



## **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a cataract of the left eye as causally related to the accepted December 7, 1999 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board on the same issue<sup>4</sup> and on different issues.<sup>5</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference.

On February 13, 2001 appellant, then a 39-year-old social insurance specialist claims representative, filed an occupational disease claim (Form CA-2) alleging that she sustained tendinitis of the bilateral upper extremities due to factors of her federal employment including performing the repetitive motions of keypunching, typing, and writing. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. It subsequently expanded the acceptance of appellant's claim to include right wrist tenosynovitis and bilateral median nerve neuritis.

On March 27, 2013 Dr. Timothy Cavanaugh, an attending Board-certified ophthalmologist, performed an OWCP-authorized phacoemulsification with posterior chamber intraocular lens implantation in the right eye and subsequently in the left eye on April 10, 2013.<sup>6</sup>

On August 21, 2013 Dr. Cavanaugh performed OWCP-authorized yttrium aluminum garnet (YAG) laser capsulotomy for the left eye.<sup>7</sup>

On December 18, 2014 OWCP expanded the acceptance of appellant's claim to include a right ocular cataract and a right shoulder condition.

By decision dated December 28, 2016, OWCP granted appellant a schedule award for seven percent permanent impairment of the right eye. The period of the award ran for 11.2 weeks from October 28, 2013 through January 14, 2014.

On January 6, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held on June 22, 2017.

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<sup>4</sup> *Order Remanding Case*, Docket No. 22-0708 (issued June 21, 2023).

<sup>5</sup> Docket No. 21-0239 (issued December 1, 2021); Docket No. 17-1854 (issued March 20, 2018); Docket No. 11-0527 (issued April 9, 2012).

<sup>6</sup> On October 5, 2018 OWCP retroactively authorized the March 27, 2013 right eye surgery and lens implant.

<sup>7</sup> On July 3, 2018 OWCP retroactively authorized the August 21, 2013 left eye surgery.

By decision dated August 1, 2017, OWCP's hearing representative affirmed the December 28, 2016 decision.

Appellant, through counsel, appealed to the Board.

By decision dated March 20, 2018,<sup>8</sup> the Board affirmed the August 1, 2017 decision.

Thereafter, OWCP received a May 17, 2018 report wherein Dr. Cynthia Burlingame, an optometrist, recounted appellant's bilateral cataract surgeries. On examination of the right eye, Dr. Burlingame observed unaided distant visual acuity (DVA) of 20/30 and unaided near visual acuity (NVA) of 20/200. On the left, she observed 20/25 unaided DVA and 20/200 unaided NVA, with bilateral acuities of 20/20 unaided DVA and 20/100 unaided NVA. Dr. Burlingame diagnosed ocular allergy, bilateral dry eye syndrome, hyperopia, and presbyopia.

On January 18, 2019 appellant, through counsel, requested reconsideration.

By decision dated March 2, 2022, OWCP denied modification. Thereafter, on April 8, 2022, appellant appealed to the Board.

By order dated June 21, 2023,<sup>9</sup> the Board set aside OWCP's March 2, 2022 decision and remanded the case for it to consider Dr. Burlingame's May 17, 2018 report, to be followed by issuance of a *de novo* decision on the schedule award issue.

On August 7, 2023 OWCP referred the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Kevin Yuhan, a Board-certified ophthalmologist serving as a district medical adviser (DMA) to provide an opinion on whether appellant's left cataract was related to steroid use necessitated by the accepted employment injury or was an idiopathic condition. It requested that Dr. Yuhan indicate his agreement or disagreement with Dr. Burlingame's May 17, 2018 report.

In an August 30, 2023 report, Dr. Yuhan reviewed the SOAF and medical record, including Dr. Burlingame's May 17, 2018 report. He noted his agreement with Dr. Burlingame's opinion. Dr. Yuhan opined that as the "left eye was consistent with normal aging of the eye due to having a nuclear sclerotic cataract," OWCP should not expand the acceptance of the claim to include the left eye cataract.

By decision dated October 4, 2023, OWCP denied appellant's request for expansion of the acceptance of the claim, finding that the medical evidence of record was insufficient to establish a left eye cataract causally related to the accepted December 7, 1999 employment injury.

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<sup>8</sup> *Supra* note 5.

<sup>9</sup> *Supra* note 4.

On October 12, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 3, 2024.

By decision dated March 18, 2024, OWCP's hearing representative affirmed the October 4, 2023 decision.

### **LEGAL PRECEDENT**

Where 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.<sup>10</sup>

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>11</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.<sup>12</sup> The opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>13</sup>

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>14</sup> 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.<sup>15</sup><sup>10</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>16</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete

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<sup>10</sup> *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>11</sup> *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

<sup>12</sup> *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

<sup>15</sup> *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>16</sup> *E.M.*, *supra* note 12; *Robert G. Morris*, 48 ECAB 238 (1996).

factual and medical background.<sup>17</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>18</sup>

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>19</sup> OWCP's procedures dictate that when a 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.<sup>20</sup>

### ANALYSIS

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

OWCP referred the medical record, along with a SOAF dated August 7, 2023 and a series of questions, to Dr. Yuhan, an OWCP DMA, for an opinion on whether OWCP should expand its acceptance of appellant's claim to include a cataract of the left eye. In an August 30, 2023 report, Dr. Yuhan noted his review of the SOAF, discussed appellant's medical history, and indicated his agreement with Dr. Burlingame that appellant's left eye cataract was an age-related sclerotic cataract unrelated to the employment injury.

The Board notes, however, that the August 7, 2023 SOAF Dr. Yuhan reviewed did not mention that on August 21, 2013, appellant underwent OWCP-authorized left eye YAG laser capsulotomy. The Board has found that when an OWCP DMA, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF, which is incomplete or inaccurate, the probative value of the opinion is seriously diminished or negated altogether.<sup>21</sup> As Dr. Yuhan's report was based on an incomplete SOAF, his report lacks probative value and cannot represent the weight of the medical evidence.<sup>22</sup>

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<sup>17</sup> *J.P.*, Docket No. 23-0975 (issued April 25, 2024); *M.V.*, *supra* note 13; *Victor J. Woodhams*, *supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *C.E.*, Docket No. 19-1923 (issued March 30, 2021); *A.M.*, Docket No. 19-1602 (issued April 24, 2020); *K.V.*, Docket No. 15-0960 (issued March 9, 2016); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>20</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see J.P. (T.P.)*, Docket No. 23-0725 (issued April 4, 2024); *L.J.*, Docket No. 14-1682 (issued December 11, 2015). *See also* Chapter 2.809 (September 2009).

<sup>21</sup> *Supra* note 20; *see also R.S.*, Docket No. 23-1093 (issued March 12, 2024); *N.P.*, Docket No. 19-0296 (issued July 25, 2019); *M.D.*, Docket No. 18-0468 (issued September 4, 2018).

<sup>22</sup> *See Order Remanding Case, M.O.*, Docket No. 23-0608 (issued October 25, 2023); *see also M.G.*, Docket No. 22-1394 (issued May 10, 2023).

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>23</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>24</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the issue in the case.<sup>25</sup>

Accordingly, the Board finds that the case must be remanded to OWCP.<sup>26</sup> On remand, OWCP shall prepare a complete and accurate SOAF, which includes the OWCP-authorized surgical procedures, request that Dr. Yuhan review the updated SOAF, and provide a supplemental opinion regarding whether appellant's left eye cataract was causally related to her accepted December 7, 1999 employment injury. 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.

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<sup>23</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>24</sup> *P.T.*, Docket No. 21-0138 (issued June 14, 2021); *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>25</sup> *L.N.*, Docket No. 22-0497 (issued September 14, 2023); *G.M.*, Docket No. 19-1931 (issued May 28, 2020); *W.W.*, Docket No. 18-0093 (issued October 9, 2018).

<sup>26</sup> *S.J.*, Docket No. 22-0714 (issued March 31, 2023); *P.W.*, Docket No. 22-0218 (issued November 28, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2024 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: June 28, 2024  
Washington, DC

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

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

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