

FACTUAL HISTORY

This case was previously before the Board. By decision dated April 18, 2011, the Board set aside OWCP's March 15 and June 11, 2010 decisions denying appellant's occupational disease claim and remanded the case for further development.²

OWCP referred appellant to Dr. Robert A. Fulford, a Board-certified orthopedic surgeon, for an examination and a reasoned opinion on the etiology of his diagnosed carpal tunnel syndrome. In a June 2, 2011 report, Dr. Fulford stated that there were no objective findings of carpal tunnel syndrome on examination, noting that appellant demonstrated lack of effort and deceptive behavior. He found no motor, sensory, Tinel's signs or Phalen's test. Testing did not establish the existence of carpal tunnel syndrome (CTS). Although a March 13, 2009 electromyogram (EMG) suggested evidence of CTS, Dr. Fulford stated that the report was flawed because no temperature was recorded. He disagreed with Dr. Steven Seefeldt, Board-certified in internal medicine, opinion that appellant's CTS condition was work related and due to repetitive use of the hands, stating that "repetitive use is not recognized as a cause of carpal tunnel syndrome [CTS]." Dr. Fulford diagnosed cervical spondylosis, with no evidence of CTS.

A conflict in medical opinion was found between Dr. Seefeldt and Dr. Fulford. OWCP referred appellant to Dr. Frank Barnes, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion as to whether appellant developed CTS or ulnar nerve entrapment as a result of employment activities. In a July 12, 2011 report, Dr. Barnes reviewed the statement of accepted facts and the medical record. On examination of the upper extremities, manual muscle testing showed grade 4+/5 strength generally. The skin was normal. There was tenderness over the ulnar groove at the elbow and negative Tinel's sign at the wrist and at the elbow. Appellant had a normal range of motion at the elbow and wrist. Sensory testing was normal except for numbness over the right little finger in the right hand and numbness over the left thumb and little finger in the left hand. The radial pulse, ulnar pulse and capillary filling were normal. Dr. Barnes diagnosed bilateral carpal and cubital tunnel syndrome, which he opined were diseases of life, occurring frequently with no initiating injury or similar cause. Referring to the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation*, he opined that a job such as appellant's would have no relation to either CTS or cubital tunnel syndrome.

By decision dated August 15, 2011, OWCP denied modification of its March 15, 2010 decision, finding that the weight of the medical opinion was represented by Dr. Barnes.

On January 31, 2012 appellant, through his representative, requested reconsideration. He submitted a November 18, 2011 functional capacity evaluation and an October 18, 2011 report from Dr. Louis Tran, Board-certified in emergency medicine, who diagnosed severe CTS bilaterally.

² Docket No. 10-1778 (issued April 18, 2011). The Board found that the reports of appellant's treating physicians, Drs. Seefeldt and Jarolimek, while not completely rationalized, strongly supported a causal relationship between appellant's diagnosed CTS and factors of employment and warranted further development of the medical evidence.

By decision dated February 14, 2012, OWCP denied modification of its August 15, 2011 decision, finding that appellant had not established that his diagnosed condition was causally related to work factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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 evidence required to establish causal relationship, generally, 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.⁵

Section 8123 of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.⁶ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ 5 U.S.C. § 8123.

sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

When OWCP 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, it must secure a supplemental report from the specialist to correct the defect in his original report.⁸

ANALYSIS

The Board finds that this case is not in posture for a decision as to whether appellant sustained an injury in the performance of duty, as there remains an unresolved conflict in the medical evidence.

OWCP found a conflict in medical opinion between appellant's treating physician, Dr. Seefeldt, and the second opinion physician, Dr. Fulford, as to whether he developed a diagnosed condition as a result of the accepted employment activities. In order to resolve the conflict, it properly referred appellant to Dr. Barnes for an impartial medical examination. The Board finds, however, that Dr. Barnes' July 12, 2011 report is insufficient to resolve the conflict.

Dr. Barnes provided a review of appellant's medical treatment and brief examination findings. He diagnosed bilateral CTS and cubital tunnel syndrome, which he opined were diseases of life, occurring frequently with no initiating injury or similar cause. Dr. Barnes further opined, without adequate explanation, that a job such as appellant's would have no relation to either CTS or cubital tunnel syndrome. When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of the specialist, if sufficiently well rationalized, must be given special weight.⁹ The Board finds that Dr. Barnes did not furnish sufficient rationale to support his stated conclusion that appellant's diagnosed CTS was not causally related to employment activities. Dr. Barnes did not provide an accurate factual background or address appellant's accepted repetitive employment activities. For these reasons, the Board finds that his report is of diminished probative value and is insufficient to resolve the conflict.

As OWCP referred appellant to Dr. Barnes, it has the duty to obtain a report sufficient to resolve the issues raised and the questions posed to the specialist.¹⁰ The case will be remanded to OWCP for further development of the medical evidence and a supplemental opinion from

⁷ *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

⁸ *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

⁹ See *supra* note 7.

¹⁰ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case. *Melvin James*, 55 ECAB 406 (2004).

Dr. Barnes. After such further development as OWCP deems necessary, an appropriate decision should be issued regarding this matter.

CONCLUSION

The Board finds that the case is not in posture for decision. The case shall be remanded for further development of the medical evidence, to be followed by an appropriate merit decision.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 14, 2012 decision is set aside. The case is remanded for action consistent with this decision of the Board.

Issued: January 22, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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