

ISSUE

The issue is whether appellant sustained an occupational disease in the performance of duty. On appeal appellant's counsel argues that the case should be remanded for review by a rheumatologist as OWCP failed to adequately develop the medical evidence.

FACTUAL HISTORY

This case has previously been before the Board. On August 9, 2011 the Board set aside a May 18, 2010 OWCP hearing representative's decision affirming an October 1, 2009 decision denying appellant's occupational disease claim.³ The Board remanded the case for further development of the medical evidence to determine whether appellant's neck and bilateral shoulder injuries were the result of established employment activities in her capacity as a patient services assistant. The facts and circumstances of the Board's prior decision are incorporated by reference.⁴

Following the Board's remand instructions, OWCP referred appellant for a second opinion evaluation with Dr. Thomas Gritzka, a Board-certified orthopedic surgeon. In a January 17, 2012 report, Dr. Gritzka, based upon a review of the medical evidence and statement of accepted facts and physical examination, concluded that there was no orthopedic diagnosis due to the identified employment factors. A physical examination revealed a normal orthopedic examination of appellant's shoulders, cervical and lumbar spines. There were no cervical paravertebral muscle spasms, no tenderness on palpation over the medial right scapula border and normal lumbar paravertebral muscle tone. Dr. Gritzka reported that appellant had normal lumbar, cervical and bilateral shoulder range of motion. He deferred to a rheumatologist on the question of whether there was an underlying rheumatological condition and whether it had been aggravated by her employment. Dr. Gritzka also noted that musculoskeletal conditions were not due to a traumatic or occupational disease.

By decision dated March 13, 2012, OWCP denied appellant's claim, finding there was no causal relationship between the accepted employment activities and the claimed condition.

On March 28, 2012 appellant requested an oral hearing before an OWCP hearing representative. On July 17, 2012 a telephonic hearing was held before an OWCP hearing representative.

By decision dated September 20, 2012, an OWCP hearing representative affirmed the March 13, 2012 denial of appellant's claim. He found that Dr. Gritzka's recommendation for a referral was speculative and the record contained no evidence supporting a rheumatologic diagnosis.

³ Docket No. 10-2282 (issued August 9, 2011).

⁴ On July 8, 2009 appellant, then a 50-year-old patient services assistant, filed an occupational disease claim alleging that her debilitating neck, shoulders, back, ribs, hands and wrist pain were due to her repetitive use of substandard equipment and workstations. She stated that she first became aware of this condition on November 21, 2007, but did not realize that it was employment related until December 14, 2007. Appellant stopped work on July 9, 2009 and resigned from the employing establishment effective March 11, 2011.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.⁵

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.⁷ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.

ANALYSIS

The Board finds that this case is not in posture for a decision.

Based on the Board's instructions on remand, OWCP referred appellant for a second opinion evaluation with Dr. Gritzka, who opined that appellant had no orthopedic condition as a result of the accepted work factors, but noted there might be an underlying rheumatologic disorder. Dr. Gritzka recommended that OWCP refer appellant for an evaluation by a rheumatologist to determine whether there was an undiagnosed underlying rheumatologic condition and any relationship to the accepted work factors. In its March 13, 2012 decision, however, OWCP did not address Dr. Gritzka's recommendation and failed to follow his recommendation for a rheumatological examination. In a September 20, 2012 decision, an OWCP hearing representative affirmed the denial of appellant's claim and rejected the argument that OWCP erred in failing to refer appellant for a rheumatologic examination as recommended by Dr. Gritzka.

Appellant bears the burden to establish that a condition is causally related to employment factors. However, when OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner.⁸ In this case, it undertook the development of medical evidence when it referred appellant to Dr. Gritzka for a second opinion evaluation.

⁵ *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *David Apgar*, 57 ECAB 137 (2005).

⁷ *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

OWCP requested that Dr. Gritzka diagnose the condition and discuss any causal relationship of those conditions to work activities at the employing establishment. Dr. Gritzka recommended an evaluation by a rheumatologist for a determination of whether appellant had any rheumatologic condition and whether that condition had been aggravated by the employment factors. OWCP did not follow Dr. Gritzka's recommendation. Although the burden of proof does not revert to OWCP to disprove a claim, OWCP had an obligation to follow its second opinion as to whether any condition was caused or aggravated by the accepted employment factors. The Board therefore sets aside the September 20, 2012 OWCP decision and remands for OWCP to refer the case to a rheumatologist to determine whether appellant's rheumatologic condition may have been aggravated by work factors. After such further development of the record as it deems necessary, it shall issue a *de novo* decision

CONCLUSION

The Board finds that this case is not in posture for a decision as further development of the medical evidence is necessary.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2012 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: May 16, 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