

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 2, 2020 appellant, then a 62-year-old former painter, filed an occupational disease claim (Form CA-2) alleging that he sustained a respiratory condition due to factors of his federal employment including exposure to multiple chemicals without protective equipment. He noted that he first became aware of his condition and realized its relationship to his federal employment on November 1, 2000.³ Appellant remained employed as a painter supervisor through August 31, 2019, when he retired from the employing establishment. An official position description dated October 31, 2006, notes that appellant's job duties as a painter supervisor exposed him to epoxy, paint thinners, mineral spirits, methyl ethyl ketone, polyurethane paint, grease, oil, fuels, battery acid, cleaning solvents, slippery surfaces, high pressure air and engine noise, electrical energy, and dust.

In support of his claim, appellant provided a July 14, 2020 statement alleging that he had been issued improper or inadequate personal protective equipment (PPE). During operation of a bead-blast cabinet, which produced chromium dust, cadmium, and polyurethane dust, he alleged receiving a paper mask that did not offer adequate protection. Appellant used a half-face respirator while stripping paint from aircraft and aircraft parts with methylene chloride, as well as using polyurethane paint, and sanding. He alleged that environmental testing later established that this PPE did not filter out contaminants.

In an undated incident report received by OWCP on July 14, 2020, appellant noted that he had been hired by the employing establishment on August 17, 1989. He alleged that he had developed breathing problems due to workplace exposures to methyl ethyl ketone, polyurethane thinner, methylene chloride, epoxy primer, lacquer thinner, polyurethane paint, naphtha thinner, toluene thinner, acetone, plastic media, cadmium, and chromium.

OWCP also received material safety data sheets for methyl ethyl ketone, base component industrial coating, polyurethane thinner, stripper 18, and curing solution.

Appellant submitted medical evidence from the employing establishment's health unit. In an August 17, 1992 report, Dr. Gregory G. Gardner, an employing establishment family practitioner, opined that pulmonary function testing (PFT) performed on that date was within normal limits. In an August 5, 1993 report, Dr. Blake V. Chamberlain, an employing establishment emergency medicine specialist, found that PFT performed that day were within normal limits. In a July 26, 1995 report, Dr. Gardner opined that PFT performed on that date was within normal limits. Appellant completed a respirator medical evaluation questionnaire

² Docket No. 21-1208 (issued February 6, 2023).

³ In a July 9, 2020 statement, appellant requested that OWCP change the date of injury noted on his July 2, 2020 Form CA-2 from August 17, 1989 to November 1, 2000.

indicating complaints of shortness of breath, thick sputum, high blood pressure, and a heart problem for which he took medication.

In an October 19, 1998 exposure questionnaire, appellant alleged excessive exposure to metals, dusts or fibers, chemicals, fumes, chromium, cadmium, and methyl ethyl ketone. He alleged that the PPE provided by the employing establishment was inadequate.

OWCP received laboratory test panels dated from November 3, 1999 through January 31, 2019 from the employing establishment health unit, screening for cadmium exposure.

A December 13, 1999 occupational health examination requirements report acknowledged that employees in the corrosion control area where appellant worked were exposed to strontium chromate, zinc chromate, and chromic acid above the occupational exposure limit. These exposures necessitated a program of an annual PFT, chest x-rays, a physical examination, and exposure questionnaires.

In a September 13, 2001 fitness-for-duty examination report, Dr. Allan E. Ward, an employing establishment occupational medicine specialist, noted appellant's complaints of intermittent right-sided chest pain that felt like pleurisy.

In a September 30, 2002 employing establishment health unit respirator questionnaire. Dr. Lisa B. Firestone, an employing establishment physiatrist, indicated that appellant's medical clearance or disqualification was on hold pending further evaluation. Appellant complained of chest pain, shortness of breath, and thick sputum production.

A January 6, 2011 occupational health note indicated that workers exposed to chromic acid should have periodic physical examinations to detect incipient changes in the nostrils and respiratory tract.

In an April 26, 2016 report, Dr. Preston Moore, an employing establishment family practitioner, opined that appellant's recent laboratory studies and PFT were within normal limits.

In a development letter dated July 17, 2020, OWCP advised appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence needed, and provided a questionnaire for his completion. By separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations, including any history of hazardous exposures, the frequency and duration of such exposures, air sample results, safety data sheets for the relevant materials, and a description of the safety equipment provided. It afforded both parties 30 days to respond.

On December 1, 2020 OWCP referred appellant, along with statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Lukena Karkhanis, a Board-certified internist, allergist, and immunologist, for a second opinion evaluation regarding whether the identified occupational exposures had caused the claimed respiratory condition. The SOAF noted appellant's date of injury as August 17, 1989 and that he "claimed working around loud aircraft and painting aircraft. Exposed to multiple of chemicals, which caused me to have breathing problems. Inaccurate respirator assigned."

In a January 11, 2021 report, Dr. Karkhanis opined that PFT results obtained that day demonstrated a mild restrictive ventilator defect based on a mildly reduced forced vital capacity. She noted that appellant's symptoms of difficulty getting air in at rest had worsened when wearing a surgical mask, and that the symptoms were atypical for asthma and lessened when walking. On examination, Dr. Karkhanis found that appellant's pulmonary auscultation was within normal limits, with no crackles or wheezes. She diagnosed shortness of breath and cough after exposure to diisocyanates. Dr. Karkhanis opined that there was no objective evidence that diisocyanate-related injury had any role in appellant's current condition. She noted that appellant's morbid obesity, obesity-related hypoventilation, and significant cardiac disease were alternative etiologies for his symptoms. Dr. Karkhanis recommended treatment for vocal cord dysfunction. She returned appellant to sedentary duty in a position that would allow him to walk around the room occasionally when he developed pulmonary symptoms while seated.

By decision dated February 1, 2021, OWCP accepted that the alleged occupational exposures had occurred as described. It denied the claim, however, finding that the medical evidence of record was insufficient to establish that he sustained a pulmonary condition causally related to the accepted occupational exposures.

On March 15, 2021 appellant requested reconsideration. In an accompanying statement dated March 6, 2021, he contended that the factual evidence of occupational exposures was sufficient to establish his claim, and that Dr. Karkhanis did not discuss these exposures in her report.

Appellant submitted material safety data sheets for red and white urethane paint, and high solids Ura-Zen catalyst.

A September 19, 2013 occupational health examination requirements memorandum indicated that employees in the corrosion control unit where appellant worked were exposed to chromium VI and strontium chromate "over the action level."

In a July 9, 2020 attending physician's report (Form OWCP-20), Dr. David M. O'Brien, an employing establishment physician specializing in aerospace medicine, diagnosed asthma, emphysema, or airway obstruction. He answered "Yes" in support of a causal relationship between the diagnoses and "[l]ack of proper respirator."

Appellant also submitted copies of evidence previously of record.

By decision dated July 19, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated February 6, 2023, the Board reversed the July 19, 2021 decision, finding that appellant had submitted new, relevant evidence on reconsideration, and remanded the case for a merit review.⁴

⁴ *Supra* note 2.

By decision dated April 6, 2023 OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁶ that the claim was timely filed within the applicable time limitation of FECA,⁷ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁸ 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.⁹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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 compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ 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.¹²

⁵ *Supra* note 1.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *Id.*

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *See A.S.*, Docket No. 22-0861 (issued April 27, 2023); *A.S.*, Docket No. 19-1766 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 140 (2000).

ANALYSIS

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

The SOAF provided to Dr. Karkhanis noted appellant's date of injury as August 17, 1989. However, in a July 9, 2020 statement, appellant requested that OWCP change the date of injury noted on his July 2, 2020 Form CA-2 from August 17, 1989 to November 1, 2000. Moreover, the SOAF merely noted that appellant "claimed working around loud aircraft and painting aircraft. Exposed to multiple of chemicals, which caused me to have breathing problems. Inaccurate respirator assigned." However, by decision dated February 1, 2021, OWCP accepted that appellant was exposed to paints in the performance of duty as alleged.

OWCP's procedures dictate that, when an OWCP district medical adviser (DMA), second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹³ As the SOAF provided to Dr. Karkhanis was incomplete, her opinion is of diminished probative value and cannot represent the weight of the medical evidence in this case.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁵ Once OWCP undertook development of the evidence by referring appellant to a second opinion physician, it had the duty to secure an appropriate report addressing the relevant issues.¹⁶ As Dr. Karkhanis did not base her report on a complete, accurate factual history, the case shall be remanded to OWCP for further development of the medical evidence.

On remand, OWCP shall prepare an updated SOAF, and then obtain a supplemental opinion from Dr. Karkhanis on the issue of causal relationship. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ C.C., Docket No. 22-0460 (issued October 12, 2022); R.W., Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.6003 (October 1990).

¹⁴ *Id.*

¹⁵ M.B., Docket No. 21-0060 (issued March 17, 2022); J.N., Docket No. 19-0215 (issued July 15, 2019); Kathryn E. Demarsh, 56 ECAB 677 (2005).

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board