

asbestosis, and bronchitis as a result of his federal employment. He stated that he first became aware of these conditions on November 20, 2012 when his physician reviewed a chest x-ray. In an undated statement, appellant indicated that he had worked from 1981 to 2011 at various power plants and paper mills, with exposure to asbestos, coal dust, and fumes.

In a statement dated February 19, 2013, an employing establishment industrial hygienist stated that appellant had worked intermittently since 1981 at the employing establishment, totaling 4.3 years. The remainder of the time was spent working with private contractors at the employing establishment worksite. The hygienist reported that exposure to asbestos, coal dust, and fumes were below established permissible levels.

In a report dated December 31, 2012, Dr. Glen Baker, a Board-certified pulmonary specialist and certified B reader,² provided a history and results on examination. He stated that pulmonary function studies were normal. Dr. Baker reported that a November 1, 2012 chest x-ray showed evidence of occupational pneumoconiosis category 1/0 based on the 2000 international labour organization classification. He diagnosed occupational pneumoconiosis with pulmonary asbestosis, and bronchitis. Dr. Baker stated that appellant did have x-ray changes of early pulmonary asbestosis, and this was due to asbestos exposure. He stated that the bronchitis was due to exposure to asbestos, dust, and fumes. The record contains a November 1, 2012 roentgenographic interpretation form signed by Dr. Baker indicating parenchymal abnormalities consistent with pneumoconiosis.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Sarah Hayat, a Board-certified internist, for a second opinion examination. In a report dated October 28, 2013, Dr. Hayat reported that appellant was exposed to asbestos, and provided results on examination. She stated that appellant's lung volume, and diffusion capacity were still within normal limits, and due to lack of symptoms no treatment was recommended. Dr. Hayat diagnosed chronic rhinitis and probably allergic, unrelated to asbestos exposure. The record contains an October 28, 2013 chest x-ray from Dr. Jani Widjaja, a radiologist, stating that there were no acute lung, pleura, or tracheobronchial abnormalities.

By decision dated November 20, 2013, OWCP denied the claim for compensation. It found Dr. Hayat represented the weight of the medical evidence.

Appellant requested a hearing before an OWCP hearing representative, which was held on June 9, 2014. He discussed his exposure to asbestos, dust, and fumes since 1981.

By decision dated August 25, 2014, the hearing representative affirmed the November 20, 2013 decision. She found that the weight of the evidence was represented by Dr. Hayat.

² A "B" reader is a physician certified by the National Institute of Occupational Safety and Health for classifying chest x-rays for the presence of pneumoconiosis. *See S.T.*, Docket No. 13-1977 (issued March 18, 2014).

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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.⁴

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.⁵ Causal relationship is a medical question that can generally be resolved only by medical opinion evidence based on a complete background and supported by sound medical reasoning.⁶

ANALYSIS

Appellant has claimed a pulmonary condition causally related to exposure to asbestos, coal dust, and fumes in his federal employment. In support of his claim, he submitted a report from Dr. Baker, diagnosing pneumoconiosis with pulmonary asbestosis based on his review of a November 1, 2012 chest x-ray. Appellant opined that the condition, as well as bronchitis, was related to exposure in federal employment. OWCP found that the weight of the evidence was represented by second opinion physician, Dr. Hayat, who did not diagnose a pneumoconiosis and did not find an employment-related condition.

On appeal, appellant's counsel argues that Dr. Hayat's report is of reduced probative value because she is not a B-reader. While neither FECA, nor OWCP's regulations impose such a restriction, OWCP examination requirements in asbestos disease cases state that chest x-rays shall be read by either a Board-certified radiologist or a pulmonary specialist.⁷

The Board in the case of *J.B.*,⁸ stated that reports of two Board-certified pulmonary specialists can be found to be of equal weight. In this case, while Dr. Baker is a Board-certified pulmonary specialist, Dr. Hayat is Board-certified in internal medicine. Dr. Hayat's report therefore is not of greater weight than that of Dr. Baker.

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *J.B.*, Docket No. 06-905 (issued September 1, 2006). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(b) (September 1994 and December 1995), (Exhibit 7) (December 1994).

⁸ *J.B.*, *id.*

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.⁹

The Board finds that, while Dr. Baker's report is not completely rationalized, it does offer support for a finding that appellant sustained an employment-related injury. Dr. Baker provided a history and results on examination. He noted that pulmonary function studies were normal, but that a November 1, 2012 chest x-ray showed evidence of occupational pneumoconiosis. Dr. Baker diagnosed occupational pneumoconiosis, with pulmonary asbestosis, and bronchitis due to exposure to asbestos, dust, and fumes. Although he did not provide a fully-rationalized medical opinion on causal relationship, he provided a consistent opinion based on examination findings and an accurate factual and medical background that appellant's pulmonary conditions were causally related to factors of his employment. While Dr. Baker's report is not sufficient to meet appellant's burden of proof to establish his claim, his opinion raises an uncontroverted inference between appellant's pulmonary condition and his federal employment. It is sufficient to require OWCP to further develop the medical evidence and the case record.¹⁰

On remand, OWCP should prepare a statement of accepted facts indicating specifically when appellant was employed by the employing establishment. The Board notes in this regard that a claimant working for a private contractor at the employing establishment is not a federal employee under FECA.¹¹ OWCP shall then refer appellant to an appropriate medical specialist, specifically a Board-certified pulmonologist B-reader, for a detailed opinion as to whether his pulmonary conditions are causally related to factors of his employment. Following this and any other further development as deemed necessary, it shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

⁹ *D.G.*, Docket No. 14-901 (issued August 21, 2014).

¹⁰ *Id.*

¹¹ *See* 5 U.S.C. § 8101 (1); *P.P.*, Docket No. 09-1363 (issued January 8, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2014 is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: February 24, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board