

supplemental report on accepted thrombophlebitis requested by the Board on the prior appeal as Dr. Borman only examined his right knee regarding accepted orthopedic conditions. Appellant also alleged that Dr. Borman merely quoted a report from Dr. C. Scott Graham, an osteopathic physician Board-certified in family practice, without providing the supplemental opinion requested by OWCP.

FACTUAL HISTORY

This is the fourth appeal before the Board in this case. By decision and order issued September 16, 2011,² the Board set aside a June 8, 2010 decision of OWCP denying appellant's claim for a recurrence of disability commencing June 24, 2005, the day he retired from federal employment. The Board remanded the case to OWCP to obtain a supplemental report from Dr. Borman. The Board asked OWCP to obtain a clarification from Dr. Borman regarding whether accepted thrombophlebitis of both lower extremities worsened on or after June 24, 2005. The law and the facts of the case as set forth in the Board's prior decision are incorporated by reference.³

During the pendency of the prior appeal, appellant submitted progress notes and prothrombin time tests from Dr. Graham dated from June 2010 to December, 2011. Dr. Graham noted periodic flare-ups of lower extremity pain with chronic edema due to venous insufficiency. A June 9, 2010 bilateral lower extremity pulse volume recording study (PVR) showed no occlusive disease, with arterial medial calcification affective arteries in the left calf.

In an October 20, 2011 letter, OWCP requested that Dr. Borman opine whether there were objective findings to support that appellant sustained a recurrence of disability on June 24, 2005 due to a worsening of accepted thrombophlebitis of the right leg. In response, Dr. Borman responded on February 23, 2012 letter referring to Dr. Graham's April 9, 2007 report. He noted that Dr. Graham found appellant's condition had deteriorated in early 2005 when Bextra, the anticoagulant drug, with which he treated the accepted condition on thrombophlebitis, was withdrawn from the market. Dr. Borman also referred to Dr. Graham's opinion that appellant stopped work in June 2005 primarily due to worsening of accepted osteoarthritis of the right knee and would continue to require anticoagulant and pain control medications due to occupational thrombophlebitis and osteoarthritis of the right lower extremity. He found that based on Dr. Graham's clinical note of April 9, 2007 appellant needed medical care for a worsening condition due to an intervening cause.

By decision dated March 2, 2012, OWCP denied modification of its prior decision on the grounds that the medical evidence did not support a recurrence of disability commencing June 24, 2005. It attributed the quotation from Dr. Graham's April 9, 2007 opinion to

² Docket No. 11-450 (issued September 16, 2011).

³ OWCP accepted that on July 25, 1978, appellant, a forestry technician, sustained a right knee strain. It later accepted a strain of the right Achilles tendon, right knee instability, a possible torn right medial meniscus, post-traumatic osteoarthritis and septic arthritis of the right knee, total right knee arthroplasty and chronic thrombophlebitis with deep venous thrombosis of both legs.

Dr. Borman, and found it sufficient to carry the weight of the medical evidence as an impartial medical opinion.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁴ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁵ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁶

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.⁷ In situations where 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 sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

When OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.⁹ If the specialist is unwilling or unable to clarify or elaborate on his or her opinion as requested, the case should be referred to another appropriate impartial medical specialist.¹⁰

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁵ *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ 5 U.S.C. § 8123; see *Charles S. Hamilton*, 52 ECAB 110 (2000).

⁸ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

⁹ *Harry T. Mosier*, 49 ECAB 688 (1998).

¹⁰ *Guiseppe Aversa*, 55 ECAB 164 (2003).

ANALYSIS

In its September 26, 2011 decision and order, pursuant to the prior appeal, the Board directed OWCP to request a supplemental report from Dr. Borman, an osteopathic physician Board-certified in orthopedic surgery and the impartial medical examiner in the case. The Board instructed it to “obtain a supplemental report from Dr. Borman regarding whether the accepted thrombophlebitis worsened on or after June 24, 2005.” The Board emphasized that “clarification of this medical question is essential to a determination of whether appellant sustained a recurrence.”

On remand of the case, OWCP requested that Dr. Borman further state whether objective findings supported a recurrence of disability on June 24, 2005 due to a worsening of accepted thrombophlebitis of the right leg. Dr. Borman submitted a February 23, 2012 report in which he found that Dr. Graham’s April 9, 2007 report substantiated the need for medical care resulted from a worsening of his accepted work injury due to an intervening cause. He did not specifically address thrombophlebitis or explain how Dr. Graham’s clinical findings supported an intervening cause. The Board finds that these brief remarks from Dr. Borman are insufficient to clarify whether he believed that the accepted thrombophlebitis worsened on June 24, 2005.

As Dr. Borman’s clarification of his opinion was insufficient to resolve the conflict evidence on this issue, the case will be referred to a new impartial medical specialist to obtain a reasoned opinion as to whether the accepted thrombophlebitis worsened on June 24, 2005 as claimed, causing a recurrence of disability.¹¹ As the Board stated in its prior decision, resolving this issue is essential to the proper adjudication of this claim. Following this and any other development deemed necessary, OWCP will issue an appropriate decision in the case.

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2012 is set aside and the case remanded for additional development consistent with this decision.

Issued: March 14, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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