

By decision dated January 14, 2010, an Office hearing representative set aside the July 1, 2009 decision and remanded the case for further development, including preparation of a statement of accepted facts, referral for a second opinion examination with appropriate specialists and additional testing as necessary. The hearing representative found that Dr. Velikova's report was well reasoned and supported a causal relationship.

On remand, the Office forwarded the case file to a district medical adviser (DMA) for review and an opinion as to whether employment-related chemical exposure caused or contributed to appellant's renal cancer. In an April 20, 2010 report, the DMA stated that the medical reports of record were insufficient to make a determination as to whether a causal relationship existed. He recommended that the Office obtain a report from a specialist in occupational diseases, as well as updated records from the treating physician.

By decision dated April 29, 2010, the Office denied the employee's claim based on the DMA's April 20, 2010 report.²

The Board finds this case is not in posture for a decision and must be remanded for further development of the medical evidence. On January 14, 2010 an Office hearing representative remanded the case to the Office with specific instructions to obtain a second opinion from an appropriate specialist. Instead, the Office sent the case to a medical adviser for review. The Office medical adviser recommended that the Office obtain a report from a specialist in occupational diseases, as well as updated records from the treating physician. There is no evidence, however, that the Office made any attempt to obtain such reports or to further develop the medical evidence in any way. The Board finds that the Office improperly relied on the DMA's April 20, 2010 report in its April 29, 2010 decision denying the employee's claim.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done.³ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁴ As the Office undertook development of the medical evidence, it has an obligation to secure a report adequately addressing the relevant issues.⁵ Moreover, the Office did not comply with the hearing representative's directive to obtain an opinion from an appropriate specialist as to whether the employee's renal cancer was causally related to chemical exposure in the workplace.

² The employee passed away sometime after the April 29, 2010 decision of the Office.

³ *Russell F. Polhemus*, 32 ECAB 1066 (1981).

⁴ *Melvin James*, 55 ECAB 406 (2004).

⁵ *See id.* (once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner).

The Board notes that the employee died sometime after the April 29, 2010 decision of the Office. The fact that the employee died before his case could be decided, does not obviate the Office's obligation to develop the case record.⁶

On remand, the Office shall obtain a rationalized opinion from a specialist in occupational diseases in accordance with the instructions of the hearing representative's January 14, 2010 decision. After this and such other development of the medical evidence as it deems necessary, the Office shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the appeal docketed as No. 10-1555 be set aside and the case remanded to the Office of Workers' Compensation Programs for action consistent with the terms of this order.

Issued: May 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁶ Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. *Edward Schoening*, 41 ECAB 277, 282 (1989).