

between Dr. Larry Lefors, an attending osteopath and Dr. William Moore, a Board-certified specialist in occupational medicine and second opinion physician. Dr. Lefors opined that appellant sustained chronic fatigue syndrome and fibromyalgia on or before December 1, 1997 due to her assigned duties as a biological technician and a December 7, 1997 incident in which appellant sustained a lumbar strain when closing a heavy gate. In contrast, Dr. Moore opined that appellant's chronic fatigue syndrome and fibromyalgia were not occupationally related. The Board also directed that the Office ascertain whether appellant had filed a claim for a December 7, 1997 traumatic incident in which she allegedly sustained a low back or hip strain when closing a heavy metal gate. The Board stated that, if appellant had filed a claim for the December 7, 1997 injury, the prior file should be combined with the occupational disease claim. The law and the facts of the case as set forth in the Board's prior decision and order are hereby incorporated by reference.²

On remand of the case, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Michael Allison, a physician Board-certified in occupational medicine, for an impartial medical examination. In a May 17, 2002 report, Dr. Allison diagnosed nonoccupational chronic fatigue syndrome and fibromyalgia. The Office issued a June 28, 2002 decision denying appellant's occupational disease claim. Appellant then requested a hearing. By decision dated December 2, 2002, the Office hearing representative vacated the Office's June 28, 2002 decision on the grounds that Dr. Allison's report was insufficiently rationalized and required clarification. In a February 13, 2003 letter, Dr. Allison opined that appellant showed no objective signs of chronic fatigue syndrome. By decision dated April 11, 2003, the Office denied appellant's claim on the grounds that causal relationship was not established. Following an oral hearing, the Office issued an April 22, 2004 decision setting aside the April 11, 2003 decision. The Office hearing representative found that Dr. Allison's two reports contained conflicting findings and conclusions. The hearing representative directed the appointment of a second impartial medical examiner.

On October 20, 2004 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Dennis Stumpp, a physician Board-certified in occupational medicine, for an impartial medical examination. The statement of accepted facts noted that in "December of 1997, [appellant] sustained a low back strain while closing a large gate at work. She developed low back pain radiating down into her hip and leg."

Dr. Stumpp submitted a November 12, 2004 report reviewing the medical record and statement of accepted facts. He diagnosed nonoccupational hypertension, sleep apnea, nonoccupational chronic fatigue syndrome possibly related to sleep apnea, "fibromyalgia unrelated to workplace factors on a more probable than not basis," and a history of a December 1997 occupational left hip strain which became "manifest as a chronic pain syndrome." Dr. Stumpp explained that chronic fatigue syndrome and fibromyalgia were both subjective syndromes unaffected by appellant's federal employment.

² During the pendency of the prior appeal, appellant submitted a February 15, 2001 report from Dr. Lefors, who opined that appellant's chronic fatigue syndrome was caused, in part, by job stress, "the hours her job demanded" and handling chemicals at work. Dr. Lefors noted that appellant's adrenal hormones were low.

By decision dated January 7, 2005 and issued April 13, 2006,³ the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found that the weight of the medical evidence rested with Dr. Stumpp.

In an April 28, 2006 letter, appellant requested an oral hearing, held October 3, 2006. At the hearing, appellant asserted that she filed a traumatic injury claim for a December 7, 1997 lumbar strain. After the hearing, she submitted a statement criticizing Dr. Stumpp's report and the Office's development of his findings.

By decision dated November 29, 2006, the Office hearing representative affirmed the April 13, 2006 decision, finding that appellant failed to establish that she sustained chronic pain syndrome, chronic fatigue syndrome or fibromyalgia causally related to factors of her federal employment. The Office found that Dr. Stumpp's report was sufficiently rationalized to represent the weight of the medical evidence. The Office further found that his statement that appellant had a chronic pain syndrome causally related to the December 7, 1997 traumatic work injury was immaterial as appellant did not file a claim for this injury. The hearing representative noted that the statement of accepted facts provided to Dr. Stumpp indicated that appellant sustained a low back strain in a December 7, 1997 traumatic work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the

³ In an April 13, 2006 letter, the Office stated that it did not send out the January 7, 2005 decision until April 13, 2006. The Office stated that appellant should consider her "current receipt of the decision timely for appeal rights as [she would] not have had the decision until this month." The Office noted that no additional evidence was received in appellant's claim following Dr. Stumpp's November 12, 2004 examination.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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. The medical evidence required to establish causal relationship is generally 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.⁷

ANALYSIS

Appellant claimed that she sustained chronic pain syndrome, chronic fatigue syndrome and fibromyalgia due to work factors on or before December 7, 1997. She also asserted that she filed a traumatic injury claim for a December 7, 1997 incident involving closing a heavy gate at work. In the statement of accepted facts provided to Dr. Stumpp, a physician Board-certified in occupational medicine and an impartial medical examiner, the Office stated that appellant sustained a low back strain in December 1997 while closing a large gate at work. Dr. Stumpp opined that the December 7, 1997 injury manifested as chronic pain syndrome. But the Office denied the occupational disease claim in April 13 and November 29, 2006 decisions, asserting it had not accepted a December 1997 injury. The Board finds that there is conflicting evidence as to whether the Office accepted a December 1997 traumatic injury. The case will be remanded for further development on this issue.

On remand of the case, the Office shall conduct appropriate development to determine if it accepted a December 1997 traumatic injury. If the Office determines that it did accept the injury, it shall ascertain the precise nature and duration of the accepted injury. The Office will also determine whether the medical evidence establishes that appellant sustained consequential chronic fatigue syndrome, chronic pain syndrome or fibromyalgia resulting from that injury. If the Office determines that it did not accept the injury, the Office shall undertake appropriate development to determine whether appellant filed a claim for a December 1997 traumatic injury. This development shall include obtaining all applicable personnel and injury compensation records from the employing establishment, federal records depository or other such custodian. Following this development and any other action deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant sustained chronic fatigue syndrome, chronic pain syndrome and fibromyalgia in the performance of duty. The case will be remanded for appropriate further development.

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 29 and April 13, 2006 are set and the case remanded for further action consistent with this decision.

Issued: July 23, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board