

the case record was incomplete.¹ In a May 14, 2003 decision, the Board² set aside an Office decision dated March 1, 2002 which denied appellant's claim that his neuropathy was causally related to his accepted pesticide exposure.³ The Board determined that there was an unresolved conflict in the medical opinion evidence between his treating physician Dr. Paula G. Davey, a Board-certified internist, and an Office referral physician Dr. Thomas J. Petz, a Board-certified internist and pulmonologist. The Board found that the Office erroneously relied upon the opinion of Dr. Al Franzblau, a Board-certified internist and occupational medicine physician, as he was not selected to resolve the conflict in the evidence. The facts and circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

Subsequent to the Board's May 14, 2003 decision, the Office referred appellant to Dr. John Bernick, a Board-certified occupational medicine physician, to resolve the conflict in the medical opinion with regard to whether appellant's neuropathy was caused or aggravated by his accepted pesticide exposure.

In a report dated June 30, 2004, Dr. Bernick reviewed the medical records and statement of accepted facts. On physical examination, he reported that appellant's breathing was regular and unlabored and "[h]is initial gait is broad-based and staggering, but become normal after several steps." A physical examination showed no cyanosis, clubbing or edema in the extremities, lower and upper extremities were bilaterally symmetrical with full range of motion in all joints. Dr. Bernick reported that a neurological examination revealed intact cranial nerves, cerebellum and sensorium. There were no motor deficits although "there is a give away weakness in muscle testing" and "no response to pinwell on the extremities or face." Dr. Bernick also reported "[t]he pattern is nonanatomic" and lower extremity reflexes were diminished. With respect to pulmonary studies, he stated that they did "not correlate with the clinical examination" and concluded, "[t]here is no compelling evidence of airway obstruction." Dr. Bernick indicated additional tests were necessary to determine whether appellant had a condition due to his pesticide exposure.

Appellant underwent additional diagnostic testing.

In a supplemental report dated April 25, 1995, Dr. Bernick opined that appellant had no pesticide-related health problem or any other employment-related condition. He concluded that appellant "suffers from seasonal allergic disease" including "extrinsic allergic bronchial asthma, allergic rhinosinusitis, allergic conjunctivitis and history of urticaria." Dr. Bernick opined that appellant did not have any residuals of his accepted 1989 employment-related pesticide toxicity. In support of this conclusion, he noted there was no evidence of pesticide intoxication as there were no "laboratory abnormalities of a chemical poisoning" nor were there any "clinical findings on physical examination consistent with pesticide intoxication." Dr. Bernick opined that

¹ Docket No. 00-1112 (issued February 5, 2002).

² Docket No. 02-1606 (issued May 14, 2003).

³ On September 29, 1988 appellant, then a 47-year-old horticulturist, filed an occupational disease claim alleging that his pesticide toxicity was employment related. The Office accepted appellant's exposures and pesticide toxicity.

appellant's allergic conditions were neither caused nor aggravated by his pesticide exposure but were rather genetic or "inherent in him."

By decision dated April 28, 2005, the Office denied appellant's claim that his neuropathy was employment related. The Office relied upon the opinion of Dr. Bernick, the impartial medical examiner.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Marlon Vera*, 54 ECAB 834 (2003); *Janet L. Terry*, 53 ECAB 570 (2002); *Roger Williams*, 52 ECAB 468 (2001).

⁶ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *Luis M. Villanueva*, 54 ECAB 666 (2003).

⁸ *Conard Hightower*, 54 ECAB 796 (2003).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

Section 8123(a) of the Federal Employees' Compensation Act¹² provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination¹³ and in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁴

ANALYSIS

There was an unresolved conflict in this case with respect to whether appellant's neuropathy was caused or aggravated by his accepted employment-related pesticide exposure. As noted, Dr. Davey, his attending Board-certified internist, opined that he "developed generalized sensory peripheral neuropathy" due to his employment and exposure to pesticides. On the other hand, the second opinion Board-certified internist and pulmonary specialist, Dr. Petz, opined that appellant had no condition or disability due to his accepted pesticide exposure. Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹⁵

The Office selected Dr. Bernick to resolve the conflict in the medical evidence. In June 30, 2004 and April 25, 1995 reports, Dr. Bernick provided results on examination and reviewed the medical evidence in detail. Dr. Bernick reported normal physical and neurological examinations. With regard to pulmonary studies, he stated that they did "not correlate with the clinical examination" and concluded, "[t]here is no compelling evidence of airway obstruction." In an April 25, 1995 supplemental report, Dr. Bernick reviewed the medical record, laboratory and radiology studies. He opined that appellant had no pesticide-related health problem nor any employment-related condition. Dr. Bernick stated that appellant had seasonal allergic disease including "extrinsic allergic bronchial asthma, allergic rhinosinusitis, allergic conjunctivitis and history of urticaria." He concluded that these conditions were neither caused nor aggravated by his employment-related pesticide exposure. Dr. Bernick stated that the medical evidence did not reveal any pesticide intoxication based upon the lack of any "laboratory abnormalities of a chemical poisoning" and lack of clinical findings on physical examination consistent with pesticide intoxication. He opined that appellant's allergic conditions were neither caused nor aggravated by his pesticide exposure, but were rather genetic or "inherent in him."

The Board finds that Dr. Bernick provided a reasoned medical opinion, based on a complete background, that appellant had no condition caused or aggravated by his accepted pesticide exposure. As an impartial medical specialist, his reasoned opinion is entitled to special weight and the Board finds that it constitutes the weight of the medical evidence in this case.

¹² 5 U.S.C. §§ 8101-8193.

¹³ 5 U.S.C. § 8123(a).

¹⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁵ *Bryan O. Crane*, 56 ECAB ____ (Docket No. 05-232, issued September 2, 2005).

CONCLUSION

The Board finds that appellant has not established that his neuropathy condition is causally related to his accepted employment-related injury of pesticide exposure.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 28, 2005 is affirmed.

Issued: April 5, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board