

On December 17, 2012 appellant was treated by Dr. Eric Solomon, an osteopath, for shoulder pain and anxiety. Dr. Solomon prescribed a medication and returned her to work on December 18, 2012 with restrictions. Appellant submitted a December 19, 2012 prescription note from Dr. Natu R. Patel, a Board-certified family practitioner, who noted that she was under his care for severe anxiety and uncontrolled hypertension and was referred to a psychiatrist. Dr. Patel placed appellant off work pending an evaluation.

On December 19, 2012 the employer's Office of the Inspector General provided a memorandum noting that on December 17, 2012 appellant was called to the branch manager's office to be interviewed regarding a refund investigation for a coworker. Appellant requested that the interview be postponed until after Christmas because of personal issues regarding her daughter and grandson. The special agents agreed to postpone the interview but requested that she provide handwriting samples. Appellant provided handwriting samples from 9:17 a.m. to 11:30 a.m. and was given breaks. On December 18, 2012 the branch manager advised the special agent that she had filed a Form CA-1 alleging that she injured her left hand, arm and shoulder when she was required to write under pressure for two and a half hours. The special agent noted that appellant voluntarily agreed to provide writing samples and was repeatedly given the opportunity to take breaks. The special agent indicated that on December 18, 2012 he received an e-mail from appellant's supervisor, Marinda Williams, who advised that on December 17, 2012 at 1:45 p.m. appellant asked to be taken to urgent care because her left arm, shoulder and hand were hurting because she was required to write for two and a half hours. Ms. Williams noted that appellant completed a CA-1 form using her right hand because her left hand hurt. She noted taking appellant to the urgent care and advised that appellant returned to the employing establishment at 5:45 p.m. to clock out. Appellant's cash drawers were audited on December 18, 2012.

In a December 31, 2012 letter, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim.

In an undated statement appellant noted that, on December 17, 2012, she arrived at work at 5:00 a.m. and sorted mail, emptied mail equipment, distributed and scanned parcels. At 9:30 a.m. she was escorted to her supervisor's office with two agents who wanted to interview her and obtain a handwriting sample. Appellant asserted that she provided a handwriting sample for two and a half hours. She advised that her hand, arm, neck and shoulder hurt her after four and a half hours of lifting overhead, reaching and lifting mail out of equipment, pulling and pushing equipment and then being required to provide a writing sample for two and half hours, which further aggravated her condition.

Appellant submitted a December 17, 2012 emergency medical service report, which noted that she was picked up at her physician's office where she was complaining of anxiety and pain and was transported to a hospital. She reported a history of anxiety and hypertension noting that she was at the physician's office for a work-related injury and stress. Appellant submitted physical therapy notes from December 21 to 27, 2012.

In a December 18, 2012 report, Dr. Solomon, an osteopath, treated appellant for neck and shoulder pain. Appellant reported pain in the left trapezius and left lateral neck and anxiety due to stress in her personal life. Dr. Solomon noted findings of normal motor, sensory and strength,

left shoulder revealed full range of motion in all directions with pain and normal median, radial and ulnar nerve function. He diagnosed shoulder strain and anxiety and returned appellant to work modified duty. Appellant was treated by a physician's assistant on December 27, 2012 for left shoulder pain. In a December 27, 2012 return to work certificate, the physician's assistant diagnosed shoulder pain and anxiety and noted that she could return to work on December 27, 2012 with restrictions.

Dr. Pamela Gordon, a Board-certified family practitioner, treated appellant on January 3, 2013, for left shoulder pain. Appellant reported lifting and moving parcels for five hours, which initiated the pain and then providing writing samples for two hours which aggravated her symptoms. She had full neck rotation with pain in the left trapezius, decreased range of motion of the left shoulder, normal sensation and normal grip strength. Dr. Gordon diagnosed left rotator cuff and trapezius strain. She continued physical therapy and returned appellant to work with restrictions. In a January 3, 2013 note, Dr. Gordon diagnosed shoulder pain and anxiety. She returned appellant to work on January 3, 2013 with restrictions.

In a January 15, 2013 form report, Dr. Patel noted that appellant worked as a clerk and sorted and distributed mail and parcels. Appellant reported being treated at the hospital for shoulder pain on December 17, 2012 and that she was undergoing physical therapy. Dr. Patel noted that the condition would periodically prevent her from working and she would be absent during flare ups. He noted that if the shoulder pain worsened or the anxiety worsened then appellant may need time off. In January 15, 2013 progress notes, Dr. Patel treated her for left shoulder pain and anxiety. He noted findings of painful left shoulder on rotation, tenderness of the trapezius and palpable tenderness of the cervical spine, upper back and neck. Dr. Patel diagnosed acute left shoulder pain and acute upper back pain and recommended physical therapy and Advil.

In a February 4, 2013 decision, OWCP denied the claim on the grounds that the evidence was not sufficient to establish that appellant's condition arose in the course of employment.

On March 5, 2013 appellant requested a review of the written record. She submitted a December 17, 2012 emergency room report from Dr. Lauren C. Morrell, an osteopath, who treated appellant for left shoulder pain which occurred at the courthouse. Appellant reported undergoing handwriting interrogation at the courthouse for an investigation at work and was forced to write for two to three hours and had anxiety with palpitations and left shoulder pain. Dr. Morrell noted findings of anxiety, normal range of motion, normal strength and left trapezius spasm. She diagnosed nontraumatic left shoulder pain reproducible with palpation likely overuse from writing all afternoon and tension from anxiety. Appellant submitted a February 26, 2013 report from Dr. Patel who treated her for a left shoulder injury and anxiety. Dr. Patel diagnosed anxiety and left shoulder pain.

Appellant provided reports from Dr. Evan S. Kovalsky, a Board-certified orthopedist. On January 21, 2013 Dr. Kovalsky saw her for left neck and shoulder pain from repetitive overhead lifting and left arm use that occurred on December 17, 2012. He noted left shoulder pain, range of motion with impingement, painful cervical range of motion and tenderness of the left neck and trapezius. Dr. Kovalsky diagnosed left shoulder tendinitis/impingement, overuse injury and cervical and trapezius sprain and strain. He returned appellant to work with restrictions. In a

February 12, 2013 report, Dr. Kovalsky treated her for left shoulder pain with numbness and tingling in her fingers on the left side. He noted findings of intact motor and sensation in the upper extremities, no atrophy, no cervical tenderness, some tenderness over the lateral and upper trapezium and no weakness. Left shoulder x-rays showed no evidence of fractures or avulsions and slight narrowing of the acromioclavicular joint. Dr. Kovalsky diagnosed bursitis, tendinitis and impingement of the left shoulder and mild left cervical and trapezial sprain and strain. He opined that the findings were consistent with the mechanism of injury with overuse causing strain to these regions and left shoulder inflammation. Dr. Kovalsky recommended physical therapy and returned appellant to modified duties. In a February 12, 2013 form report, he noted treating appellant, her diagnoses and work status. Dr. Kovalsky continued to submit status reports through April 2, 2013.

In a decision dated May 30, 2013, an OWCP hearing representative affirmed the February 4, 2013 decision. The hearing representative found that the medical evidence did not establish that work factors caused the claimed physical conditions and also found that no compensable work factors were established with regard to her emotional reaction.

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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁶

ANALYSIS

In the instant case, it is not disputed that, on December 17, 2012, appellant performed her usual duties such as sorting mail and that, from about 9:17 a.m. to 11:30 a.m., she provided handwriting samples as part of an investigation. It is also not disputed that she was diagnosed with left shoulder overuse syndrome, impingement and tendinitis and left cervical and trapezius strain and sprain. However, appellant has not submitted sufficient medical evidence to establish that these diagnosed conditions are causally related to the December 17, 2012 work activities.

Appellant submitted reports from Dr. Kovalsky in support of her claim. On January 21, 2013 Dr. Kovalsky treated her for left neck and shoulder pain from repetitive overhead lifting and use of the left arm which occurred on December 17, 2012. He diagnosed left shoulder tendinitis/impingement and overuse injury and cervical and trapezius sprain and strain. On February 12, 2013 Dr. Kovalsky noted diagnoses and opined that his findings were consistent with the mechanism of injury with overuse causing strain to these regions and inflammation of the left shoulder. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and the employment incident.⁷ For instance, Dr. Kovalsky failed to explain how repetitive overhead lifting or prolonged writing would cause the diagnosed overuse syndrome, left cervical and trapezial sprain and strain and left shoulder bursitis, tendinitis and impingement and why the condition was not caused by nonwork-related factors. Other reports from him are insufficient as they did not specifically address causal relationship.

Appellant was treated by Dr. Gordon on January 3, 2013, for left shoulder pain. She reported lifting and moving parcels for five hours, which initiated the pain and then she provided writing samples for two hours which aggravated her symptoms. Dr. Gordon diagnosed left rotator cuff strain and trapezius strain. However, she appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether her condition was work related. To the extent that Dr. Gordon is providing her own opinion, she failed to provide a rationalized opinion regarding the causal relationship between appellant's left

⁵ *Betty J. Smith*, 54 ECAB 174 (2002).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

shoulder and trapezius pain and the factors of employment believed to have caused or contributed to such condition.⁸ Therefore, this report is insufficient to meet appellant's burden of proof.

In a December 17, 2012 report, Dr. Morrell treated appellant for left shoulder pain. Appellant reported undergoing handwriting interrogation for an investigation at work and noted that she was forced to write for two to three hours straight and had anxiety with palpitations and left shoulder pain. Dr. Morrell diagnosed nontraumatic left shoulder pain reproducible with palpation likely overuse from writing all afternoon and tension from anxiety. The Board notes that her report provides some support for causal relationship but is insufficient to establish the claimed left shoulder injury was causally related to her employment duties. Dr. Morell's reports, at best, provides unrationalized and speculative support for causal relationship as she noted that appellant's left shoulder pain was "likely" due to overuse from writing.⁹ Her opinion was also based on an inaccurate history as she indicated that appellant wrote without pause all afternoon.¹⁰ As noted, December 19, 2012 investigative memorandum shows that the writing sample was given from about 9:17 a.m. to 11:30 a.m. and that appellant had breaks as needed. Therefore, this report is insufficient to meet her burden of proof.

Appellant submitted a December 19, 2012 prescription note from Dr. Patel who noted that she was under his care for severe anxiety and uncontrolled hypertension. In a January 15, 2013 form report, Dr. Patel noted that she worked as a clerk and sorted mail, distributed mail and parcels. Appellant reported being treated at a hospital on December 17, 2012 for shoulder pain. Dr. Patel also noted her work status. In other reports he continued noting appellant's status. However, these reports are insufficient to establish the claim as Dr. Patel did not provide a history of injury¹¹ and did not specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.¹² Similarly, Dr. Solomon's December 17 and 18, 2012 reports noted treating her for shoulder pain and anxiety and he set forth her work status. However, he did not provide a history of injury or offer a specific opinion on how appellant's employment could have caused or aggravated her conditions.

Appellant submitted a December 17, 2012 emergency room report, physical therapy notes and reports from a physician's assistant. However, this evidence is of no probative

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

¹⁰ *See Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

¹¹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹² *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

medical value as these providers are not physicians under FECA and thus are not competent to render a medical opinion under FECA.¹³

The Board finds that the medical evidence does not establish that any physical condition is causally related to appellant's employment. Consequently, OWCP therefore properly found that she did not meet her burden of proof in establishing her claim.

OWCP's hearing representative also found that, to the extent that appellant alleged that she developed an emotional condition, she did not establish a compensable employment factor.¹⁴ Appellant attributed anxiety due to the investigation when she met with investigators and provided a writing sample on December 17, 2012. However, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties, are not considered to be a factor of employment absent error or abuse.¹⁵ A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation were in error or unreasonable. She provided no corroborating evidence, such as witness statements, to establish that such action was unreasonable.¹⁶ Instead, the employer's investigator explained the reasons for the actions and denied any unreasonable action. Appellant has not established a compensable employment with regard to the investigation and thus has not established a claim for an emotional condition due to the December 17, 2012 matter.

On appeal, appellant asserts that she was at work at the time of the incident and that she had a prior accepted work injury and was taken to the hospital as a result of her work injuries. The Board notes that the present claim pertains to events of December 17, 2012. As explained, appellant has not submitted sufficient evidence to establish her claim.

¹³ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

¹⁴ Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*, 28 ECAB 125 (1976) the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.

¹⁵ *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991). Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor. In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably. *S.M.*, Docket No. 09-2290 (issued July 12, 2010).

¹⁶ See *Larry J. Thomas*, 44 ECAB 291, 300 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board