



injury causally related to her federal employment.<sup>2</sup> On remand, the Board instructed the Office to prepare a new statement of accepted facts and refer the case to an appropriate impartial medical specialist. Appellant filed a petition for reconsideration requesting that the Board modify the August 30, 2004 decision. In an order dated February 1, 2005, the Board denied appellant's September 2, 2004 petition for reconsideration.<sup>3</sup> The facts and the circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The facts and the history relevant to the present issue are noted, as follows.

On February 11, 1999 appellant, then a 43-year-old poultry inspector, filed an occupational disease claim alleging her sinusitis, fibromyalgia, arthritic conditions and migraine headaches were employment related.<sup>4</sup> She stated that she was exposed to chemicals and realized that her conditions were work related after seeing a chemical occupational specialist. Appellant stopped work on February 4, 1999 and has not returned.

Following the Board's August 30, 2004 decision, the Office referred appellant, to Dr. Alan M. Ducatman, Board-certified in occupational and internal medicine, for an impartial medical examination. In a letter dated December 17, 2004, appellant, through counsel, disagreed with the referral. Counsel argued that no explanation was provided as to why appellant was not sent back to Dr. Henry L. Abrons, the previous impartial medical specialist. He further argued that no explanation was provided as to how the Office used the Physicians Directory System in selecting Dr. Ducatman as numerous other physicians who were similarly Board-certified were not selected. Counsel contended that Dr. Ducatman had been previously employed by Wampler or its lawyers in one or more cases involving federal inspectors and Wampler employees who sustained injury. He argued that since Dr. Ducatman could not have a relationship with appellant's employing establishment, he could not have a relationship with the third party that caused her injury. Counsel requested that the Office determine whether Dr. Ducatman had been paid by Wampler or any of its lawyers in any other cases and if so, in how many cases. By letter dated January 5, 2005, he reiterated his objections.

In a letter dated December 22, 2004, Carolyn Delaney, appellant's coworker, stated that she worked at Wampler for five years. She related that she, as well as many of her coworkers, developed health problems that they believed were due to chemical exposure at work. Ms. Delaney stated that, when she filed for workers' compensation benefits, Wampler's lawyers sent her to Dr. Ducatman for an examination. She indicated that her workers' compensation benefits were denied based upon Dr. Ducatman's evaluation.

By letter dated January 19, 2005, the Office advised appellant that it was in the process of scheduling an examination with another physician and that she did not have to attend the

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<sup>2</sup> Dr. Abrons was selected as an impartial medical specialist because the Office found a conflict in the medical opinion evidence between Dr. Grace E. Ziem, an attending physician, and Dr. Prasad Nataraj, an Office referral physician, as to whether appellant sustained an injury while in the performance of duty.

<sup>3</sup> Order Denying Petition for Reconsideration, Docket No. 04-432 (issued February 1, 2005).

<sup>4</sup> The record reveals that, prior to her employment at the employing establishment, appellant worked for a private employer, Wampler Longacre in Moorefield, West Virginia. Although she later worked as a poultry inspector for the employing establishment, she physically worked at the Wampler plant.

scheduled appointment with Dr. Ducatman. In a January 21, 2005 letter, the Office advised appellant that an attempt was made to reschedule an examination with Dr. Abrons but it was advised that he had left the area. It further advised that she was scheduled to see Dr. Ducatman, the next available physician in the system, in accordance with its scheduling procedures.<sup>5</sup> The appointment was scheduled for January 31, 2005. The Office stated that its district director had reviewed her objections but determined that additional detailed information was needed. It instructed counsel to submit more specific information for consideration concerning the use of Dr. Ducatman by Wampler.

In a January 25, 2005 letter, counsel again contended that Dr. Ducatman was not an appropriate choice to perform a referee examination. He argued that it was the Office's burden to gather the information from Dr. Ducatman about his relationship with Wampler.

In a January 31, 2005 medical report, Dr. Ducatman reviewed a history of appellant's medical, family, social and employment background. He also reviewed her medical records and reported his findings on physical examination. Dr. Ducatman diagnosed diverse syndrome presentation with multiple nonphysiologic physical presentations noted on examination and in the past. He stated that her prominent pain was inconsistent. Dr. Ducatman diagnosed heart disease by history with incomplete records. He stated that appellant had a poorly documented history of a cardiovascular accident, noting that either sinusitis or asthma could be outcomes of the claimed exposures but pulmonary function tests revealed an inconsistent effort which was compatible with his physical examination findings. Appellant also had diabetes and was obese. Dr. Ducatman stated that she had neurodermatitis, hypertension by history and findings on physical examination, past episodes of pneumonia by history, possible peripheral neuropathy that was unsubstantiated, a plausible history of inflammatory bowel disease, mild osteoarthritis and enchondroma and a medical history of rheumatic fever that was otherwise unsubstantiated, fibrocystic breasts and biopsy. She also had a migraine headache that was not substantiated and not fully evaluated, hyperventilation with numbness, gum/dental needs and plausible sleep apnea. Dr. Ducatman opined that an ongoing work-related illness was not documented.

In a supplemental report dated February 3, 2005, Dr. Ducatman stated that none of the symptom-based diagnoses alleged by appellant were established by objective evidence. In addition to his previous diagnoses, he found that appellant had perhaps another underlying nonoccupational dermatitis, probable peripheral neuropathy related to diabetes and heart disease, possible stroke that was inadequately supported by the medical records and colitis or Crohn's disease with inadequate medical record support and numerous symptoms without clear cut physical or laboratory findings to provide an explanation. Dr. Ducatman stated that it was well known that diabetic peripheral neuropathy frequently preceded the diagnosis of diabetes. He further stated that there were no plausible causes of toxic peripheral neuropathy so far documented or mentioned for appellant's workplace. Dr. Ducatman related that the chemicals documented in the records were not regarded as central nervous system problems, they were potential respiratory irritants. He opined that none of the current diagnoses were plausibly caused by work exposure. Dr. Ducatman stated that a past history of irritant or allergic skin

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<sup>5</sup> An Office e-mail message dated December 14, 2004, indicated that Dr. Ducatman worked at the same facility as Dr. Abrons.

dermatitis in the workplace was plausible and could not be ruled out. He opined that appellant's current dermatitis, heart disease and stroke were not work related. Dr. Ducatman stated that, based on the best available medical literature, her workplace chemicals were not a recognized cause of symptoms such as fibromyalgia, cardiac problems, lipomas, breast cysts other cysts mentioned by history but not documented in the medical records and chronic fatigue. He further stated that workplace chemicals were not established as the primary cause of a migraine in appellant, noting that her medical records were not very supportive of a migraine diagnosis as the etiology of headaches. Dr. Ducatman, however, stated that workplace chemicals were well recognized as a trigger of increased frequency of migraine or nonspecific headache in already susceptible patients while exposure persisted. He opined that appellant's conditions were likely permanent in nature. Dr. Ducatman also opined that a diagnosis of asthma which could be caused by the poultry meat industry, could not be made due to inconsistent and nonphysiologic effort on physical examination and in pulmonary function testing.

By decision dated March 16, 2005, the Office found that appellant did not sustain an injury while in the performance of duty. The Office accorded special weight to Dr. Ducatman's medical opinion as an impartial medical specialist.

In a letter dated March 20, 2005, appellant, through her attorney, requested an oral hearing before an Office hearing representative. Counsel argued that the Office did not appropriately address his objections to the scheduling of an examination by Dr. Ducatman. He contended that Dr. Ducatman's report indicated that either he or other physicians in his office had previously examined appellant and he did not explain the context in which he and his colleagues examined her. Counsel also contended that Dr. Ducatman's report suggested that appellant suffered from residuals of her work-related injuries.

By decision dated January 31, 2006, an Office hearing representative set aside the March 16, 2005 decision. The hearing representative accepted that appellant was exposed to super-chlorinated water, humidity, isolated incidents of ammonia leaks and high carbon dioxide levels in her workplace. The hearing representative, however, found that Dr. Ducatman's January 31, 2005 report was not sufficiently rationalized to establish whether appellant sustained an injury. The hearing representative instructed the Office to obtain a supplemental report from Dr. Ducatman.

In a supplemental report dated May 18, 2006, Dr. Ducatman stated that a stroke was not generally regarded as a workplace condition. He noted that available medical records did not adequately document whether appellant actually had a stroke and that the nature of her hospitalization was unclear. Dr. Ducatman noted literature concerning the etiologic relationship between work and a stroke which he stated did not support a finding that chicken slaughtering or processing was a cause of stroke or associated with chemical exposures that cause stroke. Regarding appellant's dermatitis condition, Dr. Ducatman opined that this condition was not work related at the time he evaluated her. Rather, it was consistent with past chemical exposures. Dr. Ducatman opined that it was unconventional and not evidence supported to attribute chronic, recurrent, nongeographically specific headache to workplace causes in the absence of specific temporal evidence which included reliable and specific work triggers and absence of generalized triggers. He further opined that there were specific environments which caused migraine-type vascular headaches and the poultry industry was not one of them.

Dr. Ducatman concluded that appellant's chronic pains were not work related. He further concluded that her reactive airways dysfunction syndrome or asthma was not work related based on objective evidence.

By decision dated June 29, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. It accorded special weight to Dr. Ducatman's May 18, 2006 medical opinion as an impartial medical specialist.

In a September 5, 2006 letter, appellant, through her attorney, requested reconsideration of the Office's June 29, 2006 decision.<sup>6</sup> Counsel argued that Dr. Ducatman was biased and that he previously provided medical services to Wampler. He reiterated that Dr. Ducatman did not explain the context in which he and his colleagues examined and treated appellant. Counsel also argued that Dr. Ducatman's medical opinion was not rationalized.

By decision dated November 7, 2006, the Office denied modification of the June 29, 2006 decision. It found that the appropriate procedures were followed in selecting Dr. Ducatman as the impartial medical specialist. The Office further found that his reports did not establish either that he had treated or examined appellant prior to its scheduled examination or that other physicians in his medical group had examined appellant. The Office determined that Dr. Ducatman's reports were not biased. It found that his May 18, 2006 medical opinion was entitled to special weight as an impartial medical specialist as it was well rationalized.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.<sup>8</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

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) a factual statement identifying employment factors alleged to have caused or contributed to the presence

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<sup>6</sup> Prior to appellant's September 5, 2006 request for reconsideration of the Office's June 29, 2006 decision, she appealed this decision to the Board on July 10, 2006. By letter dated July 14, 2006, appellant, through her attorney, requested that the appeal be dismissed to allow her to pursue reconsideration before the Office. In an order dated August 23, 2006, the Board dismissed appellant's appeal based on her July 14, 2006 request. Docket No. 06-1617 (issued August 23, 2006).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

or occurrence of the disease or condition; 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. The medical evidence required to establish a causal relationship 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. 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.<sup>10</sup> Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.<sup>11</sup>

Section 8123(a) of the Act<sup>12</sup> provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination.<sup>13</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>14</sup>

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.<sup>15</sup> However, when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.<sup>16</sup>

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<sup>10</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>11</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>12</sup> 5 U.S.C. § 8123.

<sup>13</sup> *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>14</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>15</sup> *Raymond A. Fondots*, *supra* note 13 at 641; *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

<sup>16</sup> *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

## ANALYSIS

Due to a conflict in the medical opinion evidence between Dr. Ziem, an attending physician, and Dr. Nataraj, an Office referral physician, the Office initially referred appellant to Dr. Abrons, Board-certified in internal, critical care, pulmonary disease and occupational medicine, for an impartial medical examination. The Board previously found that Dr. Abrons' May 23, 2000 medical opinion was insufficient to resolve the conflict in the medical opinion evidence and remanded the case to the Office for referral of appellant to another impartial medical specialist. On remand, the Office properly referred appellant to Dr. Ducatman for an impartial medical examination after learning of Dr. Abrons' unavailability.<sup>17</sup> The Board finds, however, that Dr. Ducatman's reports are not sufficient to resolve the conflict in the medical opinion evidence.

Dr. Ducatman found that appellant suffered from numerous conditions including, heart disease, pneumonia and rheumatic fever by history, diabetes, obesity, neurodermatitis, hypertension, possible peripheral neuropathy, inflammatory bowel disease, mild osteoarthritis, enchondroma, fibrocystic breasts, migraine headache, hyperventilation with numbness, gum/dental needs and plausible sleep apnea. In a February 3, 2005 report, Dr. Ducatman found that appellant perhaps had underlying nonoccupational dermatitis, possible stroke that was inadequately supported by the medical records and colitis or Crohn's disease with inadequate medical record support and numerous symptoms without clear cut physical or laboratory findings to provide an explanation. In both reports Dr. Ducatman opined that none of the diagnosed conditions were causally related to appellant's employment.

The Office requested a supplemental report from Dr. Ducatman based on the hearing representative's January 31, 2006 decision, finding that he failed to provide a rationalized medical opinion establishing whether appellant's stroke, dermatitis, headaches and reactive airway disease were causally related to the accepted factors of her federal employment.

In a May 18, 2006 report, Dr. Ducatman again opined that appellant's work duties did not cause her stroke because a stroke was not generally regarded as a workplace condition based on medical literature concerning the etiological relationship between work duties and a stroke.

Dr. Ducatman also opined that appellant's neurodermatitis was not work related. He stated that although her past chemical exposures at work could have caused a past neurodermatitis condition, his findings on physical examination did not support such a current diagnosis. Dr. Ducatman found that appellant's reactive airway dysfunction or asthma was not work related based on objective evidence. He did not specifically identify the physical or objective findings that supported his conclusion. Dr. Ducatman did not provide adequate medical rationale explaining how or why appellant's work environment did not cause her skin and respiratory conditions in light of the Office's acceptance that she was exposed to certain chemicals while working at the employing establishment.

Dr. Ducatman opined that appellant's migraine headaches were not related to her employment. He stated that she did not provide a description consistent with a workplace

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<sup>17</sup> *Harold Travis*, 30 ECAB 1071, 1078 (1979).

headache. Dr. Ducatman cited generally to statistics from medical literature regarding the incidence of chronic workplace headaches. He did not specifically describe a workplace headache. The Board finds that Dr. Ducatman did not provide a reasoned medical opinion sufficient to resolve the conflict in the medial evidence. His reports are of diminished probative value.

This case will be returned to the Office for further development, to be followed by an appropriate decision regarding this matter.

### **CONCLUSION**

The Board finds that the conflict in the medical opinion evidence remains unresolved as to whether appellant sustained an injury while in the performance of duty. The case will be remanded for resolution of the conflict.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Issued: January 15, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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