United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 13-660**
	)	**Issued: November 6, 2013**
SOCIAL SECURITY ADMINISTRATION, SSA REGION VII, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 28, 2013 appellant, through her attorney, filed a timely appeal from an August 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed bilateral wrist, hand, shoulder and neck conditions causally related to factors of her federal employment as a social insurance specialist claims representative.

FACTUAL HISTORY

On August 2, 2010 appellant filed a traumatic injury claim (Form CA-1) alleging that she developed bilateral neuritis, bilateral carpal tunnel syndrome (CTS), bilateral epicondylitis,

[1] 5 U.S.C. § 8101 *et seq.*

tenosynovitis of the hand and wrist and shoulder conditions as a result of her federal employment duties as a social insurance specialist claims representative.[2] She stated that her symptoms began on December 7, 1999 and on April 5, 2010, after being returned to full-duty regular rotation without restrictions,her conditions became more pronounced due to the increased motion of her wrists.[3] Appellant retired on November 30, 2010.

This case has previously been before the Board. On April 20, 2010 appellant filed a notice of recurrence (Form CA-2a) after being placed on full duty April 5, 2010. On appeal, the Board affirmed OWCP's November 18, 2010 denial of her recurrence claim.[4] The Board found that the evidence had not established either a change in the nature or extent of appellant's light-duty restrictions or a change in her work-related condition.

Appellant reported that activities from wrist and hand motions were affecting her elbows, arms and shoulders. The activities she attributed to her condition included keyboarding, typing, using calculators, the telephone, going through papers and files, writing, folding and stuffing envelopes, entry between workstations, opening and closing file drawers and locking and unlocking secured keyboards. Appellant stated that, though her employing establishment provided devices and software to assist her disability, she was still using her wrists and hands. Using the microphone provided for the software still required her hands to remain on the keyboard to continuously push two buttons off and on in order to work the software. Thus, appellant stated that the accommodations provided to her were ineffective.

By letters dated May 4 and August 13, 2010, the employing establishment controverted the claim. It noted that,although appellant stated a date of injury of December 7, 1999, she did not begin working at her current position until January 2006.The employing establishment confirmed that she had returned to her regular duties on April 5, 2010, but had been on leave without paysince August 2, 2010. It stated appellant's treating physician, Dr. John B. Moore, found her capable of performing her usual job with restrictions of using her wrists for repetitive movements for 4 hours a workday and taking a 10-minute break after 30 minutes of typing. The employing establishment had provided herwith voice recognitionsoftware for hands-free access to the computer and noted that this software had been successfully used by other similarly situated claims representatives in the employing establishment. The software would have allowed her to perform the full range of her duties without having to use her hands in excess of the restrictions imposed by her physician. If appellant had properly used the software, she would not have needed to continuously push buttons or type. It also noted that, although she was on duty after April 5, 2010, she rarely was in the office, due to frequent use of annual or sick leave. Nevertheless, on July 14, 2010 appellant accepted the agency's offer to continue her permanent

[2] Although appellant filed a Form CA-1, OWCP treated her claim as an occupational injury as appellant described a condition produced by her work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[3] OWCP had accepted her claim for bilateral CTS and bilateral lateral epicondylitis, Claim No.xxxxxx960. On June 16, 2008 the claim was expanded to include right wrist tenosynovitis and on April 10, 2009 OWCP also accepted bilateral nerve neuritis. Appellant's claims have been combined with Claim No. xxxxxx960 as the master file.

[4]Docket No. 11-527 (issued April 9, 2012).

full-time employment as a claims representative with the accommodations of the voice recognition software.[5]Relevant medical reports in the record include a March 20, 2007 diagnostic report by Dr. Milton R. Wolf, a Board-certified diagnostic radiologist,finding a C6-7 small posterior broad based disc protrusion with mild central canal narrowing, following a magnetic resonance imaging (MRI) scan of the cervical spine.

In medical reports dated September 14 to October 19, 2007, Dr. Michael J. Schwartzman, a physician of osteopathic medicine, reported that appellant sustained a nonemployment-related motor vehicle accident on July 6, 2006 when she was hit from behind and sustained a whiplash injury. Immediately, following the accident she began experiencing neck and shoulder pain, upper thoracic discomfort and numbness and tightness in the arms. After seeking physical therapy and chiropractic treatment, shecomplained of ongoing neck and shoulder pain, stiffness, spasms and intermittent achiness in her forearms, wrists and fingers. The pain and numbness were aggravated when using her hands, such as typing and the numbness in her fingertips was aggravated by repetitive motion. Dr. Schwartzman diagnosed cervical sprain and recurrent bilateral CTS. In an October 19, 2007 report, he reported that appellant remained off work and despite eliminating repetitive motions from work, she continued to experience hand numbness and pain.

In a January 27, 2009 medical report, Dr. John B. Moore IV, a Board-certified hand surgeon, reported that appellant underwent carpal tunnel release and, based on her subjective reports of pain when typing, provided restrictions of no keyboarding for more than 4 hours total per day and a 10-minute break for every hour of key. In a May 17, 2010 medical report, Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, reported that an electromyography (EMG) study revealed bilateral CTS and possible mild right C5-6 radiculopathy. He noted that since appellant already had carpal tunnel decompressive surgery twice, she was unlikely to benefit from a third attempt. Dr. Prostic further noted that repetitious handling of the median nerve at a single location could cause devascularization of the nerve with a catastrophic result.

An August 2, 2010 prescription note with an illegible signatureplaced appellant off work indefinitely to seek medical treatment.

By letter dated August 26, 2010, OWCP informed appellant of the additional medical and factual evidence needed to support her claim and was provided 30 days to submit the supporting documentation.

In an undated narrative statement, appellant contended that using the voice-activated computer workstation and microphone provided to her by the employing establishment aggravated her upper extremities. She further stated that using the software made it difficult to conduct interviews and talk at the same time which slowed down her work production. This

[5] In order to accommodate her permanent restrictions, it provided her with the following equipment: two new computers with 19-inch monitors, Dragon Naturally Speaking Software, a microphone, headset, printer, scanner, photocopier, paper folding machine and tubing to assist her in gripping pencils and pens. Appellant was provided 15 days to either accept or decline this permanent job offer. She accepted the permanent modified job offer on July 14, 2010.

forced appellant to use the keyboard in order to meet her work requirements or else she would have been terminated.

By letter dated September 3, 2010, Dr. Moore stated that appellant had been diagnosed with bilateral CTS, but despite a positive EMG, she no longer hadclinical CTS. He noted that the EMG results rarely return to normal after successful surgical release. Dr. Moore stated that appellant's EMG was suspicious for C5-6 radiculopathy, which could potentially explain her current symptoms. Hefurther noted that her symptoms were predominantly in her upper extremities in the shoulder and elbow regions and any type of repetitive motion would increase her pain, even sleeping at nighttime. Dr. Moore found that appellant had been unable to return to her regular work because of appellant's chronic pain.Appellant's permanent restrictions remained the same with a 30-minute typing restriction, 30-minute 10 keying restriction and a 4-hour hand use restriction.

By decision dated October 4, 2010, OWCP denied appellant's claim finding that the evidence of record failed to establish that the current diagnosed conditions were causally related to factors of her federal employment.

On October 21, 2010 appellant requested an oral hearing before the Branch of Hearings and Review.

At the February 11, 2011 hearing, appellant testified that she had two prior upper extremity conditions which had been accepted by OWCP. She had been provided with accommodations after her 1999 injury. Despite appellant's accommodations and the voice activated software provided to her, she stated that her condition had continued to worsen, causing her to retire on November 30, 2010. The record was held open for 30 days.

By decision dated May 6, 2011, the Branch of Hearings and Review affirmed OWCP's October 4, 2010 decision finding that the evidence of record failed to establish that appellant's conditionswere causally related to the claimed employment factors.

By letter dated October 21, 2011, appellant, through counsel, requested reconsideration of OWCP's decision and submitted an April 25, 2011 medical report from Dr. John W. Ellis, Board-certified in family medicine.

Dr. Ellis reviewed appellant's medical history and provided findings on physical examination.

Dr. Ellis, based ona physical examination of appellant, her description of her workstation and duties and areview of medical records,found that the injuries, impairments and disabilities set forth in his diagnosis, findings and impairments, arose out of and in the course of her employment and that employment factors and work duties contributed to, aggravated and/or caused her stated injuries, disabilities and impairments.The constant tightness in her neck caused the disc at the C6-7 level to protrude. The constant work caused the tendons and internal structures of the shoulder girdles and shoulder joints to become inflamed and developed tendinitis and traumatic arthritis, requiring surgery on appellant's right shoulder. Up through August 5, 2010, appellant'swork caused the tendons in the medial aspect of herelbows to become hypertrophied. This caused CTS through impingement of the ulnar nerve at the elbows.

Appellant's work with a straight keyboard caused the tendons in her forearms to become tightened, hypertrophied and then inflamed causing radial tunnel syndrome with radial nerve impingement.Similarly, the ulnar deviation of her wrists with a straight keyboard caused increased straining. The abnormal straining of the tendons and wrists caused tendinitis, inflammation and impingement of the median nerve at the wrists, which is CTS as well as the ulnar nerve at the wrists, which is Guyon's canal syndrome. Appellant's repetitive data entry also caused hypertrophy of the carpometacarpophalangeal joint of both thumbs and traumatic arthritis in both thumbs. Dr. Ellis opined that she could not return to any type of work where she would be doing data entry or repetitive work with her hands. He restricted repetitive pulling, pushing, gripping or pinching with the fingers and recommended vocational rehabilitation, retraining and job placement.

By decision dated March 8, 2012, OWCP affirmed the May 6, 2011 decision finding that the evidence of record failed to establish that appellant's diagnosed condition was causally related to factors of her federal employment. It found Dr. Ellis' conclusions to be based on an incomplete and inaccurate factual and medical background.

By letter dated July 12, 2012, appellant, through counsel, requested reconsideration of OWCP's decision.

In a March 27, 2012 supplemental report, Dr. Ellis stated that an older person with preexisting conditions and poor ergonomic workplaces would have even more problems and injuries. He noted that he had not been provided with a written and extensive job description but based his report on the information provided him by appellant. Dr. Ellis requested OWCP submit a detailed job description with her duties. He further stated that, though there were ergonomic modifications, appellant's initial injuries continued to be aggravated and worsened. As appellant aged, her work, even under good ergonomic conditions, would cause the conditions set forth in Dr. Ellis'April 25, 2011 report.

By decision dated August 16, 2012, OWCP affirmed the March 8, 2012 decision finding that the evidence of record failed to establish that appellant's diagnosed condition was causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[8] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[9]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[10] The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[11]

ANALYSIS

OWCP accepted appellant's factors of federal employment as a claim representative. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her diagnosed conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed additional bilateral shoulder, hand, wrist and neck conditions causally related to factors of her federal employment as a claim representative.

In medical reports dated September 14 to October 19, 2007, Dr. Schwartzman reported that appellant sustained a whiplash injury from a nonemployment-related motor vehicle accident on July 6, 2006. He diagnosed cervical sprain and recurrent bilateral CTS. While Dr. Schwartzman provided a diagnosis, none of his reports mentioned a work-related cause or aggravation of her injuries. His statement that appellant's pain and numbness were aggravated

[8] *Elaine Pendleton*, *supra* note 6 at 1143.

[9] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005);*Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[10] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[11] *James Mack*, 43 ECAB 321 (1991).

by repetitive motion is not sufficiently rationalized to establish that her employment factors caused or aggravated her conditions. Moreover, Dr. Schwartzmanstated that her pain and numbness continued when she was not working and performing repetitive tasks. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12]

Dr. Moore stated that appellant no longer had clinical CTS and noted that a positive EMG was normal following CTS release surgeries.He speculated that her EMG was suspicious for a C5-6 radiculopathy, which could potentially explain her symptoms. Appellant's permanent restrictions remained the same with a 30-minute typing restriction, 30-minute 10 key restriction and a 4-hour hand use restriction. Dr. Moore's report finds her CTS resolved and that any current symptoms could be a result of C5-6 radiculopathy but failed to provide a firm medical diagnosis. As he failed to provide any kind of diagnosis or detail regarding appellantcurrent symptoms, it fails to establish causal connection to her employment factors.[13]

In his April 25, 2011 medical report, Dr. Ellis reviewed appellant's medical history, provided findings on physical examination and reviewed her description of her employment workstation and work duties and opinedthat her injuries arose out of and in the course of her employment and that employment factors and work duties contributed to, aggravated and/or caused her stated injuries, disabilities and impairments set forth in his report. He opined that she could not return to any type of work where she would be doing data entry or repetitive work with her hands. Dr. Ellis restricted repetitive pulling, pushing, gripping or pinching with the fingers and recommended vocational rehabilitation, retraining and job placement.

The Board finds that the opinion of Dr. Ellis is not well rationalized. Dr. Ellis provided a list of diagnoses including muscle tendon unit strain of the neck, deranged discs in the neck, muscle tendon unit strain of the shoulders with traumatic arthritis and impingement syndrome in both shoulders, bilateral mild brachial plexus impingement, bilateral medial epicondylitis with ulnar nerve impingement and cubital tunnel syndrome, bilateral radial tunnel tendinitis and radial tunnel syndrome, bilateral deQuervain'sstenosing tenosynovitis, bilateral tendinitis in the wrists with CTS and median nerve impingement, bilateral tendonitis in the wrists with Guyon's canal syndrome and ulnar nerve impingement and traumatic arthritis of the carpometacar-pophalangeal joint of the right and left thumb. He opined, based solely on appellant's description of her duties, that her injuries arose out of and in the course of her employment and that employment factors and work duties contributed to, aggravated and/or caused her stated injuries.

Dr. Ellis made no mention of the fact that appellant voluntarily chose to stop using the software, which was provided to accommodate her conditions or that she rarely worked a full day after April 5, 2010. He attributed repetitive data entry to the cause of her condition but she was provided accommodations which eliminated repetitive movements. While Dr. Ellis stated that appellant's repetitive work duties contributed to her preexisting conditions, he was not

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009) and *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[13] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

provided an accurate history of her employment factors or the duties she was required to perform. Hewas unaware how often she was required to perform certain tasks or the frequency of other physical movements. Dr. Ellis provided multiple diagnoses and generally found that all of appellant's conditions were causally related to her employment. He failed to provide a sufficient understanding of her employment factors to make a determination of causal relationship. Dr. Ellis' report is therefore of limited probative value.[14]

Although Dr. Ellis requested more information as to the specifics of appellant's employment duties, he admitted in his March 27, 2012 supplemental report that he had not been provided with a written and extensive job description. As he did not have a proper understanding of her employment factors, his opinion on causal relationship is speculative and of little probative value. Furthermore, Dr. Ellis failed to address Dr. Moore's September 3, 2010 report, which stated that her bilateral CTS had resolved or address Dr. Schwartzman's findings that her condition continued to worsen even when she was off work and not performing repetitive tasks. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established factors of employment.[15] Dr. Ellis' report does not meet that standard and is insufficient to meet appellant's burden of proof.[16]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Wolf's diagnostic report interpreted an MRI scan of the cervical spine with no other details or findings regarding her condition and factors of federal employment. Dr. Prostic's May 17, 2010 report provided a diagnosis of bilateral CTS but failed to provide any opinion on the cause of appellant's condition. Dr. Moore's January 27, 2009 report provided appellant with permanent work restrictions with no findings on causation. While all of appellant's physicians provided a firm medical diagnosis, they failed to state any opinion on causal relationship.[17] Thus, the additional medical reports are of limited probative value.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a claims representative and her bilateral CTS, shoulder, wrist, hand and neck conditions. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

[14] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[15] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[16] *Supra* note 12.

[17] *Supra* note 11.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral CTS, shoulder, wrist, hand and neck conditions are causally related to factors of her federal employment as a social insurance specialist claims representative.

ORDER

IT IS HEREBY ORDERED THATthe August 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board