

exposure to Agent Orange (AO) in his federal employment as a helicopter mechanic and inspector. By decision dated March 31, 1992, the Board affirmed OWCP's denial of the claim as being untimely filed.² On January 7, 2005 the employee filed an occupational disease claim alleging that he developed Type II diabetes and peripheral neuropathy as a result of chemical exposure while overhauling helicopters in his federal employment. By decision dated September 17, 2008, the Board affirmed an OWCP decision dated July 2, 2007, finding that the medical evidence was insufficient to establish that diabetes and peripheral neuropathy were causally related to any chemical exposure.³

In a decision dated August 27, 2012, the Board remanded the case for further development.⁴ The Board found that an October 5, 2010 report from Dr. A. Lee Guinn, a Board-certified internist, was sufficient to require additional development of the evidence. By decision dated June 5, 2013, the Board again remanded the case.⁵ The Board found that a conflict in the medical evidence existed under 5 U.S.C. § 8123(a) between Dr. Guinn and second opinion physicians Drs. Imawati Wong, a Board-certified oncologist, and Dr. Raye Bellinger, a Board-certified internist. The issue was whether the employee had sustained colon cancer, diabetes, or peripheral neuropathy causally related to chemical exposure in his federal employment. OWCP was directed to prepare a detailed statement of accepted facts (SOAF) and refer the evidence to a referee physician to resolve the conflict.

OWCP prepared a SOAF and selected Dr. Ernest Chiodo, a Board-certified internist, as a referee physician. In a report dated April 15, 2014, Dr. Chiodo indicated that he had reviewed the voluminous record in this case. He stated that the determination of whether an individual had developed a condition due to environmental exposure involved a three-step process: (1) consideration of the nature and extent of the exposure; (2) consideration of whether the exposure is known to cause the condition claimed; and (3) determination of specific causation in the case presented. Dr. Chiodo accepted that the employee may have had limited exposure to AO, and would have had exposure to solvents and fuels. As to step two, he indicated that he had reviewed extensive medical literature and found no support for an increased risk of colon cancer due to AO or exposure to solvents, fuels, or other chemicals as an aviation mechanic. With respect to diabetes and peripheral neuropathy, Dr. Chiodo noted that diabetes was a common condition and peripheral neuropathy a common complication of diabetes. He stated that it was not a credible claim that the employee first developed peripheral neuropathy and then later diabetes. Dr. Chiodo concluded:

“In summary, the records reviewed do not support the assertion that more than a minimal exposure to [AO] [occurred] during his work at [the employing establishment]. However, even if he had a significant exposure to [AO], the peer reviewed medical literature does not support the assertion that [AO] causes colon cancer. Similarly, the peer reviewed medical literature does not support the

² Docket No. 91-1047 (issued March 31, 1992).

³ Docket No. 07-1911 (issued September 17, 2008).

⁴ Docket No. 11-2103 (issued August 27, 2012).

⁵ Docket No. 13-322 (issued June 5, 2013).

assertion that work as an aviation mechanic with exposure to aviation fuels, solvents and chemicals typical of that occupation causes colon cancer. In addition, [the employee's] diabetes and peripheral neuropathy are common conditions in the aging population in the United States [and] were not caused by any exposure he had to [AO] or to any solvents, fuels or chemicals encountered during his work as an aviation mechanic at [the employing establishment].”

By decision dated June 6, 2014, OWCP denied the employee's claim for compensation. It found the weight of the medical evidence was represented by Dr. Chiodo.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ 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.⁷

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 employment factors identified by the claimant.⁸

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.¹⁰ Additionally, in order to be considered rationalized, the 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.¹¹

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹²

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ See *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

¹² *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

ANALYSIS

As the above history indicates, this case has undergone significant factual and medical development. The Board noted in the last appeal that the case presented complex factual and medical issues. OWCP was directed to prepare a detailed SOAF and refer the case for a referee opinion on the issues presented.

In this regard, OWCP did prepare a detailed SOAF with respect to possible exposure to chemicals and other substances by the employee. The SOAF reviews evidence with respect to exposure to benzene, asbestos, chromium, epoxies, cleaning substances, dirt, sand, fumes, insecticides, as well as AO. It also discusses the employee's duties as an aircraft mechanic and the time period he performed those duties. The Board also notes that Dr. Chiodo indicated in his April 15, 2014 report that he had reviewed the extensive evidence in the file.

The Board finds that Dr. Chiodo had a detailed and accurate factual and medical background to provide the foundation for his opinion. As to the opinion itself, Dr. Chiodo explained the process he utilized in making a determination on causal relationship in this case. He accepted that the employee did have some exposure to AO and chemicals. Dr. Chiodo indicated that he reviewed extensive medical literature on exposure to AO and other chemicals and substances, with respect to an increased risk of colon cancer, diabetes or peripheral neuropathy. He provided an unequivocal opinion, based on the evidence of record and review of medical literature. Dr. Chiodo concluded that the employee did not have a diagnosed condition causally related to his federal employment.

As explained above, an opinion of a referee physician is entitled to special weight if it is based on a complete background and is supported by medical rationale. The April 15, 2014 report from Dr. Chiodo provides a rationalized medical opinion based on a complete background. The Board finds it is entitled to special weight and represents the weight of the evidence.

On appeal, appellant's representative has reiterated his arguments that the employee had greater exposure to chemicals and substances than acknowledged by OWCP. There is no definitive document or evidence that can provide an exact measurement of the employee's exposure to all substances while in federal employment. This is a difficult issue and OWCP did provide a detailed review of the evidence in the SOAF. Again, Dr. Chiodo indicated that he had reviewed voluminous evidence in the record, and he did accept some exposure to AO and chemicals. The April 15, 2014 report was a careful and thorough report that addressed the issues presented. The purpose of a referee selection under 5 U.S.C. § 8123(a) is to resolve a conflict in the medical evidence. For the reasons stated, the Board finds that Dr. Chiodo resolved the medical issues presented in this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the employee has not established an injury causally related to exposure to chemicals or other substances in his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2014 is affirmed.

Issued: February 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board