

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

L.W., widow of K.W., Appellant)	
)	
)	
and)	Docket No. 19-0569
)	Issued: August 16, 2019
)	
DEPARTMENT OF THE TREASURY,)	
BUREAU OF THE PUBLIC DEBT,)	
New York, NY, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 16, 2019 appellant, through counsel, filed a timely appeal from a December 18, 2018 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 a June 13, 1994 employment injury.

FACTUAL HISTORY

On June 22, 1994 the employee, then a 63-year-old bond sales promotion representative, filed a traumatic injury claim (Form CA-1) alleging that on June 13, 1994 he tore his right Achilles tendon when he stepped and landed awkwardly off a high concrete slab while in the performance of duty. OWCP accepted the employee's claim for ruptured Achilles tendon of right foot and, on December 12, 1994, authorized debridement and right Achilles tendon repair surgery.

In a report dated October 20, 1998, Dr. Jacob Bornstein, a Board-certified cardiologist, indicated that the employee had a heart condition prior to his Achilles tendon surgery on December 28, 1994. He related that immediately after the December 28, 1994 surgery the employee went into cardiac arrest, and underwent an emergency cardiac catheterization. On January 5, 1995 the employee underwent a triple bypass operation, however, the procedure was not successful, and he subsequently developed atrial arrhythmia. Dr. Bornstein noted that, following the January 5, 1995 operation, the employee had been readmitted to the hospital for cardiac-related problems multiple times from February 1996 through July 1998. He opined that, but for the surgery to his Achilles tendon, the employee would not have suffered an acute myocardial infarction on December 28, 1994.

In July 1998 the employee underwent cardiac catheterization for recurrent angina symptoms, and in November 1998, OWCP expanded acceptance of the claim to include acute myocardial infarction. He remained on the periodic compensation rolls for total disability until his death on February 24, 2016.

In a letter dated March 7, 2016, OWCP informed appellant, the employee's widow, that she could request survivor benefits if she believed her husband died from an employment-related condition. It provided a questionnaire for her completion.

In a letter dated March 15, 2016, appellant indicated that the employee died from congestive heart failure as a result of an employment-related injury, and requested payment of survivor benefits. She submitted a death certificate along with her request, however, the death certificate did not indicate a cause of death.

In a development letter dated April 1, 2016, OWCP informed appellant of the deficiencies of her claim and provided an opportunity to submit additional evidence. It afforded her 30 days to submit the necessary evidence.

On April 25, 2016 appellant filed a claim for survivor's benefits (Form CA-5), alleging that the employee had passed away on February 24, 2016 from congestive heart failure causally related to the accepted June 13, 1994 employment injury.

In a development letter dated June 22, 2016, OWCP informed appellant of the factual and medical evidence needed to establish her claim. It afforded her 30 days to submit the necessary evidence.

In an attending physician's report (Form CA-5) dated July 7, 2016, Dr. David Seinfeld, a Board-certified cardiologist, indicated the direct cause of the employee's death as multi-system failure secondary to sepsis. He noted contributory causes of death including renal failure, left ventricular pump failure, respiratory failure, and prostate cancer. Dr. Seinfeld related employee's history of myocardial infarction following an employment-related surgery in 1994, coronary artery disease, congestive heart failure, and atrial fibrillation, and opined that these underlying cardiac diseases were a contributing factor in his death.

On September 1, 2016 OWCP referred appellant's case along with a statement of accepted facts (SOAF) and medical record to the district medical adviser (DMA) to determine whether the employee's death was causally related to the accepted June 13, 1994 employment injury. In a report dated September 15, 2016, Dr. Amanda C. Trimpey, Board-certified in occupational medicine and serving as the DMA, reviewed the SOAF and medical history, and indicated that the employee's direct cause of death was septic shock. She opined that there was no medical evidence of record that established that the accepted myocardial infarction or ruptured Achilles tendon caused the employee's death.

On September 23, 2016 OWCP referred the case, along with a SOAF and medical record, to a second opinion examiner for review. In the referral letter, it defined types of causal relationship as direct causation, aggravation, acceleration, and precipitation. In a report dated October 17, 2016, Dr. Paul Wein, a Board-certified cardiologist serving as a second opinion examiner, reviewed the SOAF and medical history, and opined that the employee had long-standing progressive cardiovascular disease, as well as a number of other medical problems that he was being treated for prior to his death. Dr. Wein related that the employee's preexisting cardiovascular disease was aggravated by the slip and fall when he suffered the myocardial infarction. He agreed with Dr. Seinfeld's July 6, 2016 medical opinion and again noted that the employee's heart disease was aggravated by the slip and fall and surgery in 1994. Dr. Wein thereafter indicated that the employee had multiple medical conditions at the time of his death. He concluded, "I do not see a clear causal relationship between the [employee's] demise" and the accepted June 13, 1994 employment injury.

By decision dated December 5, 2016, OWCP denied appellant's claim for survivor's benefits, finding that she had not submitted medical evidence sufficient to establish that an employment-related condition caused or contributed to the employee's death on February 24, 2016.

On May 2, 2017 appellant requested reconsideration of OWCP's December 5, 2016 decision. She submitted additional evidence with her request.

In a letter dated April 15, 2016, received by OWCP on August 7, 2017, Dr. Seinfeld indicated that the employee was admitted to the hospital on February 7, 2016 with stage IV prostate cancer, respiratory failure, community-acquired pneumonia, and urinary tract infection. He noted that the hospital stay was complicated by renal failure and hypovolemic shock requiring intubation,

mechanical ventilatory support, pharmacologic support of his blood pressure, tracheostomy, and placement of a feeding tube. Dr. Seinfeld further related that the employee had a long-standing history of extensive coronary artery disease, atrial fibrillation, and congestive heart failure, all of which were contributory to his death on February 24, 2016.

By decision dated November 3, 2017, OWCP denied modification of its December 5, 2016 decision finding that the evidence of record was insufficient to demonstrate that the employee's death was causally related to the accepted June 13, 1994 employment injury.

On February 9, 2018 appellant requested reconsideration of OWCP's November 3, 2017 decision.

By decision dated February 21, 2018, OWCP denied appellant's request for reconsideration of the merits of her case finding that the evidence submitted after the November 3, 2017 decision was duplicative of evidence that was previously in file at the time of the prior contested decisions, and the evidence did not support that OWCP erroneously applied or interpreted a point of law.

On September 21, 2018 appellant, through counsel, requested reconsideration of OWCP's November 3, 2017 decision.

In a letter dated March 15, 2017, received by OWCP on September 28, 2018, Dr. Nicholas Skipitaris, a Board-certified clinical cardiac electrophysiologist, noted that the employee developed a systemic infection (septic shock), respiratory failure, pneumonia, urinary tract infection, and refractory congestive heart failure, all of which contributed to his multi-organ system failure, and ultimate demise. He opined that decreased cardiac reserve was the major contributor to the employee's death.

By decision dated December 18, 2018, OWCP denied modification of its November 3, 2017 decision finding that the evidence of record did not contain sufficient medical rationale explaining how the accepted conditions caused the employee's death.

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 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

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

⁴ *M.L. (S.L.)*, Docket No. 19-0020 (issued May 2, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); see *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

background, establishing causal relationship between the employee's death and an employment injury or factors of his 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 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 be 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.

On April 25, 2016 appellant filed a Form CA-5 requesting survivor benefits, and alleging that the employee had passed away on February 24, 2016 in part from congestive heart failure causally related to the accepted June 13, 1994 employment injury, which was accepted in part for myocardial infarction.

OWCP referred the case record to Dr. Wein for a second opinion evaluation. In the referral letter, it defined types of causal relationship, but did not inform Dr. Wein that the employee's accepted cardiac condition did not have to be a significant cause of his death. In his report dated October 17, 2016, Dr. Wein opined that he agreed with Dr. Seinfeld's opinion dated July 7, 2016, that the employee's preexisting cardiovascular disease was aggravated by the accepted employment injury, when he suffered a myocardial infarction. He then noted that the employee had multiple other medical conditions for which he was being treated at the time of his death. Dr. Wein concluded that he did "not see a clear causal relationship" between the employee's death and the accepted employment injury.

The Board finds that Dr. Wein's opinion regarding causal relationship was vague, and required further development. Once OWCP undertakes development of the record, it has the responsibility to do so in a proper manner, to see that justice is done.⁹ It should have advised Dr. Wein that the employee's accepted cardiac condition did not have to be a significant factor in his death,¹⁰ but a contributing factor.¹¹ OWCP should also have requested a supplemental rationalized opinion from Dr. Wein as to all contributing causes of the employee's death. As

⁵ *J.P. (E.P.)*, Docket No. 18-1739 (issued May 3, 2019); see *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁶ *J.P. (E.P.)*, *id.*; *W.C. (R.C.)*, *supra* note 4; *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁷ *M.L. (S.L.)*, *supra* note 4; see *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁸ *Id.*

⁹ *D.W. (L.W.)*, Docket No. 10-0598 (issued October 6, 2010).

¹⁰ *Supra* note 7.

¹¹ *Supra* note 8.

OWCP did not fully develop the evidence in this case, the Board will remand it for further development of the medical evidence. On remand, OWCP shall inform Dr. Wein of the proper legal standard regarding causal relationship and shall request that he provide a supplemental report, which provides a rationalized opinion regarding the cause of the employee's death. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.

Issued: August 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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