in all the subsequent complications reported in the hospital's intensive care unit. Dr. Epstein further opined that there was nothing in the medical records that would implicate the routine and uncomplicated September 20, 2022 outpatient lumbar laminectomy with the employee's cardiac arrest that occurred on October 2, 2022. In particular, he noted that aspiration pneumonia could not be rationally attributed to the September 20, 2022 lumbar laminectomy by any plausible causal physiological mechanism.

The Board finds that the report from Dr. Epstein was well-rationalized and based on an accurate history of injury and review of the employee's medical record.⁹ Accordingly, the Board finds that his report constitutes the weight of the medical evidence.

⁶ *M.L.*, Docket No. 19-0020 (issued May 2, 2019).

⁷ *Id.*

⁸ See *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *R.C.*, Docket No. 21-0617 (issued August 25, 2023); *E.H.*, Docket No. 19-0365 (issued March 17, 2021); *James A. Long*, 40 ECAB 538 (1989).

⁹ See *M.D. (R.D.)*, *id.*; *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

As the medical evidence of record is insufficient to establish that the employee's death was causally related to the accepted April 4, 2022 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 was causally related to his accepted April 4, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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