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

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| **R.G., claiming for the children of K.G., Appellant** | ) | |
| **and** | ) | **Docket No. 24-0193** |
| | ) | **Issued: September 17, 2026** |
| **U.S. POSTAL SERVICE, MICHIGAN METROPLEX PROCESSING & DISTRIBUTION CENTER, Pontiac, MI, Employer** | ) | |

*Appearances:*
*Alyson Oliver, Esq.,* for the appellant[1]
*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 December 20, 2023 appellant, through counsel, filed a timely appeal from a June 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish that the employee's death on June 9, 2015 occurred in the performance of duty, as alleged.

## ***FACTUAL HISTORY***

This case has previously been before the Board.[4] The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 2, 2017 appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) on behalf the deceased employee's children. She alleged that the employee's death on June 9, 2015 was caused by the employing establishment's refusal to allow her access to her asthma medication in the workplace.

In support of her claim, appellant submitted a June 9, 2015 hospital record of death, which indicated that the employee passed away of respiratory failure at 5:40 a.m. on that date. A June 10, 2015 autopsy report by Dr. Bernardino B. Pacris, a county deputy medical examiner, determined that the employee had died of bronchial asthma. The results of a June 17, 2015 toxicology report were normal. The county death certificate dated June 18, 2015 listed the deceased employee's immediate cause of death on June 9, 2015 as bronchial asthma.

In a July 26, 2017 response, the employing establishment noted that the employee's family had alleged that methane gas at the workplace had contributed to the employee's death. It contended, however, that the Occupational Safety and Health Administration (OSHA) found no levels of methane gas or other hazardous air pollutants that represent a health and safety concern at that facility.

By decision dated April 30, 2018, OWCP denied appellant's claim for compensation, finding that the evidence of record was insufficient to establish that the claimed events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish that the employee sustained an injury as defined by FECA.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that OWCP received additional evidence following the June 23, 2023 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

[4] Docket No. 22-0288 (issued February 9, 2023); Docket No. 19-1059 (issued July 28, 2020).

On May 18, 2018 appellant, through then counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 6, 2018 statement, appellant related that the employee's coworkers had informed her that her daughter's death was due to methane poisoning. She advised that the employee had experienced an asthma attack on her first day of work in November 2014 and had to be taken to the hospital. The hospital prescribed an inhaler and EpiPen. Appellant asserted that news reports attributed the employee's death to methane. She called OSHA, but by the time they investigated six months later, the levels were normal. Appellant questioned why the employee's supervisor had not checked on her for two hours.

A hearing was held on October 17, 2018.

OWCP subsequently received additional evidence, including a June 9, 2015 employing establishment emergency incident report which documented that, on that date, the employee suffered a nonwork-related asthma attack, which caused her death. The report advised that the employing establishment had conducted an onsite investigation and found no hazardous situations or defective equipment. OWCP also received a May 6, 2018 statement, wherein appellant related that five other employees at the same employing establishment facility had died in the past five years. She further related that a news investigation found that the plant was built on a gas site and, since its existence, 11 people had died, all with the same upper respiratory problem." Appellant asserted that there were reports showing the methane levels at the time of the employee's death.

By decision dated December 20, 2018, OWCP's hearing representative affirmed OWCP's April 30, 2018 decision, finding that the evidence of record was insufficient to establish that the employee was denied use of her asthma medication at work "or exposed to an event, hazardous gas or other substance that initiated her asthma attack."

On April 16, 2019, appellant appealed the December 20, 2018 decision to the Board.

By decision dated July 28, 2020, the Board set aside the December 20, 2018 decision, finding the case was not in posture for decision regarding whether the employee was exposed to methane at work, as OWCP failed to adequately develop that issue. The Board remanded the claim for OWCP to obtain all relevant information from the employing establishment.[5]

In a September 9, 2020 development letter, OWCP requested that appellant provide additional medical evidence regarding the employee's cause of death and a toxicology report. In a separate development letter of even date, it requested that the employing establishment provide all environmental/air tests conducted at the employee's worksite, on or around June 9, 2015, including tests conducted by OSHA and independent contractors. OWCP also requested a copy of the employee's job duties. It afforded both parties 30 days to respond.

The employing establishment subsequently provided the results of methane testing and air monitoring conducted by private companies at the employee's facility. The testing found no detected levels of methane that would present a health and safety concern for the occupants of the

[5] *Id.*

building. The employing establishment also provided the results of personal air monitoring at the employing establishment conducted by OSHA on April 5, 2016, which found no detectable levels of methane or hydrogen sulfide.

By *de novo* decision dated December 23, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed events occurred as alleged.

OWCP continued to receive evidence, including a February 22, 2016 memorandum from the employing establishment's Office of Inspector General (OIG) which addressed the safety concerns at the employing establishment. The OIG determined that the MDS had not been functioning properly since March 2015. OIG found that the employing establishment did not address repeated recommendations to resolve the claims of methane buildup, by modifying the MDS to include a ventilation of the pipes that release the methane gas into the atmosphere, until January 15, 2016 at which time an industrial hygienist found that methane levels were low and that there were no immediate health or safety concerns. It requested written confirmation from the employing establishment that corrective actions were completed.

OWCP also received additional medical evidence in support of appellant's claim.

On January 26, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Appellant continued to submit additional medical evidence.

A hearing was held on April 28, 2021.

By decision dated June 22, 2021, OWCP hearing representative affirmed the December 23, 2020 decision, finding that the evidence of record was insufficient to establish that the employee was in fact exposed to methane gas at work on June 9, 2015. He also denied appellant's request for the issuance of subpoenas.

On December 14, 2021, appellant appealed the June 22, 2021 decision to the Board.

By decision dated February 9, 2023, the Board set aside the June 22, 2021 decision, finding the case not in posture for decision with regard to the employee's exposure to methane at the employing establishment. The case was remanded for OWCP to obtain additional relevant information from the employing establishment regarding the presence of methane at the employing establishment followed by a *de novo* decision.[6]

In a March 23, 2023 development letter, OWCP requested that the employing establishment provide all information regarding the specific dates of methane alarms between March and July 2015, the levels of methane found on those dates, and whether and how these alarms and methane levels correspond to June 9, 2015, the date of the employee's death.

In a June 1, 2016 letter, an employing establishment contractor provided its findings regarding the MDS at the employing establishment. It reinstalled four sensors from the horizontal

[6] *Id.*

position to the vertical position per manufacturer's specifications, modified the code, and recommended a new display and upgraded communications.

On April 24, 2023, M.B., the lead maintenance manager at the employing establishment, described the MDS, and related that from March to July 2015 the main control panel registered various warning alarms indicating that methane was detected by sensor 4. Investigation of sensor 4 revealed that there were no levels of methane detected on the sensor 4 display even though the main control panel was registering various levels of methane and triggering a warning alarm. There were warning lights for sensor 4 on March 8, (16 percent) March 9, (6 percent at 8:00 a.m. and 7 percent at 10:00 a.m.) and on March 10, 2015 (17 percent at 8:10 am and 16 percent at 8:14 a.m.). Employing establishment maintenance personnel investigated each warning alarm and confirmed that the display for sensor 4 was not detecting methane. On March 10, 2015, a vendor replaced the sensor and processor on sensor 4 in an attempt to correct the false warning signs. Additional main control panel alarms from sensor 4 occurred on April 20, 2015 and June 1, 2015, although sensor 4 was not detecting methane on its display. There was no alarm triggered on June 9, 2015 from any of the sensors. The employing establishment subsequently learned that there was a short in the circuitry that was intermittently causing the main control panel to register false information from sensor 4 resulting in the warning lights and methane levels displayed. For the period March through July 2015 no other methane sensors were triggered. The employing establishment provided copies the alarm log.

By *de novo* decision dated June 23, 2023, OWCP summarily denied the claim. It referenced the evidence submitted to support that the employee was restricted or told that she could not use her inhaler but concluded that was insufficient to establish appellant's claim. With regard to whether appellant's allegation that the employee was exposed to methane while in the performance of duty, OWCP merely stated that there "is also no evidence that there was exposure to toxic levels of methane." It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## ***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 an appellant's belief that the employee's death was caused, precipitated, or aggravated by the employment.[8] It is appellant's burden of proof to submit sufficient evidence necessary for OWCP to make a determination as to whether an employment incident occurred as alleged.[9]

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

[8] *See Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

[9] *T.S.*, Docket No. 09-2184 (issued June 9, 2010).

## ***ANALYSIS***

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

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.[10] Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.[11] As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence, which would overcome it.[12]

OWCP summarily denied appellant's survivor benefits claim. It did not sufficiently explain its findings with regard to whether the employee was restricted or told that she could not use her inhaler, or whether the employee was exposed to methane while in the performance of duty. The Board therefore finds that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the appropriate subject of the decision, *i.e.,* whether appellant has met her burden of proof to establish that the employee's death was causally related to the accepted factors of her federal employment.[13] The case must therefore be remanded to OWCP to provide detailed reasons for accepting or rejecting the claim based on the appropriate standards.[14]

Therefore, the Board shall set aside OWCP's June 23, 2023 decision and remand the case for findings of fact and a statement of reasons for its decision pursuant to the standard set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After any further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

## ***CONCLUSION***

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

[10] 5 U.S.C. § 8124(a).

[11] 20 C.F.R. § 10.126.

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

[13] *Supra* note 10.

[14] *See Order Remanding Case, M.S.,* Docket No. 23-0118 (issued February 21, 2024); *Order Remanding Case, A.J.,* Docket No. 21-0944 (issued March 23, 2022).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 23, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 17, 2026
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