

FACTUAL HISTORY

The case has been before the Board on prior appeals. There were four claims filed by the employee, who initially filed a claim on March 2, 1988 alleging that he developed fatigue, depression, a skin condition, rapid heartbeat, stress and anxiety due to exposure to Agent Orange. By decision dated March 31, 1992, the Board affirmed OWCP's denial of the claim on the grounds it was not timely filed.² On January 7, 2005 the employee filed an occupational disease claim alleging that he developed Type 2 diabetes and peripheral neuropathy as a result of chemical exposure while overhauling helicopters in federal employment. By decision dated September 17, 2008, the Board affirmed an OWCP decision dated July 2, 2007, finding that the medical evidence was insufficient to establish that diabetes and peripheral neuropathy were casually related to chemical exposure.³

On August 2, 2007 the employee filed an occupational disease claim alleging that he sustained colon and liver cancer as a result of chemical exposure. By decision dated July 15, 2008, the Board affirmed OWCP's decision dated October 24, 2007 denying the claim on the grounds the medical evidence was insufficient.⁴ On September 12, 2008 the employee filed an occupational disease claim alleging that he developed a stroke and peripheral neuropathy as a result of chemical exposure. By decision dated January 6, 2010, the Board affirmed a January 19, 2009 OWCP decision denying the claim on the grounds that the medical evidence was insufficient to establish the claim.⁵ The employee's claims had been consolidated under the claim file for the January 7, 2005 claim. He died on January 27, 2011. The history of the case as reported in the Board's prior decisions is incorporated herein by reference.

In a letter dated May 14, 2010, the employee requested reconsideration and submitted a January 21, 2010 report from Dr. A. Lee Guinn, a Board-certified internist, who stated that appellant had been diagnosed with Type 2 diabetes and peripheral neuropathy secondary to diabetes. Dr. Guinn stated that during the employee's federal employment from approximately 1966 to 1974, the employee was responsible for returning helicopters from Vietnam, which were contaminated with the herbicide Agent Orange. He stated that multiple research studies confirm that exposure to Agent Orange can cause a variety of diseases, including, but not limited to, diabetes mellitus Type 2, peripheral neuropathy, prostate cancers, respiratory cancers and multiple myeloma. Dr. Guinn opined that the employee's "current health status could be a result of his exposure to Agent Orange" during his years of federal employment.

By decision dated September 23, 2010, OWCP reviewed the merits of the claim and denied modification of the January 6, 2010 Board decision. It found that the medical evidence was insufficient to establish the claim.

² Docket No. 91-1047 (issued March 31, 1992).

³ Docket No. 07-1911 (issued September 17, 2008). The Board noted that OWCP had accepted that the employee was exposed to fuels, solvents and Agent Orange while working on helicopters.

⁴ Docket No. 08-361 (issued July 15, 2008).

⁵ Docket No. 09-908 (issued January 6, 2010).

By letter dated October 19, 2010, the employee requested reconsideration. In a report dated October 15, 2010, Dr. Guinn provided a history, stating that the employee had a documented exposure to multiple toxic chemicals in federal employment, including pesticide compounds such as Agent Orange, solvents, fuels, asbestos, toluene, chromate compounds and multiple other carcinogens. He reiterated that multiple research studies confirm that exposure to Agent Orange can cause a number of diseases. Dr. Guinn indicated that the employee frequently had direct contact with these chemicals without any protective barriers such as gloves or protective clothing and daily his skin was in frequent contact with these chemicals. He stated that pesticide compounds may be absorbed through the skin, GI tract and respiratory tract, but almost all significant poisonings occur as a result of accidental or intentional ingestion. According to Dr. Guinn, these herbicides produce nonspecific dermal and GI irritation with nausea, muscular abnormalities and generalized muscle weakness. He stated that the employee had peripheral neuropathy, a known complication of Agent Orange exposure, as well as diabetes and colon cancer. Dr. Guinn concluded:

“For these reasons above my opinion, with a reasonable degree of medical certainty, is that [the employee] has developed many comorbid medical conditions due to continuous and long-term exposure to the chemicals noted which include his peripheral neuropathy, diabetes mellitus, [T]ype 2, cardiovascular disease resulting in stroke, skin cancers and damage at site of exposure and metastatic colon cancer. His exposure was great since he had direct contact with these chemicals through his skin, gastrointestinal tract and respiratory tract without appropriate barrier protective gear.”

By decision dated April 6, 2011, OWCP reviewed the case on its merits and denied modification of the July 2, 2007 OWCP decision. It found that the October 15, 2010 report from Dr. Guinn was not of sufficient probative value to establish the claim.

On August 15, 2011 OWCP received an August 9, 2011 letter from the employee’s spouse requesting reconsideration. The letter stated that additional medical evidence was attached, but the record does not include any additional medical evidence submitted with the August 9, 2011 letter.

By decision dated September 12, 2011, OWCP found that the application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under FECA⁶ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁷

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.¹⁰ Additionally, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factors.¹¹

ANALYSIS -- ISSUE 1

As the procedural history of the case has noted, the employee filed occupational claims on January 7, 2005 for diabetes and peripheral neuropathy, on August 6, 2007 for colon and liver cancers and on September 12, 2008 for stroke and peripheral neuropathy. These claims have been consolidated under the current OWCP claim file.

OWCP has accepted some exposure to chemicals during federal employment. The numerous decisions in the case have been based on a review of the medical evidence with respect to causal relationship between a diagnosed condition and the employment exposure. The Board, having reviewed the October 15, 2010 report from Dr. Guinn, finds that the medical evidence requires further development. Dr. Guinn provided a history discussing the employee's chemical exposure, noted the employee's medical history and referred to medical studies regarding causal relationship between chemical exposure and diabetes, peripheral neuropathy and cancer. He offered an opinion within a reasonable degree of medical certainty that peripheral neuropathy, Type 2 diabetes mellitus, cardiovascular disease resulting in stroke and metastatic colon cancers were causally related to chemical exposure in federal employment.

While Dr. Guinn did not fully explain his opinion as to causal relationship with employment for the diagnosed conditions, he provided a clear and probative medical opinion reflected a thorough knowledge and review of appellant's medical and employment history and there is no contrary medical evidence. OWCP has never attempted to further develop the medical evidence in this case. While appellant has the burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹² The Board will remand the

⁸ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *See Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

¹² *William J. Cantrell*, 34 ECAB 1233 (1983).

case for OWCP to prepare an accurate statement of accepted facts and referral to an appropriate specialist(s) for a rationalized medical opinion on the issues presented. After such further development as OWCP deems necessary, it should issue an appropriate decision. In view of the Board's finding, OWCP will not address the denial of reconsideration issue.

CONCLUSION

The Board finds that appellant has submitted sufficient medical evidence to require further development of the claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 27, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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