United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 17-0925**
	)	**Issued: December 14, 2017**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Deer Lodge, MT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 23, 2017 appellant, through counsel, filed a timely appeal from a January 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established an occupational disease causally related to exposure to chemicals on July 8 and 10, 2009 in the performance of his federal employment duties.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 15, 2009 appellant, then a 36-year-old seasonal maintenance worker, filed an occupational disease claim (Form CA-2) alleging that on July 11 and 12, 2009 he experienced tingling, nerve spasms, loss of muscle control, numbness, rapid and heavy breathing, tightness in chest, sweating, panic, and emotional stress after he cleaned out hazardous materials (hazmat) storage sheds on July 8 and 10, 2009. He stopped work on July 31, 2009.

The employing establishment provided an incident investigation report by Robert Glover, an accident investigator. This report related that on July 8 and 10, 2009 appellant and three other Youth Conservation Crew (YCC) members cleaned out a building spill in a hazmat storage shed. Mr. Glover related that the shed contained a 55-gallon barrel of boiled linseed oil, which was 80 percent of the contents of the spill reservoir, and the other 20 percent of the spill were unknown organic and nonorganic solvents. He noted that the workers used rubber gloves, latex gloves, wide putty knives, paint stripper, Grez-Off, and N95 respirators. The employing establishment also provided various statements from appellant's supervisors, which described events that occurred from July 8 to 13, 2009 relating to the chemical exposure.

In reports dated July 22 and August 21, 2009, Dr. Patrick J. McGree, a Board-certified family practitioner, described that on July 8 and 10, 2009 appellant cleaned out a storage container with multiple chemicals and that on July 11 and 12, 2009 he experienced episodes of cramps and numbness. He also related that appellant continued to complain of tremors, chest pain, and difficulty breathing. Dr. McGree reviewed appellant's history and reported an essentially normal physical examination. He opined that appellant had chemical exposure, multiple spasms and contractures, and a history of hepatitis C.

By letter dated August 17, 2009, OWCP advised appellant that the evidence submitted was insufficient to establish his occupational disease claim. It requested that he submit additional factual information regarding the July 8 and 10, 2009 exposure incident at work and medical evidence to establish a diagnosed medical condition as a result of the alleged exposure at work. A similar letter was sent to the employing establishment. Appellant was afforded 30 days to submit the additional evidence.

The employing establishment provided a September 17, 2009 letter from an employee relations specialist for the employing establishment, who described appellant's complaints of feeling "light-headed" and having to "spit junk out of his throat." The employee relations

[3] Docket No. 16-0374 (issued November 2, 2016).

specialist indicated that appellant did not take any time off work until July 22, 2009 and that the other staff members did not notice anything unusual with him at work. The employing establishment also provided an inventory list dated May 15, 2009 of the 62 materials stored in the hazmat shed and several material safety data sheets (MSDS) for the various materials in the hazmat shed. It also submitted a position description for a maintenance worker, the results of the analysis screening of the spilled material, and an August 25, 2009 Investigative Activity Report.

In a decision dated February 4, 2010, OWCP denied appellant's occupational disease claim. It accepted that on July 8 and 10, 2009 he was exposed to various chemicals at work, but denied the claim finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment factors.

Appellant requested a telephone hearing before an OWCP hearing representative on March 9, 2010.

By report dated April 19, 2010, Dr. Shawn M. Smith, a Board-certified neurologist, related that appellant's December 4, 2009 brain magnetic resonance imaging (MRI) scan and electroencephalogram (EEG) were within normal limits. He noted that appellant had episodic twitching movements, which may not have been physiologically caused by his employment exposure, but may be secondary to somatization due to psychosocial stressors regarding the event.

A telephone hearing was held on June 8, 2010. Counsel related that appellant was unable to provide a well-rationalized medical report because the physicians in his town were unfamiliar with chemical exposure cases.

Dr. Kaye H. Kilburn, Board-certified in internal and occupational medicine, began to treat appellant in June 2010. In a June 9, 2010 report, he described appellant's exposure to hazardous materials and fumes on July 8 and 10, 2009 and his complaints of nausea, confusion, seizures, convulsions, headache, repeated body electric muscle contractions, numbness, hands locking up, freezing contractures, muscle contractions, and twitching in the face after appellant's chemical exposure. Dr. Kilburn reviewed appellant's history and indicated essentially normal findings on physical and neurological examination. He reported that cerebellar signs demonstrated unsteady gait, ataxic normal dysmetria, and slowed rapid alternating movements. Neurophysiological tests demonstrated abnormal balance measured by sway speed with eyes open and closed. Blink reflex latency was abnormal on the right and normal on the left. Dr. Kilburn diagnosed chemical encephalopathy, peripheral neuropathy, and chemical intolerance due to pyrethroids and similar chemicals. He opined that appellant suffered multiple chemical exposures at his workplace in July 2009, resulting in lack of concentration, recent and long-term memory loss, instability of mood, loss of balance, extreme fatigue, shortness of breath, headache, nausea, and insomnia. Dr. Kilburn indicated that there was probably a single causal factor for these manifestations, which was pyrethroid exposure. He noted that pyrethroids were included in the inventory list of 64 chemicals in the hazmat shed.

By decision dated July 29, 2010, OWCP's hearing representative remanded the case for further development of the medical evidence. He found that Dr. Kilburn's report was sufficient to warrant further development of the medical evidence.

OWCP referred appellant's claim, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Edward Cetaruk, Board-certified in emergency medicine with a subspecialty in medical toxicology, for a second opinion examination, to determine whether appellant sustained a condition causally related to chemical exposure on July 8 and 10, 2009 at work.

In an August 2, 2010 addendum, Dr. Kilburn reported that appellant was disabled from employment because of a chemical brain injury, also called chemical encephalopathy. He explained that the "hours of exposure to cleaning, sorting, and disposing of stored chemicals and waste in the storage shed on July 8 and 10, 2009, were the major exposure to pyrethroids (pesticides) that caused the impairment and symptoms." Dr. Kilburn also noted that appellant used hydrocarbon solvents to clean the hazmat shed, which caused lightheadedness, dizziness, loss of concentration and memory, and muscle twitching.

In a December 17, 2010 report, Dr. Cetaruk described the July 8 and 10, 2009 chemical exposure and the symptoms that appellant experienced following the incident. He reviewed appellant's history and noted that he had preexisting disability, hepatitis C, and polysubstance abuse. Dr. Cetaruk reported essentially normal physical and neurological examination. He opined that he did not believe that appellant's exposure while cleaning the hazardous materials shed were related to his current complaints. Dr. Cetaruk explained that he reviewed the inventory list of materials in the hazmat shed and none of the compounds would be expected to cause the episodes appellant experienced on July 11 and 12, 2009 or his continued symptoms.

By decision dated January 20, 2011, OWCP again denied appellant's claim. It found that Dr. Cetaruk's second opinion report constituted the weight of the medical opinion evidence and established that appellant did not have a medical condition causally related to the accepted chemical exposure.

On February 17, 2011 appellant again requested a telephone hearing before an OWCP hearing representative. A telephone hearing was held on June 9, 2011. Dr. Kilburn testified that appellant had chemical encephalopathy as a result of exposure to chemicals, specifically pyrethroids, on July 8 and 10, 2009 at work. He also noted the differences between specialties in neurotoxicology and toxicology.

Dr. Kilburn provided reports commencing January 24, 2011 wherein he indicated that the 30 objective tests that he performed on appellant revealed brain impairment. He noted that exposure to pyrethroid, which was found in indoor insect foggers, adequately explained all of appellant's movement disorders, disturbance balance, deficient memory, slowed blink reflex, diminished grip strength, and blind spots. In a July 15, 2011 report, Dr. Kilburn related that appellant was physically and neurologically normal prior to the hazmat clean up job on July 8 and 10, 2009, but later experienced nausea, confusion, seizures, headaches, strong unexpected muscle contractions, numbness, hands locking up and freezing, and twitching of the face, neck, lips, eyelids, and eyes.

By decision dated September 1, 2011, OWCP's hearing representative again remanded the case to OWCP for further development. He found that Dr. Cetaruk's opinion required clarification as to whether the substances appellant had cleaned from the floor of the hazmat shed

had been tested and identified and whether they may have been a cause of appellant's medical condition.

OWCP requested that Dr. Cetaruk provide clarification of his December 17, 2010 second opinion report. It advised him to review the lab results of the testing performed on the materials contained in the hazmat shed and the MSDS sheets of the substances and provide an opinion on whether the nature and extent of appellant's exposure in the hazmat shed contributed to chemical encephalopathy condition as suggested by Dr. Kilburn.

In an April 19, 2012 supplemental report, Dr. Cetaruk indicated that he re-reviewed the medical record and the new additional documentation forwarded to him since his December 17, 2010 report. He opined that, based on the toxicology of all compounds in the matter and the history obtained by appellant, he found no demonstration of an exposure pathway or documentation of toxicological chemical exposure to pyrethroid compounds. Dr. Cetaruk also reported that none of the pesticides listed on the May 15, 2009 Inventory List were known to cause the history of appellant's complaints. He disagreed with Dr. Kilburn's medical opinion and asserted that nothing on the record supported that appellant was exposed to over 60 compounds. Dr. Cetaruk opined that there was no epidemiological data to support a valid causal relationship between appellant's current complaints and his potential exposure to pyrethroids and/or the other compounds in the hazmat shed.

By decision dated May 7, 2012, OWCP again denied appellant's claim. It found that Dr. Cetaruk's opinion constituted the weight of the medical opinion evidence and established that the substances on the hazmat shed floor were not pyrethroid compounds.

On May 15, 2012 appellant requested another telephone hearing before an OWCP hearing representative.

In a June 25, 2012 letter, Dr. Kilburn clarified that neurotoxicology was a specialty in neurology and toxicology, which used many quantitative measurements of brain function, but that toxicology was a poison control function of doctors in emergency medicine without special training in neurology.

On June 29, 2012 OWCP's hearing representative vacated the May 7, 2012 denial decision and remanded the case for further medical development. She found that a conflict existed in the medical opinion evidence between Dr. Kilburn and Dr. Cetaruk as to whether appellant had a medical condition causally related to the accepted employment incident. The hearing representative found that appellant should be referred for an impartial medical evaluation.

On remand from the June 29, 2012 hearing representative decision, OWCP referred appellant's case, along with an updated SOAF, to Dr. Scott Phillips, Board-certified in internal and emergency medicine with a subspecialty in medical toxicology, for an impartial medical examination to resolve the conflict of medical opinion between Dr. Kilburn, appellant's treating physician, and Dr. Cetaruk, an OWCP referral physician, regarding whether appellant's exposure to chemicals or substances on July 8 and 10, 2009 caused or contributed to a medical condition.

In a September 26, 2012 report, Dr. Phillips related that on July 8 and 10, 2009 appellant cleaned up spilled linseed oil in a hazmat shed that contained several containers of various substances. He described appellant's immediate symptoms and reported that since the employment incident appellant complained of muscle spasms in his face, difficulty talking, and spasms of his arms, primarily on the right side. Dr. Phillips reviewed appellant's medical records, including Dr. Cetaruk's December 17, 2010 and April 19, 2012 reports and Dr. Kilburn's various reports. He noted that Dr. Kilburn opined that appellant suffered from pyrethroid poisoning, but he clarified that pyrethroids did not cause this cluster of symptoms as described by appellant.

Upon examination, Dr. Phillips observed some intermittent twitching movements primarily involving the right side of appellant's face and the right upper extremity. He reported normal findings on physical and neurological examination of the head, ears, nose, throat, chest, abdomen, extremities, and skin. Mental status was described as grossly normal with some pressured speech at times. Dr. Phillips indicated that appellant did not demonstrate any signs or symptoms after leaving the office. He diagnosed other and unspecified factitious illness, episodic mood disorder, and hepatitis C without coma. Dr. Phillips opined that, based on his evaluation of the exposure history and consideration of the chemicals being provided, he did not believe there was "a causal nexus between the work in the hazardous materials shed and the complaints proffered by [appellant] and supported by Dr. Kilburn." He explained that this opinion was supported by the focality of the symptoms, signs displayed by appellant, his training and experience in medical toxicology, and peer-reviewed scientific literature. Dr. Phillips reported that the chemicals listed were not known to cause the types of symptoms claimed by appellant which were supported by Dr. Kilburn and that there was no evidence of pesticide poisoning, particularly pyrethroid poisoning. He reiterated that the alleged exposures on July 8 and 10, 2009 neither caused nor contributed to any medical condition in this claimant. Dr. Phillips opined that appellant was not totally disabled and was able to perform full duty.

By decision dated October 10, 2012, OWCP denied appellant's claim, finding that the special weight of medical evidence rested with the impartial medical opinion of Dr. Phillips.

On October 17, 2012 OWCP received appellant's request for another telephone hearing. Appellant submitted an August 23, 2012 report from Dr. Michael Gray, Board-certified in occupational medicine, a December 6, 2012 report from Dr. Kilburn, and a February 27, 2013 report by Dr. Raymond Singer, a clinical neuropsychologist, which supported his occupational disease claim.

By decision dated April 26, 2013, OWCP's hearing representative affirmed the October 10, 2012 denial decision, finding that the additional medical evidence was insufficient to overcome the special weight of evidence attributed to Dr. Phillips' September 26, 2012 referee medical report.

On July 18, 2013 OWCP received appellant's request, through counsel, for reconsideration. In a decision dated August 20, 2013, it denied appellant's reconsideration request, finding that the evidence submitted was insufficient to warrant further merit review.

On October 30, 2013 appellant, through counsel, again requested reconsideration. In support of this request for reconsideration, it received an October 3, 2013 report from Dr. Kilburn. In this report, Dr. Kilburn related that appellant was exposed to at least 64 hazmat chemicals on July 8 and 10, 2009 while at work. He noted that he picked pyrethroids as the best fit to appellant's impaired brain function, as evidenced by measurements for balance, color, vision, peg placement, memory verbal recall, and long-term memory. Dr. Kilburn reviewed Dr. Cetaruk's and Dr. Phillips' reports and noted his disagreement with their opinions. He related that he had practiced in neurotoxicology for over 30 years and published 70 peer reviewed papers on the subject. Dr. Kilburn alleged that his credentials and examination of appellant, based on objective testing, treatments, and follow up, should be accepted as the definitive medical opinion.

By decision dated November 14, 2013, OWCP denied modification of the April 26, 2013 decision.

On September 16, 2014 appellant, through counsel, requested reconsideration of the November 14, 2013 decision. Counsel submitted an April 3, 2014 report by Dr. Singer who expressed his disagreement with OWCP's decision which granted the special weight of medical opinion to Dr. Phillips. Dr. Singer alleged that appellant should be evaluated by a neuropsychologist experienced in neurotoxicology in order to determine whether he is suffering from a mental health disorder due to a mental health issue or a neurotoxic cause.

By decision dated August 11, 2015, OWCP denied modification of its November 14, 2013 decision.

Appellant appealed to the Board. In a decision dated November 2, 2016, the Board determined that impartial medical examiner Dr. Phillips' September 26, 2012 report was not sufficiently well rationalized and therefore insufficient to resolve the conflict in medical opinion evidence.[4] The Board set aside OWCP's August 11, 2015 decision and remanded the case for OWCP to obtain a supplemental report from Dr. Phillips that provided a well-rationalized medical opinion regarding whether appellant sustained a medical condition causally related to the accepted work exposure.

By letter dated December 8, 2016, OWCP requested that Dr. Phillips review the additional medical evidence that OWCP received and provided a supplemental report with a well-rationalized medical opinion regarding whether appellant sustained chemical encephalopathy causally related to exposure to chemicals on July 8 and 10, 2009.

In a January 12, 2017 supplemental report, Dr. Phillips clarified that he was a Board-certified internist eligible for Board-certification in medical toxicology. He explained the scientific discipline of medical toxicology and described his medical toxicology training. Dr. Phillips noted that he had authored and published approximately 200 scientific articles and peer-reviewed papers and attached his *curriculum vitae*. He related that he reviewed the new materials received by OWCP after his September 2012 report, including Dr. Kilburn's December 6, 2012, July 9 and 10, 2013, and October 3, 2013 letters and Dr. Singer's reports

[4] Docket No. 16-0374 (issued November 2, 2016).

dated February 22 to August 20, 2013. Dr. Phillips explained the basic toxicological causation methodology processes, which included dose response relationship, target organ specificity, requirement for physical contact with chemical, and cause and effect relationship. He noted that neither Dr. Kilburn nor Dr. Singer were Board-certified toxicologists and asserted that Drs. Kilburn and Singer's conclusions were based on circular reasoning, in that they relied on appellant's symptoms and ailments to explain that sufficient exposure and causal relationship had occurred.

Dr. Phillips explained that the most generally accepted methodology for establishing causation was to follow the nine "Hill Criteria" and described how appellant's case did not meet the various steps. Regarding strength and consistency, he asserted that appellant's complaints of "uncontrollable movements and episodic agitation" were inconsistent with pyrethroid exposure and toxicity and that there were no specific epidemiological studies that linked exposure to the pyrethroids to those symptoms. Dr. Phillips also noted that pyrethroids may cause seizure activity, but this was not experienced or reported by appellant. Regarding temporality, he indicated that appellant's alleged exposure and symptoms did not come prior to the onset of his illness. Dr. Phillips reported that neither Dr. Kilburn nor Dr. Singer provided data on how much pyrethroid chemical appellant was exposed to. Regarding plausibility, coherence, experiment, and analogy, he explained that Dr. Kilburn's methodology cited no objective, scientific literature or existing theory, knowledge, or human epidemiological studies that supported a causal association between appellant's symptoms and exposure to pyrethroids.

By decision dated January 20, 2017, OWCP again denied modification of its November 14, 2013 decision. It found that the special weight of the medical evidence rested with the medical opinion of Dr. Phillips, the impartial medical examiner, who concluded in his September 26, 2012 and January 12, 2017 reports that the medical evidence of record was insufficient to establish that appellant's claimed condition was causally related to the chemical exposure at work on July 8 and 10, 2009.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[6] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[7] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which

[5] *Supra* note 2.

[6] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[7] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[11] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[12] When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[13]

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in his original report.[14] When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, OWCP must submit the case record together with a detailed SOAF to another impartial medical specialist for a rationalized medical opinion on the issue in question.[15]

[8] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[9] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[12] 20 C.F.R. § 10.321.

[13] *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[14] *Raymond A. Fondots*, 53 ECAB 637 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[15] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

ANALYSIS

In the prior appeal, the Board remanded the case to OWCP for a supplemental opinion from Dr. Phillips, the impartial medical examiner, providing further elaboration and clarification, based on medical rationale, regarding whether appellant sustained any condition due to the accepted work exposure to chemical substances on July 8 and 10, 2009.

In a January 12, 2017 supplemental report, Dr. Phillips clarified that he was a Board-certified internist and Board eligible in medical toxicology. He explained what the scientific discipline of medical toxicology was, described his medical toxicology training, and reviewed his credentials. Dr. Phillips related that he reviewed the new materials received by OWCP after his September 2012 report, including Dr. Kilburn's letters and Dr. Singer's reports. He noted that neither Dr. Kilburn nor Dr. Singer were Board-certified toxicologists and asserted that their conclusions were based on circular reasoning, in that they used appellant's symptoms and ailments to explain that sufficient exposure and causal relationship had occurred.

Dr. Phillips explained that the most generally accepted methodology for establishing causation was to follow the nine "Hill Criteria" and described how appellant's case did not meet the various steps. He asserted that appellant's complaints of uncontrollable movements and episodes of agitation were not consistent with pyrethroid exposure and toxicity and explained that there were no specific epidemiological studies that linked exposure to the pyrethroids to those symptoms. Dr. Phillips also noted that pyrethroids may cause seizure activity, but this was not seen or reported by appellant. He indicated that appellant's alleged exposure and symptoms did not come prior to the onset of his illness. Dr. Phillips reported that neither Dr. Kilburn nor Dr. Singer provided a dosage of how much pyrethroids chemical that appellant was exposed to in order to determine whether appellant's symptoms resulted from his chemical exposure. He further alleged that Dr. Kilburn's methodology cited no objective, scientific literature or existing theory, knowledge, or human epidemiological studies that supported a causal association between appellant's symptoms and exposure to pyrethroids. Dr. Phillips expressed his disagreements with Dr. Kilburn and Dr. Singers' credentials and opinion on causal relationship based on poisoning by pyrethroids. He alleged that neither medical opinion met the weight of evidence using the widely accepted Hill methodology.

The Board finds that Dr. Phillips' supplemental opinion is insufficient to resolve the outstanding conflict in this case. Dr. Phillips reiterated his opinion that there was not a "causal nexus" between appellant's accepted work exposure and his various symptoms. The Board finds, however, that Dr. Phillips did not provide sufficient medical rationale to support his conclusion. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[16] Dr. Phillips based his conclusion mainly on his disagreement with Dr. Kilburn and Dr. Singer's affirmative opinions on causation and articulated the problems with their methodology in determining causation. However, he failed to provide any further explanation of his own opinion on the issue of whether appellant did not sustain any diagnosed medical condition causally

[16] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

related to his employment exposure on July 8 and 10, 2009 as requested by OWCP.[17] Dr. Phillips provided a generalized description of the methodology used to determine toxicological causation, specifically the "Hill Criteria," but did not cite to any specific clinical findings from appellant's case or other medical findings in the record as requested by the Board in its prior decision. When an impartial medical report lacks medical reasoning to support conclusory statements about the claimant's condition, it is insufficient to resolve a conflict in the medical evidence.[18]

Moreover, the Board notes that Dr. Philips' medical opinion focuses on his disagreement with Dr. Kilburn and Dr. Singer's conclusions that appellant's chemical encephalopathy resulted from exposure to pyrethroids. He did not, however, address any of the other chemicals that appellant was exposed between July 8 and 10, 2009 and did not provide any medical explanation as to why appellant's diagnosed medical condition was not caused or aggravated by the accepted chemical work exposure.

The Board finds, therefore, that there remains an unresolved conflict of medical opinion in this case. As OWCP has not obtained a sufficiently well-rationalized impartial medical report, referral to another impartial medical specialist to resolve the conflict is necessary.[19] The Board will set aside OWCP's January 20, 2017 decision and remand the case for referral to a new impartial medical specialist to resolve the conflict as to whether appellant's accepted work exposure caused or contributed to any medical condition. After such further development of the medical evidence as may become necessary, OWCP shall issue an appropriate *de novo* decision on appellant's occupational disease claim.

CONCLUSION

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

[17] *See J.R.*, Docket No. 13-2020 (issued March 5, 2014).

[18] *A.R.*, Docket No. 12-443 (issued October 9, 2012).

[19] *See S.T.*, Docket No. 13-1977 (issued March 18, 2014).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2017 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: December 14, 2017
Washington, DC

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

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

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