

eye causally related to his accepted May 25, 2018 employment injury; and (2) whether appellant has met his burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

FACTUAL HISTORY

On May 30, 2018 appellant, then a 62-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2018 he experienced burning pain and blurred vision when a leaking medical liquid splashed into his right eye while in the performance of duty. He stopped work on May 25, 2018.

On July 7, 2018 OWCP accepted appellant's claim for right eye visual discomfort.

On September 20, 2018 appellant underwent right eye extracapsular cataract extraction by phacoemulsification with intraocular lens implantation, which was not authorized by OWCP.

On May 15, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated May 30, 2019, OWCP informed appellant that the medical evidence of record was insufficient to establish his schedule award claim. It requested that he submit a detailed narrative medical report from his treating physician based upon a recent examination including a date of maximum medical improvement, the diagnosis upon which the impairment rating was based, a detailed description of any preexisting impairment, and a final rating of the permanent impairment and discussion of the rationale for calculation of the impairment, with references to the applicable criteria and tables of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).³

OWCP subsequently received a September 20, 2018 operative report from Dr. Kevin Prendiville, a Board-certified ophthalmologist, who described appellant's extracapsular cataract extraction procedure. He diagnosed posterior subcapsular cataract of the right eye.

Appellant also submitted hospital notes, dated September 20, 2018, which described the treatment related to his right-sided extracapsular cataract extraction procedure.

In a June 25, 2019 note, Dr. Prendiville noted that appellant's mild dry eye disease related to the employment injury had reached a fixed state as of June 21, 2019. He indicated that appellant had no permanent impairment of the right eye that preexisted the employment injury.

On July 2, 2019 counsel requested that acceptance of appellant's claim should be expanded to include posterior subcapsular cataract of the right eye based on the opinion of Dr. Prendiville.

In a letter dated October 16, 2019, counsel requested that OWCP issue a decision regarding appellant's request to expand his claim.

³ A.M.A., *Guides* (6th ed. 2009).

On November 20, 2019 OWCP determined that additional development was required to further appellant's request to expand his claim.

By decision dated February 19, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On February 27, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 5, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), and a series of questions for a second opinion examination with Dr. Forrest Murphy, a Board-certified ophthalmologist, to determine if any additional conditions were attributable to the May 25, 2018 employment injury. In a March 31, 2020 report, Dr. Murphy noted appellant's history of injury and indicated that appellant experienced blurry vision. He examined appellant and diagnosed pseudophakia of the right eye, nuclear sclerotic cataract of the left eye, and macular edema due to type 2 diabetes mellitus. Dr. Murphy reported that appellant's retinal examination and diagnostic testing was normal. He noted that appellant's right eye diagnoses included pseudophakia, mild nonproliferative diabetic retinopathy without macular edema, and allergic conjunctivitis. Dr. Murphy opined that appellant's current right eye conditions were not causally related to the employment injury. He indicated that he was unable to answer if appellant's posterior subcapsular cataract of the right eye was caused or aggravated an underlying/preexisting condition as a result of the employment injury. Dr. Murphy opined that appellant's employment injury was not apparent and appeared to have resolved.

A telephonic hearing was held on June 11, 2020. During the hearing, counsel argued that OWCP should have completed development and adjudication on the issue of whether appellant's claim should have been expanded to include posterior subcapsular cataract of the right eye prior to issuance of its February 19, 2020 schedule award decision.

By decision dated August 25, 2020, OWCP's hearing representative affirmed the February 19, 2020 decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the

⁴ C.S., Docket No. 20-0621 (issued December 22, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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 incident.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸

ANALYSIS -- ISSUE 1

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

On July 2 and October 16, 2019 counsel requested that the acceptance of appellant's claim be expanded to include posterior subcapsular cataract of the right eye. On March 5, 2020 OWCP referred appellant for a second opinion examination with Dr. Murphy.

OWCP specifically requested that Dr. Murphy provide an opinion on whether appellant's claim should be expanded to include posterior subcapsular cataract of the right eye or if appellant's employment injury aggravated an underlying/preexisting condition like subcapsular cataract of the right eye. Dr. Murphy completed a physical examination and provided responses to a series of questions posed to him by OWCP. He provided a conclusory statement that appellant's right eye conditions were not causally related to the accepted May 25, 2018 employment injury. However, Dr. Murphy noted that he could not specifically answer whether appellant's claim should be expanded to include posterior subcapsular cataract of the right eye or if his employment injury aggravated an underlying/preexisting condition.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.⁹ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁰

⁶ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See D.T.*, Docket No. 20-0234 (issued January 8, 2021); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁸ *See V.K.*, Docket No. 19-0422 (issued June 10, 2020).

⁹ *See D.T.*, *supra* note 7; *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

¹⁰ *Id.*

Once OWCP undertakes development of the record, it must procure medical evidence that will resolve the relevant issues in the case.¹¹ Following its determination that, additional medical development was necessary to address whether appellant's posterior subcapsular cataract of the right eye was causally related to the accepted employment injury, OWCP denied his request for expansion of the claim based upon Dr. Murphy's report. However, Dr. Murphy failed to address the primary question posed by OWCP, whether appellant sustained posterior subcapsular cataract of the right eye causally related to the accepted employment injury. Due to the deficiencies in his report, OWCP should have sought clarification or referred appellant for a new second opinion evaluation. On remand, OWCP shall obtain a supplemental report from Dr. Murphy or refer appellant, together with a SOAF and a list of specific questions, to a new second opinion physician in the appropriate field of medicine to resolve the issue.¹²

The Board will therefore remand the case to OWCP for further development of the medical evidence to determine whether the accepted May 25, 2018 employment injury caused or aggravated additional diagnosed conditions or contributed to the progression of any additional underlying conditions. Following this and any further development deemed necessary, the Board shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹³

¹¹ *Id.*

¹² *T.S.*, Docket No. 18-1702 (issued October 4, 2019).

¹³ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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