

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

<hr/>)	
P.W., widow of J.W., Appellant)	
)	
and)	Docket No. 24-0713
)	Issued: September 20, 2024
U.S. POSTAL SERVICE, GENERAL MAIL)	
FACILITY, Boston, MA, Employer)	
<hr/>)	

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 June 24, 2024 appellant filed a timely appeal from an April 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that her claim should be accepted due to the causes and conditions contributing to death listed on the employee's death certificate. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the Board finds that the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. Accordingly, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Compensation Act² (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 was causally related to his accepted September 17, 1994 employment injury.

FACTUAL HISTORY

On September 17, 1994 the employee, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he fell and struck his head when surprised by a coworker while in the performance of duty. OWCP accepted the employee's claim for neck sprain, consequential right shoulder impingement, and other afflictions of the right shoulder region.⁴ It paid the employee wage-loss compensation on the supplemental rolls effective November 12, 1994 and on the periodic rolls effective December 11, 1994. The employee separated from the employing establishment on September 6, 2009.

On April 19, 2023 appellant, the employee's widow, notified OWCP that the employee had passed away, later confirming that his death occurred on April 12, 2023. OWCP then terminated the employee's wage-loss compensation benefits, effective April 13, 2023.

In an April 21, 2023 development letter, OWCP informed appellant that a claim for survivor 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 claim.

On April 25, 2023 appellant, the employee's widow, filed a completed Form CA-5 requesting survivor benefits. She reported that the employee had died on April 12, 2023. In an attached attending physician's report, Dr. Mohamed Elgeziry, a Board-certified internist, indicated that the employee's direct cause of death was vascular dementia. He checked a box indicating that

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 25, 2024 decision, OWCP received additional evidence. 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 The employee had previous work-related injury claims under OWCP File No. xxxxxx317 sprain sustained on November 20, 1974; File No. xxxxxx650 for lumbar sprain sustained on June 2, 1975; File No. xxxxxx211 for a right hand wound sustained on April 1, 1976; File No. xxxxxx488 for chest wall contusion sustained on February 24, 1977; File No. xxxxxx352 for facial contusion sustained on November 2, 1977; File No. xxxxxx077 for left shoulder sprain sustained on May 3, 1982; File No. xxxxxx156 for left shoulder sprain sustained on November 12, 1982; File No. xxxxxx713 for right shoulder sprain/strain sustained on August 19, 1985; File No. xxxxxx663 for an injury sustained on March 10, 1994; and File No. xxxxxx917 for sprain/strain of the sacroiliac region sustained on April 26, 1994.

the employee's employment-related acute cervical, right shoulder, and right knee conditions did not cause his death.

Appellant also submitted an April 20, 2023 death certificate, which indicated that the employee's death on April 12, 2023 was caused by vascular dementia. The death certificate also listed other significant conditions contributing to death but not resulting in its underlying cause: recurrent falls; degenerative joint disease of the right ankle and cervical spine; right fifth toe amputation; and chronic bilateral shoulder pain. The manner of death was noted as natural and not the result of injury.

In a letter dated July 3, 2023, Dr. Jordana Meyerson, Board-certified in hospice care and palliative medicine, noted that the employee was under her care during his end-of-life course of treatment. She noted that due to a work-related injury, the employee underwent multiple ankle surgeries; and that as his life and trajectory of illness evolved, he sustained multiple falls. Dr. Meyerson opined that it was "likely that his injury impaired his mobility in older adulthood and contributed to the functional decline that he experienced toward the end of his life."

OWCP prepared a statement of accepted facts (SOAF) on July 18, 2023, wherein it listed the employee's accepted work-related conditions, as well as preexisting and concurrent nonwork-related conditions, and his courses of treatment for the accepted work-related conditions. The SOAF listed accepted conditions under OWCP File No. xxxxxx579 as neck sprain and other afflictions of the right shoulder region; under File No. xxxxxx850 as right ankle strain and dislocated ankle tendon; under File No. xxxxxx650 as lumbar sprain; under File No. xxxxxx643 as a left hip condition; and under File No. xxxxxx156 as a left shoulder condition.

On July 18, 2023 OWCP referred the SOAF and the employee's medical record to Dr. Nizar Souayah, Board-certified in electrodiagnostic medicine, neuromuscular medicine, psychiatry, and neurology, 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 an August 15, 2023 report, Dr. Souayah reviewed the employee's history of injury and medical treatment. He related that the employee died on April 12, 2023, and opined that his death was not related to the accepted September 17, 1994 traumatic injury, as the employee had multiple comorbid conditions that could cause cardiopulmonary complications and eventually cause death. Dr. Souayah explained that since that injury, the employee had persistent neck and shoulder issues, including cervical spine and shoulder strain. He noted that prior to the September 17, 1994 injury, the employee had been diagnosed with obesity, diabetes, hypertension, high cholesterol, and several prior severe work-related injuries.

By decision dated August 17, 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 September 17, 1994 employment injury.

On August 31, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence. In a report dated April 12, 2023, Dr. Meyerson completed a discharge summary due to the employee's death on that date. She

diagnosed vascular dementia as the principal diagnosis, as well as secondary diagnoses of delirium, hip pain, chronic congestive heart failure with preserved ejection fraction, atrial fibrillation, coronary artery disease, chronic obstructive pulmonary disease, Type 2 diabetes mellitus, obstructive sleep apnea, hypothyroidism, a history of left-sided intraparenchymal hemorrhage, a history of seizures, hypertension, and hyperlipidemia. Dr. Meyerson noted that the employee was admitted on April 10, 2023, and on April 12, 2023 he developed hypoxemia and auditory congestion, concerning for aspiration, flash pulmonary edema, and/or pulmonary embolism. The employee passed away within two hours of onset of these symptoms. No autopsy was performed.

In letters dated September 21 and October 23, 2023, appellant requested that OWCP's Branch of Hearings and Review consider an enclosed news article regarding dementia. In letters dated January 11 and 24, 2024, she requested updates as to the status of her request for a review of the written record.

By decision dated February 27, 2024, OWCP's hearing representative vacated the August 17, 2023 decision and remanded the case for further medical development, noting that the August 4, 2023 report of Dr. Souayah, serving as the DMA, had failed to identify the employee's cause of death due to vascular dementia and did not address whether he died due to one or more of his other accepted work-related injuries. The hearing representative noted that the employee had numerous other accepted work-related injuries and stated that they would be administratively combined under the present OWCP file, with the present file, OWCP File No. xxxxxx579, serving as the master file. The hearing representative directed OWCP to acquire a supplemental report from Dr. Souayah, addressing these deficiencies, and thereafter for OWCP to issue a *de novo* decision as to appellant's claim for survivor benefits.

On remand OWCP requested clarification from Dr. Souayah regarding his August 4, 2023 report, as well as to review and specifically comment upon the July 3, 2023 opinion of Dr. Meyerson.

In an addendum report dated March 31, 2024, Dr. Souayah noted that the employee's only accepted medical conditions were neck sprain and unspecified afflictions of the shoulder region. He stated, "There is a conspicuous absence of any mention of the ankle injury as an accepted condition within the medical documentation presented." Dr. Souayah further stated that the employee's comorbid conditions were well-established risk factors for heart disease, stroke, and vascular dementia. He noted that while it was plausible that the employee's neck sprain and shoulder disease may have played a role in his functional decline, their significance was considerably overshadowed when weighed against his comorbid conditions and their possible contribution to his death. Dr. Souayah opined that "the conditions acknowledged in [the employee's] case did not significantly worsen his prognosis nor serve as a principal cause of his demise."

By *de novo* decision dated April 25, 2024, OWCP again 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 the accepted 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.⁵ 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.⁶ 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.⁷

ANALYSIS

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

OWCP referred the employee's medical record and a SOAF to the DMA, Dr. Souayah, for a determination as to whether the employee's death was causally related to his accepted employment injury. The July 18, 2023 SOAF listed accepted conditions under OWCP File No. xxxxxx579 as neck sprain and other afflictions of the right shoulder region; under File No. xxxxxx850 as right ankle strain and dislocated ankle tendon; under File No. xxxxxx650 as lumbar sprain; under File No. xxxxxx643 as a left hip condition; and under File No. xxxxxx156 as a left shoulder condition. In an addendum report dated March 31, 2024, however, Dr. Souayah noted that the employee's only accepted medical conditions were neck sprain and unspecified afflictions of the shoulder region. He stated, "There is a conspicuous absence of any mention of the ankle injury as an accepted condition within the medical documentation presented."

It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.⁸ Further, OWCP's procedures dictate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is

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

⁶ 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).

⁷ See *R.G., id.*; *B.M. (H.M.)*, Docket No. 20-0741 (issued September 30, 2021); *L.R. (E.R.)*, 58 ECAB 369 (2007).

⁸ *K.S.*, Docket No. 22-1011 (issued January 5, 2023); *D.T.*, Docket No. 21-1168 (issued April 6, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁹

In the present case, OWCP erred in relying on Dr. Souayah's March 31, 2024 addendum report, as he did not rely on the July 18, 2023 SOAF, which noted all of appellant's accepted conditions, including the right ankle conditions.

Proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁰ Once OWCP undertook development of the evidence by referring the employee's records to a DMA, it had the duty to secure an appropriate report addressing the relevant issues.¹¹

The case shall therefore be remanded for further development. On remand OWCP shall refer the case record, along with the SOAF, to a new DMA for an opinion regarding whether appellant has met her burden of proof to establish that the employee's death on April 12, 2023 was causally related to his accepted September 17, 1994 employment injury. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

⁹ *J.Z.*, Docket No. 22-0829 (issued December 9, 2022); *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁰ *See D.M.*, Docket No. 19-1181 (issued December 2, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹¹ *R.B.*, Docket No. 21-0044 (issued November 4, 2022); *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 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: September 20, 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