

claim.² The Board found that the opinion of Dr. John X. Biondi, an attending Board-certified orthopedic surgeon, provided a clear opinion that appellant sustained bilateral carpal tunnel syndrome and tenosynovitis causally related to his work duties. The Board found that he had discussed appellant's history of repetitive work duties and his opinion was supportive, unequivocal, bolstered by objective findings, and based on a firm diagnosis and accurate work record. The Board found that, while the medical evidence was insufficiently rationalized to meet appellant's burden of proof, it raised an undisputed inference of causal relationship sufficient to require further development by OWCP. The case was remanded for OWCP to further develop the medical record to determine whether appellant sustained a bilateral upper extremity condition due to his employment factors.³ The facts and circumstances from the prior decision and order of the Board are hereby incorporated by reference.

Following remand by the Board, OWCP prepared an accurate description of appellant's work duties as a mail handler and the facts of the case and requested that Dr. Biondi review appellant's work duties and provide a reasoned supplemental report "that supports how [appellant's] claimed conditions of bilateral carpal tunnel syndrome and a right finger tenosynovitis are causally related to his employment factors as a mail handler."

On May 19, 2014 Dr. Biondi discussed appellant's work duties in detail and advised that he had "left thumb flexor tenosynovitis, which is a direct and proximate result of his occupation as a mail handler." In a progress report dated May 19, 2014, he discussed appellant's complaints of catching and locking of the left thumb. Dr. Biondi also noted that appellant had "one episode of locking of his right long finger...."

By decision dated August 15, 2014, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish employment-related bilateral carpal tunnel syndrome or right finger tenosynovitis.

In a decision dated December 2, 2014, OWCP vacated its August 15, 2014 decision as it had not been properly served on appellant's counsel, but, in the same December 2, 2014 decision, it issued a new decision denying his claim finding that the new medical evidence from Dr. Biondi was insufficient to establish a diagnosed condition as a result of his employment factors.

On December 10, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on June 9, 2015, counsel maintained that OWCP had not properly developed the medical evidence. He argued that sending the case back to the treating physician after the Board remanded the case for further development was inadequate.

² Docket No. 14-0115 (issued April 3, 2014). On June 14, 2012 appellant, then a 60-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained pain in both hands and arms due to factors of his federal employment.

³ In an order dated April 3, 2015, the Board dismissed an appeal at his request. *Order Dismissing Appeal*, Docket No. 15-0122 (issued April 3, 2015).

In a decision dated July 22, 2015, the OWCP hearing representative affirmed the December 2, 2014 decision. She found that Dr. Biondi had not explained, as requested by OWCP, whether appellant's carpal tunnel syndrome and right finger tenosynovitis related to his work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing 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.⁹

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹⁰ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹¹

OWCP's procedures provide that the claims examiner should refer the case to a second opinion physician when it has "gathered all the medical evidence from the AP [attending physician] and does not have enough evidence about a diagnosis or an adequately reasoned

⁴ *Supra* note 1.

⁵ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *See Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹¹ 20 C.F.R. § 10.121.

opinion about causal relationship to accept the case, but does have sufficient evidence to suggest that the claimant might be entitled to benefits.”¹²

ANALYSIS

On prior appeal, the Board determined that the reports from Dr. Biondi, appellant’s attending physician, were sufficiently rationalized to warrant further development of the evidence by OWCP to determine whether he sustained bilateral carpal tunnel syndrome and flexor tenosynovitis of the right ring finger causally related to factors of his federal employment. The Board had reviewed the treating physician’s reports and found them worthy of further development as to whether the conditions of carpal tunnel syndrome and flexor tenosynovitis of the right ring finger were caused by appellant’s repetitive work duties.

OWCP undertook further development of the medical evidence upon the Board’s instructions and, consistent with its procedure manual, offered appellant’s treating physician an opportunity to further expound upon his opinion.¹³

Upon response to OWCP’s development letter, Dr. Biondi did not address whether appellant’s employment caused or aggravated his bilateral carpal tunnel syndrome and right finger tenosynovitis; rather, he diagnosed employment-related left thumb flexor tenosynovitis. He failed to further address the issue before OWCP. At that point, and pursuant to the procedure manual, OWCP should have referred the matter to a referral physician.¹⁴

Once it undertook development of the medical evidence, OWCP had the responsibility to do so in a manner that would resolve the relevant issues in the case.¹⁵ Additionally, as discussed, OWCP procedures provide that referral to a second opinion physician is warranted when evidence from an attending physician suggests that a claimant is entitled to benefits but fails to provide sufficient rationale or explanation.¹⁶

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁷ While a claimant has the responsibility to establish entitlement to compensation, it shares responsibility in the development of the evidence. OWCP has the obligation to see that justice is done.¹⁸ As discussed, once it undertakes to develop the medical evidence, it has the responsibility to do so in the proper manner.¹⁹ The case will be remanded to OWCP to further

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation Medical Evidence*, Chapter 2.810.9(b)(1) (June 2015).

¹³ *Id.* at 2.800(8)(c)(1) (June 2011).

¹⁴ *Id.* at 2.800(8)(c)(2), and *supra* note 12.

¹⁵ *See P.B.*, Docket No. 09-2222 (issued August 10, 2010); *Melvin James*, 55 ECAB 406 (2004).

¹⁶ *See supra* note 14.

¹⁷ *See Vanessa Young*, 55 ECAB 575 (2004).

¹⁸ *See Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁹ *See supra* note 12.

develop the medical evidence by preparing a statement of accepted facts and referring appellant for a second opinion examination in accordance with its procedures. After such further development as it deems necessary, it should issue an appropriate *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 28, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board