

FACTUAL HISTORY

This case was previously before the Board.³ Appellant, a 51-year-old letter carrier, has an accepted claim for right carpal tunnel syndrome which arose on or about June 2, 2007.⁴ He also claimed to have sustained injuries to his neck and back in the performance of duty. However, OWCP has repeatedly declined to expand appellant's claim to include cervical and/or lumbar conditions. When the case was initially on appeal, the Board affirmed OWCP's finding that appellant failed to establish that he sustained a back condition in the performance of duty. OWCP subsequently revisited the merits of appellant's claim, but denied modification by decision dated July 11, 2011. The last time the case was on appeal, the Board set aside OWCP's July 11, 2011 decision and remanded the case for further medical development. While appellant had not fully satisfied his burden of proof, he submitted sufficient medical evidence to warrant further development by OWCP.⁵ The Board's two prior decisions are incorporated herein by reference.⁶

OWCP received additional medical evidence pertaining to appellant's accepted right upper extremity condition. The information included physical therapy and pain management treatment records.⁷ There were also laboratory urinalysis reports, various prescription refills, upper extremity operative reports and postsurgical follow-up examinations, as well as a July 26, 2012 bilateral upper extremity impairment rating from Dr. Mark T. Montgomery.⁸ This evidence was largely irrelevant for purposes of determining the cause and extent of appellant's claimed cervical and lumbar conditions.

In accordance with the Board's March 23, 2012 decision, OWCP referred appellant for examination to determine if his neck and back conditions were employment related. Dr. Elliott A. Schaffzin, a Board-certified orthopedic surgeon, examined appellant on June 25,

³ Docket No. 09-481 (issued September 14, 2009); Docket No. 11-1808 (issued March 23, 2012).

⁴ Appellant has not worked for the employing establishment since June 2007. On February 15, 2008, he underwent a right carpal tunnel release. OWCP paid wage-loss compensation for temporary total disability through March 18, 2008. The employing establishment relieved appellant of his duties effective July 25, 2009. On November 28, 2011 he underwent right elbow surgery which OWCP authorized.

⁵ In a September 14, 2010 report, Dr. Marvin Pietruszka, a Board-certified pathologist, diagnosed, *inter alia*, cervical, thoracic and lumbar discopathy which he attributed to appellant's previous letter carrier duties. The Board found Dr. Pietruszka's September 14, 2010 report sufficient to warrant additional development on OWCP's part. He previously authored a May 23, 2008 report which both OWCP and the Board found deficient for purposes of establishing an employment-related neck and/or back condition. Docket No. 09-481 (issued September 14, 2009).

⁶ See *supra* note 3.

⁷ Certain healthcare providers, such as physician assistants, nurse practitioners, physical therapists and social workers, are not considered "physician[s]" as defined under FECA. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement under FECA. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

⁸ Dr. Montgomery is a Board-certified orthopedic surgeon with a subspecialty in hand surgery. He operated on appellant's left upper extremity in October 2010. Dr. Montgomery also performed the November 28, 2011 right elbow procedure OWCP authorized.

2012 and diagnosed status post bilateral carpal tunnel release and bilateral anterior transposition of the ulnar nerves, without improvement in symptoms. He also diagnosed status post cerebrovascular accident, with reported right upper and lower extremity residuals and multifocal chronic pain of undetermined origin. Lastly, Dr. Schaffzin diagnosed complaints of chronic neck and low back pain, which were nonindustrial. He stated that there was no clear etiology for appellant's neck and back condition, and no clear objective evidence of radiculopathy.⁹ Dr. Schaffzin also noted there were no limitations of motion in either the cervical or lumbar spine. Although unable to determine the etiology of appellant's neck and back conditions, Dr. Schaffzin stated that these conditions were not medically connected to appellant's federal employment duties. He surmised that appellant's "global symptoms" were some way related to the stroke he suffered at work on June 2, 2007. Dr. Schaffzin also noted that appellant was a diabetic and that he may be demonstrating a combination of residuals of the June 2, 2007 stroke and diabetic peripheral polyneuropathy.

In an August 29, 2012 decision, OWCP denied appellant's claim for employment-related neck and back conditions.

Appellant's counsel requested a review of the written record. By decision dated March 25, 2013, the Branch of Hearings and Review affirmed OWCP's August 29, 2012 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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.¹⁰

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 identified employment factors.¹¹

⁹ Dr. Schaffzin provided additional remarks regarding appellant's bilateral upper extremity condition.

¹⁰ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). The fact that the etiology of a disease or condition is unknown or obscure does not relieve an employee of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to OWCP to disprove an employment relationship. *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹¹ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

When this matter was last on appeal, the Board remanded the case for further development because while Dr. Pietruszka's September 14, 2010 report did not satisfy appellant's burden of proof, it was sufficient to warrant further development. Accordingly, OWCP referred appellant to Dr. Schaffzin. His June 25, 2012 report was the primary basis for the denial of appellant's claimed cervical and lumbar conditions.

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹² Dr. Schaffzin did not diagnose any specific condition(s) with respect to appellant's cervical and/or lumbar spine. He merely noted complaints of chronic neck and low back pain which were nonindustrial. The absence of any specific spine-related diagnoses gives pause for concern because of the numerous imaging studies that revealed various defects in appellant's cervical, thoracic and lumbar spine. Dr. Schaffzin noted some of these results in his June 25, 2012 report, but did not otherwise comment on their significance. Additionally, Dr. Schaffzin overlooked Dr. Pietruszka's September 14, 2010 report, which served as the basis of the Board's March 23, 2012 decision to remand for further development.¹³ Also, Dr. Schaffzin's diagnosis of a June 2, 2007 cerebrovascular accident appears questionable. He surmised that appellant "may be demonstrating ... residuals of the stroke he suffered on June 2, 2007...." Dr. Schaffzin referenced a July 6, 2007 brain magnetic resonance imaging (MRI) scan which provided results that were "most consistent with acute infarction." He neglected to mention the radiologist's July 11, 2007 addendum report which included differential diagnoses of multiple sclerosis and acute disseminated encephalomyelitis. Also, Dr. Schaffzin failed to reconcile the July 6, 2007 MRI scan results with appellant's November 28, 2007 brain MRI scan which was normal. A physician's opinion on causal relationship must be based on a complete factual and medical background.¹⁴ Under the circumstances, OWCP should seek further information and clarification from Dr. Schaffzin.¹⁵ Accordingly, the case shall be remanded for further development. After OWCP has developed the record to the extent it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

¹² *Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹³ While he provided an extensive account of Dr. Pietruszka's May 23, 2008 examination findings, Dr. Schaffzin omitted any reference to Dr. Pietruszka's September 14, 2010 report.

¹⁴ *Victor J. Woodhams*, *supra* note 11. Additionally, the physician's 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. *Id.*

¹⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3f(2)(a) (July 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: September 29, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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