

Orange (AO). By decision dated March 31, 1992, the Board affirmed OWCP's denial of the claim on the grounds that it was not timely filed.² On January 7, 2005 the employee filed an occupational claim alleging that he developed Type II diabetes and peripheral neuropathy as a result of chemical exposure while overhauling helicopters in his 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 causally related to chemical exposure.³

In a decision dated August 27, 2012, the Board remanded the case for further development. The Board found that an October 15, 2010 report from Dr. A. Lee Guinn, a Board-certified internist, was sufficient to require additional development of the evidence. The history of the case as provided in the Board's prior decisions is incorporated herein by reference.

On return of the case record, OWCP prepared a statement of accepted facts (SOAF) dated September 28, 2012. The SOAF noted that appellant worked in the United States from 1966 to 1973 overhauling military helicopters, from 1973 to 1980 as a quality inspector, inspecting the work on helicopters performed by mechanics, and from 1980 to 1988 as a quality assurance specialist. With respect to exposure in federal employment, the SOAF indicated that from late 1960s to early 1970s some of the helicopters appellant overhauled had been in Viet Nam and contained small amounts of a rodenticide. Also noted was a white powder seen in a single helicopter. The SOAF found that there was no documentation that any of the helicopters contained AO, but appellant could have contact with fuels, greases and oils.

The case was referred to Dr. Imawati Wong, a Board-certified oncologist, and Dr. Raye Bellinger, a Board-certified internist, for evaluation. In a report dated October 5, 2012, Dr. Wong indicated that he had reviewed medical records and the SOAF. He opined that the diagnosed conditions of colon and basal skin cancer were not causally related to any exposure in the employee's federal employment. Dr. Wong stated that exposure to fuels, greases and oils were not considered high risk factors for colorectal or skin cancer.

In a report dated October 5, 2012, Dr. Bellinger provided a history and indicated that he reviewed medical records. He noted that the employee's diagnoses included: diabetes, peripheral neuropathy, colon and skin cancer, hyperlipidemia, hypertension, impaired vision, stroke and tinea pedis. Dr. Bellinger opined that, based on his review of the evidence, there was no evidence of causal relationship between a diagnosed condition and the employee's federal employment.

By decision dated October 25, 2012, OWCP denied the claim for compensation. It found the weight of the medical evidence was represented by Drs. Wong and Bellinger.

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

³ Docket No. 07-1911 (issued September 17, 2008).

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her 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.⁵

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.⁶

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷ 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.⁸ Additionally, in order to be considered rationalized, 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 appellant's specific employment factors.⁹

FECA provides that, if there is a 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 the examination.¹⁰ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹

⁴ 5 U.S.C. §§ 8101-8193.

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

⁶ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8123(a).

¹¹ 20 C.F.R. § 10.321 (1999).

ANALYSIS

As noted above, the case has been before the Board on prior appeals and clearly the case presents difficult medical issues. Before addressing the medical evidence, a preliminary factual issue must be considered. The question of whether the employee was exposed to AO while working on helicopters in his federal employment was an issue that OWCP had not addressed in detail until the September 28, 2012 SOAF. OWCP found that there was no documentation that AO was present in the exterior or interior of the helicopters that were maintained by the employee. Appellant disagrees with this finding, arguing that the employing establishment did not disclose the actual AO exposure.

The Board is limited to review of the evidence of record.¹² In this regard the employing establishment, in letters dated February 16, 2005 and May 21, 2007, stated that there was an investigation that revealed no record of any AO contamination in the helicopters at the employee's work site. The record contains an April 7, 1989 document that reports a conversation with a Mr. Martinez, a packaging specialist with the employing establishment. According to Mr. Martinez, before any shop personnel worked on helicopters they would have been cleaned and decontaminated. In a memorandum dated July 31, 1990, an employing establishment safety and occupational health director stated that the employing establishment also attempted to clean the aircraft prior to returning to the United States.

Appellant has argued that OWCP did not properly determine the reliability of any statement by Mr. Martinez as to AO exposure. The evidence, as discussed above, was not limited to the April 7, 1989 document. Moreover, the record does not contain probative evidence documenting exposure to AO by the employee in his federal employment. The employee referred to a 1989 film regarding helicopters in Viet Nam and the use of AO, but this does not establish specific exposure in the helicopters overhauled by the employee. Witness statements from coworkers as to medical problems they encountered also do not establish AO exposure.

Based on the evidence of record, the Board finds that OWCP properly concluded that there was no documentation of AO exposure by the employee in this case. This finding does not itself, however, establish that the weight of the medical evidence is represented by the second opinion physicians, Drs. Wong and Bellinger.

As the Board noted in its prior decision, Dr. Guinn indicated in his October 15, 2010 report that appellant had been exposed to a number of chemicals, including jet fuels and other chemical compounds. He provided an unequivocal opinion that the employee had developed many comorbid medical conditions as a result of exposure to these chemicals. The Board found this report was sufficient to further develop the medical evidence. In a report dated August 8, 2011, Dr. Guinn reiterated that the employee was exposed to chemicals other than AO, including those found in solvents and fuels. He again opined that the exposure caused multiple medical conditions.

Drs. Wong and Bellinger disagreed, finding that the chemical exposure in federal employment did not contribute to a diagnosed condition for the employee. Section 8123(a)

¹² 20 C.F.R. § 501.2(c).

indicates that, when there is a disagreement between an attending physician and an OWCP second opinion physician, the case should be referred to an impartial referee physician to resolve the conflict. The case will be remanded for resolution of the conflict between Dr. Guinn and Drs. Wong and Bellinger.

Given the complexity of the factual and medical issues, it is particularly important that an accurate and complete SOAF be prepared. In this regard the Board notes that OWCP made no findings as to exposure to asbestos. The employee alleged exposure to asbestos, and the July 31, 1990 statement from the safety officer stated that asbestos would almost certainly be found in the helicopters. In addition, OWCP should clarify and expand its findings as to solvents and fuels. The record indicated that employees used solvents in overhauling helicopters, and the SOAF should provide as specific detail as possible regarding the chemicals contained in solvents and fuels at the employing establishment work site. The statement of accepted facts shall also list all chemicals and solvents which were used to prepare the subject helicopters for return to the United States.

The case will be remanded to OWCP for preparation of a SOAF and selection of an impartial referee physician in accord with established procedures. The referee should be asked to provide a rationalized medical opinion on causal relationship between a diagnosed condition and exposure to solvents and fuels in federal employment. After such further development as is deemed necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds the case must be remanded for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 5, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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