

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

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| M.F., claiming as widow of E.F., Appellant |) | |
| |) | |
| and |) | |
| |) | Docket No. 24-0518 |
| DEPARTMENT OF INTERIOR, FORT |) | Issued: June 21, 2024 |
| BELKNAP BUREAU OF INDIAN AFFAIRS, |) | |
| Harlem, MT, Employer |) | |
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Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 19, 2024 appellant filed a timely appeal from a January 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that the employee's death was causally related to the accepted employment factors.

FACTUAL HISTORY

On August 24, 2020 appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) as the widow of the deceased employee. She alleged that the employee's

¹ 5 U.S.C. § 8101 *et seq.*

death on August 7, 2020 occurred while in the performance of duty. On the “attending physician’s report” portion of the claim form William Minnis, the Deputy Sheriff and coroner, opined that the direct cause of the employee’s death was a myocardial infarction with contributory causes of death of diabetes and “heat of the day.” He checked a box marked “No” indicating that the employee’s death was not due to an employment injury or employment-related disease.

In support of her claim, appellant submitted the employee’s death certificate, which indicated that he died of natural causes including myocardial infarction and diabetes on August 7, 2020.

A September 9, 2020 Official Supervisor’s Report of Employee’s Death (Form CA-8), indicated that the employee was operating a motor grader in the performance of duty when he died at approximately 11:45 a.m. on August 7, 2020.

In development letters dated September 16 and October 15, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, including a comprehensive medical report from a physician which provided medical rationale explaining the direct cause of death and contribution of any job-related factors and/or nonwork-related factors. OWCP afforded appellant 30 days to respond.

In a November 6, 2020 letter, appellant advised that the employee was operating a motor grader on August 7, 2020, the date of his death. She recounted that the employee sustained additional stress during the week of his death as he learned that he only had one week to finish a project. Appellant reported that he was having trouble with his grader heating up. She submitted an August 7, 2020 text message in support of her claim, which related “heated up need radiator blew out still at yard.” Appellant stated that the employee’s grader did not have a working radio or working air conditioning, and that it had developed a flat tire, which the employee changed just prior to his death. She also noted that the employee’s work site was in a rural location, where a cellphone signal was not often available. Appellant asserted that the physical exertion of changing the tire and being unable to call for help contributed to his death. She indicated that the employee had voiced his safety concerns about equipment and poor planning by the employing establishment at a January 18, 2020 meeting. Appellant also contended that the employee’s death was due to the temperature at the worksite, which was 90 degrees on August 7, 2020, with an increased temperature inside the cab of the motor grader. She described the job duties of a heavy equipment operator and noted the employee’s outside activities and concurrent health conditions, which included smoking one-pack a day, Type 2 diabetes, hyperlipidemia and hypertension.

Appellant submitted a position description for an Engineering Equipment Operator/Heavy Equipment Operator.

Medical documentation included June 23, 2019 medical records from Harlem Hospital, where the employee was treated for chest pain. Included were laboratory reports and an electrocardiogram (EKG), which found no significant abnormalities.

In an October 29, 2020 medical narrative, Dr. Ethel Moore, a family medical specialist, indicated that the employee had been a patient for 30 years. She stated that in January 2000, the employee was diagnosed with Type 2 diabetes mellitus, and that on June 23, 2019, he went to the

emergency room for left-sided chest pain and had a systolic blood pressure of 180 with a normal EKG. Dr. Moore noted a family history of cardiovascular disease on both sides of the employee's family, but indicated the employee never reported complaints of heart symptoms. She also noted that numerous studies found that the risk of developing heart disease arose with diabetes, and increased when diabetes was combined with hypertension and high lipids. Dr. Moore indicated that the employee had his diabetes under control and that he had passed physical examinations. She opined that the employee's job as a road worker could be physically and environmentally trying, and that stress could also contribute to health issues.

By decision dated March 9, 2021, OWCP accepted that the employee worked with a malfunctioning motor grader machine, which had heated up and had a flat tire; that the employee had exerted himself in changing the tire in 90-degree weather; there was a lack of communication equipment; and that he had a concern over workplace safety. However, it denied the claim for survivor's benefits, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between the employee's death and the accepted employment factors.

On September 3, 2021 appellant, through her then-counsel, requested reconsideration.

In a September 1, 2021 report, Dr. Brian Reynolds, an osteopathic family medical specialist, acting as the employing establishment's medical clinical director, reported that he reviewed the employee's chart and correspondence from "various entities." He opined that on the date of the employee's death, extreme temperatures and physical labor of working on a piece of heavy equipment placed an excess burden on the employee's heart and contributed to his death. Dr. Reynolds further opined that as there was no working communication was available to the employee, the delay (*i.e.*, unable to call 911) was a direct contributing factor as time is vital in an emergency for positive outcome.

By decision dated June 2, 2022, OWCP denied modification of its March 9, 2021 decision.

On June 2, 2023 appellant requested reconsideration. In a June 1, 2023 letter, she requested that OWCP consider the coroner's report which had contributed the employee's death to "heat of the day."

By decision dated June 5, 2023, OWCP denied modification of its prior decision.

On December 19, 2023 appellant requested reconsideration.

On January 10, 2024 OWCP received a November 6, 2023 report from Dr. Reynolds wherein he recounted that the employee had a history of diabetes mellitus and heart disease and was on medications and was compliant with his treatment. Dr. Reynolds indicated that on the date of the employee's death, the employee was working in a remote location on a very hot day without properly working equipment which he was attempting to repair. However, due to extreme heat, this placed double the burden on his heart and due to the increased workload on his heart, the employee developed chest pain. He was not in a safe work environment as he did not have access to a working radio and was unable to call for help. Dr. Reynolds opined that the delay in being able to get to a medical facility in a timely manner most likely contributed to his death. He explained that research showed that as temperature rises, it doubles the stress on the heart.

Dr. Reynolds further opined that he believed that this was the case as the employee was unable to call for assistance and no other coworkers were in the vicinity to assist.

By decision dated January 11, 2024, OWCP denied modification of its prior decision.

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.² 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.³ 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.⁴ The Board has held that it is not necessary that there is a significant contribution of employment factors to establish causal relationship.⁵ If the employment contributed to the employee's death, then causal relationship is established.⁶

ANALYSIS

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

In a September 1, 2021 report, Dr. Reynolds, the employing establishment's medical clinical director, related that he reviewed the employee's chart and correspondence from various entities. He opined that on the date of the employee's death, extreme temperatures, and physical labor of working on a piece of heavy equipment placed an excess burden on the employee's heart and contributed to his death. Dr. Reynolds further opined that as there was no working communication available to the employee, the delay (*i.e.*, unable to call 911) was a direct contributing factor as time is vital in an emergency for positive outcome. In a November 6, 2023 report, he recounted that on the date of the employee's death, he was working in a remote location on a very hot day without properly working equipment, which he was attempting to repair. However, due to extreme heat, this placed double the burden on his heart and due to the increased workload on his heart, he developed chest pain. Dr. Reynolds also asserted that the employing establishment did not provide a safe work environment as he did not have access to a working

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

³ *B.M.*, Docket No. 20-0741 (issued September 30, 2021); *W.C.*, Docket No. 18-0531 (issued November 1, 2018).

⁴ *See R.G. (K.G.)*, Docket No. 19-1059 (issued July 28, 2020); *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁵ *See R.G. (O.G.)*, Docket No. 17-0916 (issued September 6, 2017); *T.H. (M.H.)*, Docket No. 12-1018 (issued November 2, 2012).

⁶ *See P.G. (J.G.)*, Docket No. 20-0815 (issued December 10, 2020).

radio and was unable to call for help. He opined that the delay in being able to get to a medical facility in a timely manner most likely contributed to his death.

The Board finds that Dr. Reynolds's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient to require further development of the record.⁷

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.⁸ OWCP has an obligation to see that justice is done.⁹

The case shall therefore be remanded to OWCP for further development of the medical evidence.¹⁰ On remand, OWCP shall refer the case record, including a statement of accepted facts, to a medical specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether the employee's death was causally related to the accepted employment events. If the physician opines that the employee's death was not causally related, he or she must explain with rationale how or why their findings differ from that of Dr. Reynolds. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

⁷ See *T.M.*, Docket No. 19-1556 (issued May 6, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.M.*, *id.*; *C.H.*, Docket No. 18-0108 (issued July 19, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

⁹ *T.M.*, *id.*; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁰ The claim should be administered based upon the procedures applicable to death claims. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Processing*, Chapter 2.700.5 (August 1994).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2024 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: June 21, 2024
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