

arm conditions causally related to employment factors.² In an undated statement received by the Office on June 4, 2008 he indicated that his claimed conditions were caused by repetitive work activities.

In a report dated October 16, 2007, Dr. Jeffrey M. Oettinger, a specialist in orthopedic surgery, stated that objective findings, including results of an electromyogram and nerve conduction studies, indicated that appellant had bilateral carpal tunnel syndrome but showed no evidence of cervical radiculopathy. He asserted that appellant's bilateral carpal tunnel syndrome was causally related to the employment factors appellant described in his June 2008 statement. Dr. Oettinger also stated that the medical reports of record specifically noted appellant's complaints of numbness and tingling into his wrists and hands while he was still working with the employing establishment; he advised that appellant's cervical condition was causing these symptoms.

By decision dated September 15, 2008, the Office denied the claim finding that appellant failed to submit medical evidence sufficient to establish that he sustained the claimed conditions in the performance of duty. It found that he failed to submit evidence that any of his specific work duties caused the claimed medical conditions. The Office further found that appellant failed to submit medical evidence sufficient to establish that his claimed conditions were related to factors of employment.

By letter dated September 25, 2008, appellant's attorney requested an oral hearing which was held on January 13, 2009.

Appellant submitted numerous reports from Dr. Steven A. Norris, a specialist in internal medicine, received by the Office on February 17, 2009, which documented his treatment of appellant for his claimed bilateral arm, bilateral lower extremity, neck and lower back conditions throughout 2008. These reports had not been previously reviewed by the Office.

In an April 24, 2008 report, Dr. Norris noted that appellant had initially sustained a work-related injury in 1984. He advised that appellant had been experiencing increased neck pain and bilateral leg pain with pain down the legs and right hip pain, with possible bursitis. Dr. Norris stated that he had been treating appellant for cervical radiculopathy, occipital neuralgia, enthesopathy, thoracic pain, sciatica, sacroiliitis, lumbar radiculopathy, restless legs syndrome, ulnar neuropathy elbow, bilateral carpal tunnel syndrome and neck pain. He stated that appellant had responded to injections for the neck and back and might also have bursitis as well. Dr. Norris noted that appellant chose to continue with conservative care; he recommended that he be referred to an orthopedist for his right hip pain, in addition to acupuncture and orthotics for his back.

In a report dated August 26, 2008, Dr. Norris advised that appellant was experiencing a worsening of occipital neuralgia, sciatica and sacroiliitis. He stated that appellant had responded

² Appellant stated that he had initially filed a Form CA-2a claim for recurrence of disability; however, the Office subsequently advised him to file a CA-2 form claim for occupational condition. The Board notes that he previously filed a claim for recurrence of disability which was denied by the Office and affirmed by the Board by decision dated May 20, 2007. Docket No. 06-2032 (issued May 20, 2007).

to injections, but opined that the numbness in the legs may not improve. Dr. Norris also noted severe worsening of his neck and low back pain in addition to bilateral arm pain.

By decision dated April 7, 2009, an Office hearing representative affirmed the September 15, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that 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 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 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 causal relationship is usually rationalized medical 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.⁶

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed neck, low back, bilateral lower extremity and bilateral arm conditions and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

causally related to employment factors and supports that conclusion with sound medical reasoning.⁷

ANALYSIS

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

Section 20 C.F.R. § 10.126 requires the Office to issue a decision containing findings of fact and a statement of reasons.⁸ The hearing representative merely stated in her April 7, 2009 decision:

“After a careful review of the evidence of record, I find [that] the medical evidence lacks medical rationale supporting claimant’s condition is causally related to the September 19, 1998 work incident. The medical evidence of record lacks a well[-]reasoned opinion supporting the current condition was caused or aggravated by the work incident of September 19, 1998. The contemporaneous medical records in the case from 1999 fail to provide a history of the September 19, 1998 incident or diagnose a condition in connection with the incident.”

In his appeal brief, appellant’s attorney argues that the hearing representative’s April 7, 2009 decision was “generic” in nature and that she erred by failing to specifically state which physician’s records she reviewed and the reasons she considered these records insufficient to establish that appellant sustained an occupational condition in the performance of duty. He also asserts that the hearing representative noted that the employing establishment provided appellant with work which accommodated his work restrictions, despite the fact that this issue is not presented in the instant case.

Appellant’s attorney challenges the hearing representative’s “generalized” statement that appellant has not proven a causal relationship because he did not submit a physician’s report which discusses the factors of employment, findings upon examination, medical history and whether the employment factors caused or aggravated the claimant’s diagnosed condition. He contends that the hearing representative failed to mention the medical documentation which was presented to her and thoroughly discussed in his hearing memorandum. Lastly, appellant’s attorney notes that the hearing representative referenced the fact that appellant’s recurrence claim was denied, despite the fact that the issue in this case is whether appellant sustained an occupational condition in the performance of duty.

The Board finds that the hearing representative erred by failing to make findings of fact in her decision. She stated boilerplate citations regarding appellant’s burden to establish that he sustained an occupational condition in the performance of duty and noted that the employing establishment accommodated his work restrictions, but made no findings of fact regarding the reports from Dr. Norris which appellant submitted. The Office therefore erred in its April 7,

⁷ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁸ 20 C.F.R. § 10.126.

2009 decision denying appellant's claim for an occupational condition by failing to consider evidence relevant to the instant issue in this case.⁹

The Board finds that the Office failed to give proper consideration to the medical evidence appellant submitted in support of his claim. In the instant case, as the Office failed to make detailed findings and provide a statement of reasons in its April 7, 2009 decision, the Board finds that the case must be set aside and remanded for adjudication of the case pursuant to section 8128(a).

Accordingly, the case will be set aside and remanded for consideration of appellant's evidence pursuant to the standards set out in section 8128(a) and 20 C.F.R. § 10.126, to determine whether he has established that his claimed neck, low back, bilateral lower extremity and bilateral arm conditions were sustained in the performance of duty. After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that his claimed neck, low back, bilateral lower extremity and bilateral arm conditions were sustained in the performance of duty.

⁹ The Board notes that the hearing representative also found that appellant failed to meet his burden to establish a recurrence of his 1998 disability, notwithstanding the fact that the Office specifically instructed appellant to file an occupational condition claim in June 2008 after he initially filed a CA-2a form, claim for recurrence of disability; as noted above, the Office and the Board had previously adjudicated the recurrence of disability issue in prior decisions.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2009 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: May 21, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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