

FACTUAL HISTORY

Appellant, a 53-year-old security guard and police officer, filed a Form CA-2 occupational disease claim for benefits on April 30, 2012, alleging that she experienced tingling in her pelvic area and a pinched nerve sensation near her thigh bone which was causing a twitch radiating down her legs. She stopped work on April 12, 2012 and returned to work on April 30, 2012.

In support of her claim, appellant submitted a May 9, 2012 return to work note signed by a registered nurse and a May 11, 2012 report from Dr. Onyemas Amakiri, an osteopathic physician specializing in internal medicine. Dr. Amakiri noted that appellant was seen for “jerky movements.” He stated his diagnoses as abdominal pain, involuntary movements, restless leg syndrome, and uric acid nephroisthiosis.

On June 12, 2012 OWCP advised appellant that the evidence of record was insufficient to establish her claim. Appellant was advised that she should complete the attached questionnaire and also submit a rationalized medical report from her treating physician explaining how her employment activities caused her diagnosed condition.

By decision dated July 18, 2012, OWCP denied appellant’s claim finding that she did not establish a pelvic nerve/dysesthesia/lumbar condition in the performance of duty. It also found that she failed to establish fact of injury because she had not established that the employment events occurred as alleged.

On July 23, 2012 appellant requested reconsideration.

Appellant submitted statements dated July 23 and 26, 2012 in which she further explained her claim. In the July 23, 2012 statement, she alleged that she had been involved in a work-related incident on January 6, 2004 while she was on patrol duty and she fell over a railroad tie. Appellant related that due to the prior incident she sustained injury to her left shoulder, which required surgery, and injury to her right knee and foot. She explained that she had recurring symptoms of twitching in her feet since that time. In her July 26, 2012 statement, appellant further alleged that since the January 6, 2004 injury her job duties required a lot of standing while conducting traffic control and checking identification at access control points. She noted that she was required to wear a bullet proof vest and gun belt with accessories which placed pressure on her waist and caused nerve damage. Appellant alleged that she was suffering nerve damage in her pelvic area from a work-related injury.

By decision dated August 28, 2012, OWCP modified the July 18, 2012 decision to find that appellant had established fact of injury. However, it denied her claim, finding that she failed to submit medical evidence sufficient to establish that she sustained her claimed pelvic nerve/dysesthesia/lumbar conditions in the performance of duty.

By letter dated July 29, 2013, appellant requested reconsideration based on new unsigned evidence noting she was seen by a Dr. Steven P. Glusman, a specialist in neurosurgery, including a report containing a magnetic resonance imaging (MRI) scan of her lumbar spine.

An unsigned report which noted that appellant had been seen by Dr. Glusman dated May 14, 2012, received by OWCP on July 31, 2013, found that she was experiencing dysesthesias, a twitching sensation in her legs which typically occurred when a patient is lying or sitting down for long periods of time. Dr. Glusman stated that she used to be a police officer and had to wear a police duty belt for prolonged periods of time; the belt held a nine-millimeter pistol, a flashlight, ammunition, magazines, etc. He opined that appellant had possible lumbar myelopathy or polyradiculopathy, with restless leg syndrome. Dr. Glusman referred her for an MRI scan of the lumbar spine in addition to nerve conduction and electromyogram (EMG) studies of both lower extremities.

In an unsigned July 31, 2012 report, which noted that Dr. Glusman had seen appellant, the results of her EMG study were reviewed. Dr. Glusman stated that she probably had partial lumbosacral plexopathy. He advised that appellant had denervation potentials in the iliopsoas on the femoral nerve and at levels L1-3. Dr. Glusman stated that she also had fibrillation potentials in the gluteus medius on the superior gluteal nerve and at the L5-S1 nerve root levels.

In an August 10, 2012 report, received by OWCP on July 31, 2013, Dr. William M. Boushka, a specialist in diagnostic radiology, indicated that appellant underwent an MRI scan of the lumbar spine which showed a small left foraminal annular tear without stenosis. He opined that this could be a source of significant discogenic pain. In a March 7, 2013 report, Dr. Glusman recommended that appellant be referred to neurosurgery for her torn disc at L4-5.

In its December 18, 2013 decision, OWCP found that appellant had submitted reports from Dr. Boushka dated March 7, May 14, and July 31, 2013 which diagnosed several conditions, including lumbago; *i.e.*, a lumbar disorder, but did not offer a medical explanation as to how these conditions are related to any specific work activities. It denied modification of the August 28, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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; (2) a factual

³ *Id.*

⁴ *See S.P.*, 59 ECAB 184 (2007).

⁵ *Victor Woodhams*, 41 ECAB 345 (1989).

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

In the case of *William A. Couch*,⁷ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

ANALYSIS

The Board has duly considered the matter and notes that in the case of *William A. Couch*,⁸ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the documents which appellant submitted in support of her July 29, 2013 request for reconsideration were not properly or fully reviewed by OWCP in its December 18, 2013 decision. It erroneously stated that it received and reviewed reports from Dr. Boushka, when in fact the reports it cited in its decision appear to be submitted by a Dr. Glusman.⁹ Dr. Boushka's August 10, 2012 MRI scan report, which appellant referenced in her July 29, 2013 reconsideration request, contained a finding of a torn annular tear in the lumbar spine. This report, however, was not mentioned or considered by OWCP in its December 18, 2013 decision. In the March 7, 2013 report, it was recommended that appellant be referred to neurosurgery for her torn disc at L4-5. OWCP, however, did not discuss or consider this report.

OWCP, in its December 18, 2013 decision, did not adequately or thoroughly review all of the medical evidence. Its regulations require that a decision contain findings of fact and a statement of reasons.¹⁰ The inaccurate and incomplete adjudication of the medical evidence in

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ 41 ECAB 548 (1990).

⁸ *Id.*

⁹ The actual dates of these reports were May 14 and July 31, 2012 and March 7, 2013.

¹⁰ 20 C.F.R. § 10.126.

the December 18, 2013 decision does not satisfy its obligation to provide a decision with appropriate findings and clear analysis.¹¹

For this reason, the case will be remanded to OWCP to require it to properly consider appellant's request for reconsideration and all the evidence submitted prior to the issuance of the December 18, 2013 decision. Following further development as it deems necessary, it shall issue an appropriate decision on the merits.

CONCLUSION

The Board finds that the case is not in posture for decision. The decision dated December 18, 2013 is set aside and the case is remanded for further development consistent with this opinion.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2013 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: July 2, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ See generally *Tonja R. Hiebert*, 55 ECAB 706 (2004).