United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 13-1977**
	)	**Issued: March 18, 2014**
TENNESSEE VALLEY AUTHORITY, PARADISE STEAM PLANT, Drakesboro, KY, Employer	)	

Appearances:
Ronald K. Bruce, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On August 28, 2013 appellant, through his representative, filed a timely appeal from the June 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a pulmonary injury in the performance of duty.

FACTUAL HISTORY

In a prior appeal,[2] the Board remanded the case for a second impartial medical evaluation to resolve the conflict as to whether appellant sustained a pulmonary injury in the performance of

[1] 5 U.S.C. § 8101 *et seq.*

[2] Docket No. 10-1804 (issued April 15, 2011).

duty. The facts of this case, as set forth in the Board's prior decision, are hereby incorporated by reference.[3]

OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Jack H. Hasson, a Board-certified specialist in pulmonary disease, a former certified B Reader, currently a certified A Reader and an assistant professor of medicine, for an impartial medical evaluation.

Dr. Hrudaya P. Nath, a Board-certified diagnostic radiologist and professor of medicine, interpreted a chest x-ray obtained for Dr. Hasson. Scattered calcified granulomas were present. There were small rounded interstitial opacities with ILO perfusion of approximately 1/2. Dr. Nath concluded that there was no acute disease.

Dr. Jubal R. Watts, Jr., a Board-certified diagnostic radiologist and certified B Reader, interpreted the same chest x-ray, the quality of which he found to be grade 1. There were small parenchymal opacities consistent with pneumoconiosis, p/q involving the upper, middle and lower lung zones bilaterally. The profusion of the small opacities was 1/1. No large opacities or pleural abnormalities consistent with pneumoconiosis were evident. A calcified granuloma was seen in the left upper lobe with a calcified left hilar node present. Dr. Watts' impression was p/q small opacities with a perfusion of 1/1 compatible with pneumoconiosis.

Dr. Hasson evaluated appellant on July 21, 2011. He related appellant's history and complaints. Dr. Hasson described his findings on examination and reviewed previous imaging studies. He stated that appellant's current chest x-rays showed lungs free of infiltrates. There were no rounded or irregular opacities and no conglomerate nodules. The pleural surfaces were free of plaque formation and pleural thickening.

Dr. Hasson found no evidence of pneumoconiosis. He concluded that appellant's significant pulmonary impairment was related to a number of factors, including chronic obstructive pulmonary disease (COPD) with an asthmatic component. Dr. Hasson stated, "I feel that [appellant's] dyspnea and impairment is totally due to his COPD related to tobacco exposure along with his cor pulmonale, which may be related to a number of factors, including obstructive sleep apnea and pCO2 retention, but I find that pneumoconiosis plays no role in his pulmonary impairment and I find no evidence of pneumoconiosis. I do not feel that coal dust plays any role in [appellant's] present impairment."

In a decision dated September 2, 2011, OWCP denied appellant's pulmonary injury claim. It found that the weight of the medical evidence rested with the opinion of Dr. Hasson, supported by the medical findings of Dr. Watts, the certified B Reader and failed to substantiate that appellant's pulmonary condition was the result of his exposure during federal employment.

On December 12, 2011 an OWCP hearing representative found that the case was not in posture for decision. The hearing representative observed that Dr. Hasson did not mention

[3] Appellant, a 58-year-old retired gas and diesel mechanic and machinist, filed an occupational disease claim alleging that his pneumoconiosis, chronic obstructive airway disease and chronic bronchitis were a result of exposure to coal dust and asbestos in his federal employment from 1976 to 1996.

Dr. Watts' interpretation of appellant's chest x-rays, which indicated there was evidence of pneumoconiosis. Dr. Hasson also did not mention having reviewed the statement of accepted facts or the accepted exposure to gasoline fumes. Further, he provided no medical rationale to support his opinion that appellant sustained no impairment related to exposure to coal dust. The hearing representative remanded the case for a supplemental report from the impartial medical specialist to address specific questions.

Dr. Hasson provided a supplemental report dated January 4, 2012. He stated that he did not believe pneumoconiosis was present based on Dr. Watts' findings. Dr. Hasson explained that he saw no evidence of pneumoconiosis after his own evaluation of the chest x-ray or other evaluations of chest x-rays by other physicians, in spite of the fact that there were x-rays felt to show pneumoconiosis. Further, he explained that the best evidence for no evidence of pneumoconiosis on imaging studies was the computerized tomography (CT) scan, noted in his initial report, showing no description of round or irregular opacities or any diagnosis of pneumoconiosis. Dr. Hasson considered CT scans to be the gold standard of imaging compared to a plain chest x-ray. "It is well known that the CT scan of the chest is a better imaging modality as compared to a plain chest x-ray."

Dr. Hasson wanted to make perfectly clear that appellant's pulmonary condition was totally related to COPD related to cigarette smoking and that there was no evidence that any other exposure, including gasoline or coal dust, had any relation to any damage that was demonstrated on appellant's examination and laboratory studies, including his arterial blood gases. Although exposure to irritants and dust can aggravate COPD, there was no evidence of any injury from either of those substances.

Dr. Hasson also explained that there was no evidence, either by clinical practice or in the literature, that coal dust causes or aggravates obstructive sleep apnea, nor was there evidence that coal dust caused any of appellant's problems, since he had classic COPD, which explained all of his symptoms. There was no evidence of pneumoconiosis on either his chest x-ray or his CT scan. In addition, the elevation of pCO2 was classic for COPD and is described well in the literature. Dr. Hasson added that he had seen it on numerous occasions frequently in his practice over the previous 35 years, "but I [have] never seen a case of elevation of pCO2 related to gasoline exposure in all of my years of practice and I know of no literature that documents elevation of the pCO2 with exposure to gasoline."

In a decision dated February 28, 2012, OWCP denied appellant's pulmonary injury claim. It found that the weight of the medical evidence rested with Dr. Hasson.

On August 14, 2012 an OWCP hearing representative remanded the case for another supplemental report from Dr. Hasson, who had provided some, but not all, of the information requested. Dr. Hasson failed to explain why exposure to coal dust had no effect on appellant's pulmonary conditions. Also, previous medical evidence indicated that a negative CT scan was meaningless, as it washed out lesions and showed a high percentage of false negatives. The hearing representative instructed Dr. Hasson to review the statement of accepted facts and to fully explain whether the condition of pneumoconiosis was present in Dr. Watts' findings. Dr. Hasson was also to address the opinion that a negative CT scan was meaningless in the

diagnosis of pneumoconiosis. He was also to explain why there was no evidence of injury or damage from appellant's exposure to gasoline or coal dust.

On November 1, 2012 OWCP received a response from Dr. Hasson, which consisted of a handwritten note on OWCP's request for additional information. With an arrow drawn to the request that he review the statement of accepted facts and certain medical reports, the note reads: "I have reviewed and my opinion is not changed."

In a decision dated November 13, 2012, OWCP denied appellant's pulmonary injury claim. It found that the weight of the medical evidence rested with the opinion of Dr. Hasson.

On June 3, 2013 an OWCP hearing representative affirmed the denial of appellant's claim on the grounds that there was no rationalized medical evidence in support of appellant's contention that the claimed pulmonary condition was causally related to factors of his federal employment. The hearing representative further found that Dr. Hasson's opinion represented the weight of the medical evidence and established that the claimed pulmonary condition was not due to appellant's federal employment.

Appellant's representative argues that the finding that the weight of the medical evidence rests with Dr. Hasson is not supported by the evidence of record.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[4] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[5]

Causal relationship is a medical issue[6] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty[8] and must be supported by medical rationale explaining the

[4] 5 U.S.C. § 8102(a).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960) (in which the claimant's physician concluded that the implicated conditions "could have had" a direct bearing upon his sickness).

nature of the relationship between the diagnosed condition and the established incident or factor of employment.[9]

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.[10] 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 sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, OWCP must submit the case record together with a detailed statement of accepted facts to another impartial specialist for a rationalized medical opinion on the issue in question.[12] Unless OWCP follows this procedure, the intent of section 8123(a) will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[13]

ANALYSIS

In the prior appeal, the Board remanded the case for a second impartial medical evaluation to resolve the conflict as to whether appellant sustained a pulmonary injury in the performance of duty. OWCP referred him to Dr. Hasson, who is a Board-certified specialist in pulmonary disease; however, he is not a certified B Reader. Dr. Hasson was once a certified B Reader, but since 2003 he has been recognized as a certified A Reader. Dr. Watts, a Board-certified diagnostic radiologist, is a certified B Reader.

Thus, on the question of whether appellant's chest x-ray shows evidence of pneumoconiosis, Dr. Watts' interpretation carries more weight. It was his opinion that appellant's chest x-ray showed small parenchymal opacities consistent with pneumoconiosis.

Dr. Hasson's opinion that pneumoconiosis was not present based on Dr. Watts' findings is not well rationalized. His interpretation of the chest x-ray and of other x-rays felt to show

[9] *See William E. Enright*, 31 ECAB 426, 430 (1980) (finding no rationalized medical evidence, addressed to the particular circumstances under which the claimant worked, indicating that his disability was causally related to such employment factors).

[10] 5 U.S.C. § 8123(a).

[11] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[12] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[13] *Harold Travis*, 30 ECAB 1071 (1979).

pneumoconiosis, is not sufficient to outweigh the opinion of a certified B Reader. When challenged on Dr. Hasson's assertion that a CT scan was a better imaging modality for identifying pneumoconiosis, he refused to address the issue. He also failed to provide any meaningful response to the questions most recently asked of him. The handwritten note indicating that Dr. Hasson had reviewed the statement of accepted facts and certain medical reports was inadequate to resolve the questions most recently posed by the hearing representative. Medical conclusions unsupported by rationale are of little probative value.[14]

Despite OWCP's attempts to obtain clarification from Dr. Hasson, the Board finds that his opinion remains insufficient to resolve the outstanding conflict in this case. Referral to another impartial medical specialist is therefore necessary. The Board will set aside OWCP's June 3, 2013 decision and will remand the case for referral to a third impartial medical specialist to resolve the conflict as to whether appellant's accepted exposure in federal employment caused or aggravated any firmly diagnosed pulmonary condition. After such further development of the medical evidence as may become necessary, OWCP shall issue an appropriate *de novo* decision on appellant's injury claim.

CONCLUSION

The Board finds that this case is not in posture for decision. Further, development of the medical opinion evidence is required.

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this opinion.

Issued: March 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board