



## **FACTUAL HISTORY**

On February 17, 2022 appellant, then a 54-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he developed multiple myeloma, a type of bone marrow cancer, due to factors of his federal employment, specifically exposure to cosmoline from February 2014 through October 2016. He explained that the chemicals give off fumes when they are melted that can attack bone marrow when inhaled. Appellant noted that he first became aware of his condition on November 9, 2018 and realized its relationship to his federal employment on February 15, 2022. On the reverse side of the claim form, W.P., a supervisor for the employing establishment, indicated that appellant was last exposed to the conditions alleged to have caused his illness on October 10, 2016.

In undated statements, appellant reported that he worked as a materials handler at the employing establishment from February 24, 2014 until October 2016. He explained that he worked with cosmoline on a daily basis, which was used to protect gages from rusting. Appellant described that at least once a month, he melted cosmoline to dip the gages for a protective coating. He noted that the fumes from the cosmoline and tanks were awful. Appellant indicated that he started experiencing breathing difficulty in 2014 and requested a protective mask to wear. He reported that he had breathing problems throughout his entire time working as a materials handler when he would melt and dip gages. Appellant noted that on November 9, 2018 he was diagnosed with multiple myeloma when a magnetic resonance imaging (MRI) scan revealed holes in his bones in his shoulder, ribs, vertebra, skull, and lower leg. He indicated that he underwent a stem cell transplant on May 23, 2019 and received infusions once a month. Appellant explained that on February 15, 2022 he learned through the materials safety data sheet that the inhalation of fumes from melting cosmoline can affect and attack bone marrow. He submitted a safety data sheet about cosmoline and a position description for instrument mechanic inspector.

In treatment notes dated November 28, 2018 through January 31, 2019, Dr. Justin J. Juliano, a Board-certified radiation oncologist, indicated that appellant was evaluated for multiple myeloma. He reviewed appellant's history and diagnosed multiple myeloma disorder.

OWCP also received November 13 and 27, 2018 biopsy and pathology reports, a March 4, 2019 chest imaging report, a March 26, 2019 right shoulder MRI scan report, laboratory test results dated March 19 through May 23, 2019, an April 17, 2019 whole body positron emission tomography (PET) scan, a May 20, 2019 port placement procedure report, blood and stem cell transfusion reports dated May 22 through June 8, 2019, a clinical visit patient flow sheet, and consent and information forms regarding stem cell transplants.

In reports dated November 27, 2018 through May 9, 2019, Dr. Michael Willen, a Board-certified internist specializing in hematology and oncology, noted appellant's complaints of newly diagnosed multiple myeloma. He indicated that, in the Fall of 2018, appellant began to develop right shoulder pain and underwent an MRI scan, which showed an ill-defined expansile medullary bone lesion in the posterior acromion. Dr. Willen reviewed appellant's history and the medical treatment that he received, including radiation therapy and four cycles of stem cell transplants. He provided examination findings and diagnosed multiple myeloma disorder.

In a March 28, 2019 note, Dr. Willen excused appellant from work on March 27 and 28, 2019, and diagnosed multiple myeloma.

An August 26, 2019 procedure report indicated that appellant underwent a stem cell transplant and had a right-sided tunneled venous chest port removed. It noted a preprocedure diagnosis of multiple myeloma.

In reports dated March 14, 2019 through May 11, 2020, Dr. Courtney M. Bellomo, a Board-certified internist, noted a diagnosis of stage 1 lambda multiple myeloma and peripheral neuropathy. She indicated that appellant was seen for follow up for autologous stem cell transplantation. Dr. Bellomo reviewed appellant's history and noted that he worked in an arsenal. On examination, she reported that appellant's neuropathy was stable. Dr. Bellomo indicated that a PET scan showed evidence of stable disease with no evidence of recurrent new disease.

A November 11, 2020 whole PET scan report revealed stable lytic lesions with sclerotic changes in the right scapula and T9 vertebral body, stable sclerosis of the right posterior 10<sup>th</sup> rib, and 1 centimeter sclerosis focus in the left focus of the left proximal tibial metaphysis with maximum standardized uptake value.

In reports dated May 11, 2020 through January 24, 2022, Dr. Muhammad A. Hussain, a Board-certified internist, reviewed appellant's diagnostic and laboratory studies. He noted that a PET scan revealed no evidence of recurrent disease or new disease. Dr. Hussain provided examination findings and diagnosed multiple myeloma, peripheral neuropathy, and diabetes mellitus type II. He indicated that appellant was status post stem cell transplant in May 2019 and discussed his maintenance therapy.

In a development letter dated March 2, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the medical and factual evidence required to establish his claim and provided a questionnaire for his completion. In a development letter of even date, OWCP requested the employing establishment comment on appellant's statements and whether it agreed with his allegations. It also requested that the employing establishment provide reports regarding appellant's radiation exposure. OWCP afforded both parties 30 days to provide the information requested.

OWCP received a position description for a materials handler.

On March 3, 2022 appellant responded to OWCP's March 2, 2022 development letter. He indicated that from February 2014 through October 2016 he worked as a materials handler at the employing establishment and was responsible for receiving gages and parts from outside vendors and moving them throughout the arsenal. Appellant noted that he stored, inventoried, cleaned, and applied cosmoline and removed cosmoline from gages, tooling, and fixtures. He reported that from October 2016 through February 2020, he worked as a machine tool inspector and his duties required inspecting parts that entered the employing establishment from outside vendors. Appellant indicated that from February 2020 to the present, he worked as an instrument mechanic inspector. His duties required inspecting and calibrating gages, fixtures, and tooling. Appellant noted that he did not receive a protective mask when he first started as a materials handler, but after about four months he began to experience breathing issues, so he requested a protective mask.

Appellant reported that he still inhaled fumes because the seal on the mask did not function properly. He also explained that the fumes were throughout the entire warehouse. Appellant described that cosmoline came in 50-pound boxes wrapped in a plastic bag. He indicated that he would cut open the boxes and plastic bags and dumped cosmoline into the tanks to melt for dipping the gages. Appellant reported that he found out about his multiple myeloma on November 9, 2018. He noted that he first became aware of the association between his cancer and cosmoline on February 15, 2022 through the materials safety data sheets. Appellant reported that he did not smoke cigarettes, cigars, or pipes.

In a statement dated March 3, 2022, W.P. indicated that he agreed with appellant's allegations of exposure to cosmoline. He explained that appellant performed gage preservation tasks, which involved dipping the gages into hot cosmoline. W.P. reported that these tasks were performed periodically when gages were returned to storage in the warehouse. He noted that employees were provided with eye protection, gloves, aprons, and respirators.

In reports dated March 21 and April 7, 2022, Dr. Hussain indicated that appellant was evaluated for follow up for lambda multiple myeloma, stage 1. He explained that appellant was first diagnosed with lambda multiple myeloma stage 1 in November 2018 and reviewed his history. Dr. Hussain discussed that appellant underwent radiation therapy, medication, and stem cell transplantation. He reported that the exact cause of multiple myeloma was not known, but scientific literature suggested a variety of causes, which included environmental factors such as exposure to radiation, genetic abnormalities, and familial risk, which accounted for only three percent of cases. Dr. Hussain indicated that exposure to asbestos, benzene, pesticides, and other chemicals used in rubber manufacturing might be associated with high risk for development of multiple myeloma. He reported that appellant was exposed to cosmoline for work and that he did not have any risk factors for multiple myeloma, except the environmental exposure. Dr. Hussain explained that he was unable to find any specific literature which definitely associated cosmoline with development of multiple myeloma. He completed a duty status report (Form CA-17), which indicated that appellant could return to part-time work with restrictions.

OWCP received investigative reports about hexavalent chromium wipes and a Wikipedia article about chromium toxicity.

By decision dated June 7, 2022, OWCP denied appellant's claim, finding that he failed to establish that the diagnosed medical conditions were causally related to the accepted employment exposure.

On June 9, 2022 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 12, 2022.

OWCP received information about the risk factors for multiple myeloma; industrial hygiene reports of the employing establishment dated December 10, 2020 through August 30, 2022; an April 5, 2022 complaint letter from the Occupational Safety and Health Administration (OSHA); a report about the effects of hexavalent chromium on the incidence of mortality of human cancers; a July 13, 2022 environmental laboratory analysis report of the employing establishment; a safety data sheet about cosmoline spray aerosol and other chemicals; an article about carbon monoxide poisoning; and appellant's April 25, 2022 laboratory test results. Several of the

industrial hygiene reports showed that high levels of hexavalent chromium were discovered throughout the building, including offices, the basement, and the breakroom, and on multiple high touch surface areas, including railings, door handles, and washing facilities.

In an October 3, 2022 report, Dr. Hussain indicated that appellant was under his care for the diagnosis of lambda multiple myeloma stage 1. He described appellant's medical history and the medical treatment that he had received. Dr. Hussain explained that he was provided with data sheets, reports, and surveys about hexavalent chromium and appellant's level of exposure at his workplace. He opined that "there is a likelihood that [appellant's] Multiple Myeloma was caused from his work environment at the [employing establishment]." Dr. Hussain explained that studies had consistently shown increased cancer rates in workers who were exposed to levels of chromium in the air at work. He noted that laboratory paperwork demonstrated that appellant still had hexavalent chromium in his blood in April 2022. Dr. Hussain indicated that appellant was also exposed to cosmoline in his workplace. He reported that there was not too much literature about cosmoline. Dr. Hussain concluded that given the new information about hexavalent chromium and previous report of cosmoline, it was "reasonable that the exposure played an important role in development of his Multiple Myeloma."

By decision dated December 28, 2022, OWCP's hearing representative set aside the June 7, 2022 decision and remanded the case for OWCP to further develop the case record. He instructed OWCP to compose a statement of accepted facts (SOAF) with a detailed description of appellant's accepted work exposure to cosmoline and hexavalent chromium and to refer appellant for a second opinion examination to "specifically address whether the claimant's federal work exposure caused or contributed to development of his multiple myeloma." The hearing representative further instructed OWCP to provide the second opinion physician with Industrial Hygiene Department reports from the employing establishment, documenting workplace exposure.

In a note dated January 9, 2023, Dr. Eli N. Avila, a supervising occupational medicine physician at the employing establishment, noted that laboratory specimens were collected from appellant on April 15, 2022 and the results showed evidence of urinary chromium within normal limits.

OWCP also received a toxicity guide for chromium and a safety data sheet for Type II B-149.

On February 27, 2023 OWCP referred appellant, the medical record, along with a SOAF, and series of questions, to Dr. Mark Levin, a Board-certified oncologist and internist, for a second opinion examination and opinion on whether he sustained a work-related injury causally related to the accepted employment exposure. The SOAF noted only that appellant worked as a materials handler and machine tool inspector, and provided a detailed description of appellant's work duties.

In a report dated April 23, 2023, Dr. Levin reviewed appellant's history and noted that a biopsy on November 13, 2018 demonstrated atypical plasma cytosis. He noted that appellant worked as an inspector of gages. Dr. Levin indicated that appellant alleged that his multiple myeloma was caused by workplace exposure to cosmoline and hexavalent chromium. He noted that he "did not find SOAF in the submitted materials." Dr. Levin also reported that his response

was based on the assumption that cosmoline and hexavalent chromium would be shown to be present in greater than background levels. He indicated that this might require an Industrial Hygiene opinion, which was out of his scope as an oncologist. Dr. Levin described the properties and uses for cosmoline and noted that cosmoline was not a known carcinogen and not known to cause multiple myeloma. He also described the properties and uses for hexavalent chromium. Dr. Levin reported that epidemiological studies showed that inhaled chromium was a human carcinogen, resulting in an increased risk of lung cancer. He indicated that some published studies suggested that exposure to chromium among workers might be associated with cancer at other tissues sites, including leukemia and bone cancer. Dr. Levin opined that there was insufficient evidence to conclude that it caused appellant's multiple myeloma. He reported that appellant's multiple myeloma condition had not resolved, but that he was able to continue to work with accommodations.

On May 18, 2023 OWCP referred the January 6, 2023 SOAF to Dr. Levin for review and requested that he provide a statement on whether his medical opinion remained the same.

In a supplement report dated June 13, 2023, Dr. Levin indicated that he had reviewed the SOAF. He noted that it did not change his determination.

By *de novo* decision dated June 20, 2023, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted employment exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

---

<sup>2</sup> *Id.*

<sup>3</sup> *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> 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 specific employment factors identified by the employee.<sup>8</sup>

### ANALYSIS

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

In his December 28, 2022 decision, the hearing representative instructed OWCP to compose a SOAF with a detailed description of appellant's accepted work exposure to cosmoline and hexavalent chromium and to refer appellant for a second opinion examination to "specifically address whether the claimant's federal work exposure caused or contributed to development of his multiple myeloma." The January 6, 2023 SOAF, however, indicated only that appellant worked as a materials handler and machine tool inspector and provided a detailed description of appellant's work duties. It did not include that appellant's exposure to cosmoline and hexavalent chromium had been accepted by OWCP as work related.

OWCP's procedures and Board precedent dictate that when a DMA, a 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.<sup>9</sup> OWCP procedures also indicate that in the SOAF the claims examiner must present a description of the employment injury or exposure as a definitive statement of fact.<sup>10</sup> In this case, OWCP failed to provide Dr. Levin with a complete and accurate SOAF noting the accepted employment exposures. Moreover, the hearing representative instructed OWCP to provide the second opinion physician with Industrial Hygiene Department reports from the employing establishment, documenting workplace exposure. It appears from the case record that OWCP did not provide this information as instructed.

---

<sup>6</sup> *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also D.P.*, Docket No. 20-0747 (issued June 2, 2021); *S.D.*, Docket No. 19-1924 (issued November 16, 2020).

<sup>10</sup> *Id.* at Chapter 2.809.3g (September 2009).

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>11</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>12</sup> Accordingly, the Board finds that the case must be remanded to OWCP.

On remand, OWCP shall update the SOAF to include accepted employment exposure to cosmoline and hexavalent chromium. It shall then refer appellant, along with the updated SOAF and the medical record, including the above-noted industrial hygiene reports, to a new physician in the appropriate field of medicine for a second opinion regarding whether appellant sustained a work-related injury causally related to the accepted employment exposure. Following 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.

---

<sup>11</sup> *M.W.*, Docket No. 20-2052 (issued May 24, 2021); *L.F.*, Docket No. 20-0549 (issued January 27, 2021).

<sup>12</sup> *See M.E.*, Docket No. 21-1058 (issued March 2, 2022); *N.W.*, Docket No. 21-0653 (issued September 30, 2021).



**ORDER**

**IT IS HEREBY ORDERED THAT** the June 20, 2023 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: January 25, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board