

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

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<b>M.D., claiming as widow of R.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0609</b>
	)	<b>Issued: July 8, 2024</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, West Palm Beach, FL,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*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 April 29, 2024 appellant filed a timely appeal from a December 4, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**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 May 22, 2005 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

## **FACTUAL HISTORY**

On June 1, 2005 the employee, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2005 he injured his back when a mail cage became stuck and he attempted to push it while in the performance of duty. OWCP accepted the employee's claim for displacement of lumbar intervertebral disc without myelopathy, left side; and degeneration of lumbar or lumbosacral intervertebral disc, right side. It paid the employee wage-loss compensation on the supplemental rolls, effective June 3, 2005, and on the periodic rolls, effective August 7, 2005.

On April 12, 2023 OWCP referred the employee for a second opinion examination with Dr. Jon Donshik, Board-certified in orthopedic surgery, to determine his work capacity.

In a May 5, 2023 report, Dr. Donshik noted the employee's history of injury and medical treatment. He found that the employee's prognosis was poor, he had not worked since 2006, and he had multiple medical comorbidities in addition to his work-related conditions that have not fully resolved. Dr. Donshik advised that the employee was disabled from work due to a combination of work-related and nonwork-related conditions. He completed a work capacity evaluation (Form OWCP-5c) and advised that the employee was unable to return to full duty, but was capable of working four hours per day with restrictions.

On June 29, 2023 appellant notified OWCP that the employee had passed away on June 27, 2023. OWCP terminated the employee's wage-loss compensation benefits, effective June 27, 2023.

On July 26, 2023 appellant, the employee's widow, filed a claim for compensation (Form CA-5) requesting survivor benefits. She reported that the nature of the injury which caused the employee's death was malignant neoplasm of the bladder aggravated by diabetes, low blood pressure, and peripheral artery disease (PAD).

In support of her claim, appellant submitted a state health department certificate of death dated July 6, 2023, which noted that the employee's cause of death was malignant neoplasm of the bladder. It noted coronary artery disease as another significant condition contributing to death, but not resulting in the underlying cause of death.

Appellant also submitted an attending physician's report (Form CA-5) from Dr. Anthony Rogers, a Board-certified anesthesiologist, dated July 21, 2023. This report noted that the employee's direct cause of death as malignant neoplasm of the bladder. Dr. Rogers also checked a box "yes" indicating that the employee's death was due to the accepted employment injury and related that his employment injury aggravated his condition and caused intense pain. He concluded that all of the employee's medical conditions aggravated his ability to recover, including his back injury.

OWCP prepared a statement of accepted facts (SOAF) on August 24, 2023 wherein it listed the employee's preexisting and concurrent nonwork-related medical conditions. It noted the employee's prior history of multiple low back injuries (1986, 2001); L5-S1 fusion (2001); chronic compression deformities, thoracic spine T10-T11; degenerative disc disease, thoracic spine; peripheral neuropathy; hypertension; plantar fasciitis and heel spur; anemia; hyperlipidemia; shrapnel in the right neck and forearm from military service; thoracic and lumbar degenerative

disc disease (service connected); bilateral peripheral vascular disease, lower extremities (service connected); diabetes mellitus, type II (service connected); diabetic neuropathy; and post-traumatic stress disorder (service connected).

On August 24, 2023 OWCP referred the SOAF and the employee's medical record to Dr. David I. Krohn, a Board-certified internist serving as the district medical adviser (DMA) for an opinion on whether the employee's death was causally related to the accepted employment injury.

In a September 4, 2023 report, Dr. Krohn noted the employee's history of injury and medical treatment. He related that the employee died on June 27, 2023 and indicated that the death certificate issued on July 6, 2023 listed the cause of death as a malignant neoplasm of bladder. The DMA recounted that the cause of death listed only one diagnosis, that of malignant neoplasm of the bladder, and that it listed coronary artery disease under "other significant conditions contributing to death but not resulting in the underlying cause." He noted that the employee previously had three coronary artery stents implanted. Dr. Krohn related that the employee died at home and no autopsy was performed. He explained that he had reviewed the extensive medical records dating from March 16, 1987, and that the treating physician notes did not address any medical issue other than the employee's chronic low back pain and its treatment with chronic opioid analgesics. The DMA opined that the fact that bladder cancer, by the determination of the medical examiner, caused the death of the employee less than six weeks following bladder surgery, indicated either a rapidly progressive neoplastic process, or one that was not discovered until it had already reached an advanced stage. Dr. Krohn recounted that there was no well-rationalized medical opinion of record that explained how his death was causally related to the accepted work-related low back injury. He concluded that neither the employee's work-related chronic back pain, nor its treatment was "demonstrated to have been competent to result in the death" of the employee.

On September 20, 2023 OWCP referred the case record, including the SOAF, to Dr. Clinton Bush, III, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether the employees' death was causally related to his accepted employment injury.

In a report dated November 4, 2023, Dr. Bush reviewed the employee's medical records. He noted that in addition to the employee's work injury, he had a significant history of lumbar injury dating back to his active military duty during the 1980's, as well as two motor vehicle collisions in 2001. Dr. Bush opined that there was no credible evidence of record establishing a causal relationship between the employee's death and his May 22, 2005 employment injury. He explained that the official cause of death was listed as bladder cancer with a secondary diagnosis of coronary artery disease, which were competent diagnoses leading to the employee's death. Dr. Bush concluded that he concurred with the DMA's opinion of September 4, 2023, that the employee's lumbar spine condition "was 'not competent to produce the death of the decedent.'"

By decision dated December 4, 2023, OWCP denied appellant's claim for survivor benefits, finding that the medical evidence of record was insufficient to establish causal relationship between the employee's death and his accepted May 22, 2005 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.<sup>3</sup> An award or compensation in a survivor benefits 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.<sup>4</sup> 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.<sup>5</sup>

## 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 May 22, 2005 employment injury.

In a July 21, 2023 attending physician's report, Dr. Rogers noted that the employee's direct cause of death was malignant neoplasm of the bladder. He also checked a box "yes" indicating that the employees' death was due to the accepted employment injury and related that his employment injury aggravated his condition and caused intense pain. Dr. Rogers concluded that all of appellant's medical conditions aggravated his ability to recover, including his back injury. While his opinion is generally supportive of causal relationship, he did not explain with medical rationale how the employee's accepted employment injury caused or contributed to his death. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale.<sup>6</sup> Thus, Dr. Rogers' July 21, 2023 report is insufficient to establish appellant's claim.

OWCP referred the medical record to DMA Dr. Krohn to determine whether the accepted employment injury was causally related to the employee's death. In his September 4, 2023 report, the DMA noted that the death certificate issued on July 6, 2023, listed the cause of death as a malignant neoplasm of bladder and also listed coronary artery disease under "other significant conditions contributing to death but not resulting in the underlying cause." Dr. Krohn opined that the employee's death less than six weeks following bladder surgery indicated either a rapidly progressive neoplastic process or one that was not discovered until it had already reached an advanced stage. The DMA opined that the employee's death was caused by malignant neoplasm

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<sup>3</sup> 5 U.S.C. § 8133 (compensation in case of death).

<sup>4</sup> See *H.C. (P.C.)*, Docket No. 24-0077 (issued April 3, 2024) *B.M. (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

<sup>5</sup> See *R.G. (K.G.)*, Docket No. 22-0288 (issued February 9, 2023); *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>6</sup> *B.H.*, Docket No. 20-077 (issued October 21, 2020); see *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

of bladder. Dr. Krohn opined that neither the employee's work-related chronic back pain, nor its treatment were "demonstrated to have been competent to result in the death" of the employee.

OWCP also referred the case record to Dr. Bush for a second opinion and requested that he provide an opinion as to whether the employee's death was causally related to the accepted employment injury. In a report dated November 4, 2023, Dr. Bush reviewed the employee's medical records and treatment history. He noted that in addition to the employee's work injury, he had a significant history of lumbar injury dating back to his active military duty during the 1980's, as well as two motor vehicle collisions in 2001. Dr. Bush explained that the official cause of death was listed as bladder cancer with a secondary diagnosis of coronary artery disease, which were competent diagnoses to have caused the employee's death. He opined that there was no credible evidence of record establishing a causal relationship between the employee's death and his May 22, 2005 employment injury. Dr. Bush concluded that he concurred with the DMA's September 4, 2023 opinion that the employee's death was not causally related to his accepted lumbar spine condition.

The Board finds that the reports from Drs. Krohn and Bush were well rationalized, and based on an accurate history of injury and review of the employee's medical record.<sup>7</sup> Accordingly, the Board finds that their reports constitute the weight of the medical evidence.

As the medical evidence of record is insufficient to establish that the employee's death was causally related to the accepted May 22, 2005 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 May 22, 2005 employment injury.

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<sup>7</sup> See *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2024  
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