

disease claim and remanded the case for further development.² In the Board's January 22, 2013 decision, the Board set aside OWCP's decision dated February 14, 2012 denying appellant's claim and remanded the case for further development. The Board found that the referee physician had not provided sufficient rationale to support his stated conclusion that appellant's diagnosed CTS was not causally related to his employment.³ The Board instructed OWCP to obtain a supplemental report from Dr. Frank Barnes, a Board-certified orthopedic surgeon and an impartial medical specialist. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.⁴

Dr. Barnes in a July 12, 2011 report reviewed the statement of accepted facts and the medical record. He noted findings upon physical examination of the upper extremities. For manual muscle testing it showed grade 4+/5 strength generally, the skin was normal, tenderness over the ulnar groove at the elbow, negative Tinel's sign at the wrist and at the elbow, normal range of motion at the elbow and wrist. Dr. Barnes noted 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 and there was normal radial pulse, ulnar pulse and capillary filling. He diagnosed bilateral carpal and cubital tunnel syndrome. Dr. Barnes opined that these conditions 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*, referencing pages 173-175, 182-83, Table 9-17 and Table 9-14, he noted that a job such as appellant's would have no relation to either CTS or cubital tunnel syndrome.

On February 12, 2013 pursuant to the Board's remand instructions, OWCP requested that Dr. Barnes provide a supplemental report. It specifically noted that appellant had not provided an accurate factual background and to address his employment activities as set forth in the statement of accepted facts.

Dr. Barnes in his March 1, 2013 supplemental report noted that appellant was a rural carrier and his job was described as heavy. He noted that since appellant did a variety of activities during the workday, he did not consider the activities "highly repetitive" in nature. Dr. Barnes noted that neither the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation* or the Official Disability Guidelines (ODG) find any significant connection between CTS and work activity. He noted that the ODG found a weak correlation between "highly repetitive" activity, continuous repetition of the same activities for much of the workday, but that did not relate to the work of a rural carrier. Dr. Barnes further opined that appellant's diagnoses of CTS and ulnar neuropathy were a disease of life and they occur frequently with no initiating injury or repetitive motion cause. Referring to the American

² Docket No. 10-1778 (issued April 18, 2011). The Board found that the reports of appellant's treating physicians, Dr. Steven Seefeldt, Board-certified in internal medicine, and Dr. Lubor J. Jarolimek, a Board-certified orthopedic surgeon, while not completely rationalized, strongly supported a causal relationship between appellant's diagnosed carpal tunnel syndrome (CTS) and factors of employment and warranted further development of the medical evidence.

³ A conflict of medical opinion arose between appellant's treating physician Dr. Seefeldt and Dr. Robert Fulford, a Board-certified orthopedic surgeon and second opinion physician.

⁴ Docket No. 12-1639 (issued January 22, 2013).

Medical Association, *Guides to the Evaluation of Disease and Injury Causation*, referencing pages 173-175, 182-83, Table 9-17 and Table 9-14, he found that the job duties of appellant would have no relation to either CTS or cubital tunnel syndrome.

In a decision dated March 14, 2013, OWCP denied modification of the decision dated August 15, 2011.

LEGAL PRECEDENT

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. Appellant must also establish that such event, incident or exposure caused an injury.⁵

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) 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 medical evidence required to establish causal relationship is generally 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.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 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

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ 5 U.S.C. § 8123.

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

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 or her original report. However, when the impartial specialist is unable to clarify or elaborate on his or her original report or if his or her supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.⁹

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 appellant had developed a diagnosed condition as a result of the accepted employment activities. In order to resolve the conflict, it referred appellant to Dr. Barnes for the impartial medical examination. The Board found that Dr. Barnes' initial report of July 12, 2011 was of diminished value and instructed OWCP to obtain a supplemental report. However, the Board finds that his March 1, 2013 supplemental report remains insufficient to resolve the conflict.

In his March 1, 2013 report, Dr. Barnes noted that appellant was a rural carrier and his job was described as heavy. He noted that since appellant does a variety of activities during the workday, he did not consider the job duties to be "highly repetitive" in nature. Dr. Barnes noted that neither the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation* nor ODG find any significant connection between CTS and work activity. He noted that the ODG found a weak correlation between "highly repetitive" activity, continuous repetition of the same activities for much of the workday and CTS, but none of the job duties of a rural carrier are of that nature. Dr. Barnes further opined that appellant's diagnoses of CTS and ulnar neuropathy are disease of life and they occur frequently with no initiating injury or repetitive motion cause. Referring to the American Medical Association, *Guides to the Evaluation of Disease and Injury Causation* pages 173-175, 182-83, Table 9-17 and Table 9-14, he found that the job duties associated with appellant's position did not relate to either CTS or cubital tunnel syndrome.

⁸ *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).

⁹ *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (April 1993).

The Board notes that Dr. Barnes reiterated the opinion from his initial report of July 12, 2011, stating that the diagnosed bilateral CTS and cubital tunnel syndrome were diseases of life, occurring frequently with no initiating injury or similar cause and that a job such as appellant's would have no relation to either CTS or cubital tunnel syndrome. Dr. Barnes failed to provide any further explanation of his opinion as requested by OWCP. 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.¹⁰ When the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, as is the case here, OWCP should refer the claimant to a second impartial specialist.¹¹

The Board finds that Dr. Barnes did not furnish sufficient rationale to resolve the conflict in medical opinion as to whether his CTS was related to employment activities. For these reasons, the Board finds that the case will be remanded to OWCP for further development of the medical evidence and referral of appellant, along with a statement of accepted facts, to a new referee physician to resolve the continuing conflict of medical opinion. 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.

¹⁰ See *supra* note 7.

¹¹ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' March 14, 2013 decision is set aside. The case is remanded for action consistent with this decision of the Board.

Issued: March 5, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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