

FACTUAL HISTORY

This is the second appeal of this case before the Board. On July 11, 2008 the Board,¹ finding an unresolved conflict in the medical opinion evidence, vacated the Office's August 30, 2007 decision and remanded the case to the Office for further development and to obtain a clarifying supplemental report from Dr. William T. Thieme, a Board-certified orthopedic surgeon, the Office's referee examiner, addressing the issue of whether appellant's accepted work activities aggravated his diagnosed conditions. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein.

Following remand, the Office, by letter dated July 15, 2008, requested from Dr. Thieme a supplemental opinion that clarified his October 31, 2006 report and specifically addressed whether appellant's work duties aggravated his diagnosed conditions. For purposes of this supplemental report, it authorized all additional diagnostic/testing procedures, including reexamination of appellant, Dr. Thieme deemed appropriate to accomplish this task.

By medical report dated September 29, 2008, Dr. Thieme opined that no specific or general work activities aggravated his knee or lumbar spine conditions.

By decision dated October 7, 2008, the Office, based upon Dr. Thieme's September 29, 2008 supplemental report, denied appellant's claim.

LEGAL PRECEDENT

When the Office refers appellant to a referee examiner for the purpose of resolving a conflict in the medical evidence pursuant to 5 U.S.C. § 8123(a), it has a responsibility to secure a medical report that properly resolves the conflict.² When the opinion from the referee examiner requires clarification or elaboration, the Office must further develop the medical evidence until the conflict is properly resolved.³

ANALYSIS

The Office sought clarification from Dr. Thieme on the issue of whether appellant's alleged medical conditions were employment related. The Board finds that Dr. Thieme's supplemental opinion was not sufficient to resolve the conflict in medical evidence, as his opinion is not well rationalized and he did not clarify or elaborate on the specific background upon which he based his opinion.

Dr. Thieme's opinion consisted of a single declarative sentence which asserted that no specific or general work activities aggravated appellant's knee or lumbar spine conditions. His report did not discuss appellant's employment duties or indicate that he reviewed a job description concerning appellant's specific position. Dr. Thieme's report did not incorporate any

¹ Docket 08-348 (issued July 11, 2008).

² See *Thomas Graves*, 38 ECAB 409 (1987).

³ *Id.*

of appellant's accepted employment duties into his consideration of causal relationship. Therefore, his supplemental clarifying opinion is insufficient as it was not based on a proper factual background.

As the Board pointed out in its prior decision, the issue to be resolved was whether appellant's medical conditions were caused, aggravated or exacerbated due to identified work factors, which included working on his hands and knees as well as striking his knees against hard surfaces. Neither Dr. Thieme's October 31, 2006 nor his most recent report, dated September 29, 2008, fully or adequately addressed this issue. He did not explain why a sole traumatic injury could cause appellant's condition, while working on his hands and knees and repeated injuries of striking his knees over a period of time could not cause or aggravate the diagnosed conditions.

Accordingly, the Office has not resolved the conflict in the medical evidence. Thus, the case must again be remanded to resolve the conflict. The referee physician should provide a rationalized opinion as to whether appellant's diagnosed medical conditions were caused, aggravated or exacerbated due to identified work factors. The specific employment factors should be clearly stated in the statement of accepted facts, all of the accepted employment-related conditions must be discussed by the physician. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's occupational disease claim.

CONCLUSION

The additional report from the referee examiner did not resolve the conflict and the case is remanded for additional development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2008 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 6, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board