

alleged that typing a high volume of invoices into an accounting system caused her conditions. Appellant first became aware of her conditions and their relation to her employment on April 20, 2013. The employing establishment did not indicate that she stopped work.

By letter dated May 7, 2013, OWCP notified appellant that the evidence was insufficient to establish her claim. It advised her that she had 30 days to submit medical evidence from her attending physician that included a diagnosis, history of the condition, and an opinion on causal relationship supported by medical rationale.

In a May 29, 2013 statement, appellant requested more time to submit medical evidence because she was having difficulty finding a clinic to evaluate a workers' compensation claim. In a June 3, 2013 statement, she advised that she sits at a computer entering invoices into an accounting system for eight hours a day. Appellant stated that her work activities aggravate her disorders causing pain in her neck, shoulders, and arms. She noted that her sleep was compromised as a result. Appellant further noted that she was previously diagnosed with cervical and lumbar spinal stenosis, degenerative disc disease, and bilateral carpal tunnel syndrome. She stated that she stopped working in 2004, but later returned to work in 2007. Appellant also advised that she previously underwent a cervical and lumbar laminectomy and fusion surgery in October 2005 and August 2009, as well as bilateral carpal tunnel surgery in November 2003.

In a February 21, 2008 report, Dr. Mark Chang, Board-certified in orthopedic surgery, noted that appellant was under his care for chronic neck and lower back pain. He diagnosed lumbar degenerative disc disease and stenosis, cervical degenerative disc disease, and bilateral wrist osteoarthritis. Dr. Chang stated that appellant's permanent work restrictions included no standing for periods longer than 45 minutes at a time for no more than 3 hours per 8-hour workday and standing for no more than 30 minutes at a time for no more than 2 hours in an 8-hour workday. He also limited appellant's lifting to no more than 10 pounds on a frequent basis and no more than 20 pounds on a rare basis.

In a June 11, 2013 report, Dr. Munawar Haider, Board-certified in family medicine, noted that appellant complained of neck pain. He stated that she experienced cumulative trauma from the use of her keyboard at work. Dr. Haider diagnosed backache, pain in the joint involving the shoulder, and cervicalgia. In a June 12, 2013 report, he diagnosed cervicalgia and pain in the joint involving the shoulder region and advised that appellant was able to return to work. June 17, 2013 shoulder x-rays, ordered by Dr. Haider, revealed no significant bone or joint abnormality. The subacromial spaces appeared grossly adequate, the glenohumeral and acromioclavicular (AC) joints appeared unremarkable, and soft tissue appeared unremarkable. Cervical spine x-rays noted an anterior fusion of C5 through C7, grade 1 retrolisthesis of C5 on C6, and moderate degenerative changes at C4-5. In a July 8, 2013 report, a physician's assistant noted that appellant works at a computer every day. He stated that she related to him that her cervical stenosis was aggravated at work, causing numbness in both lateral hands and pain that radiated up her arms.

By decision dated August 6, 2013, OWCP denied appellant's claim because medical evidence did not establish a diagnosed condition causally related to work events.

By letter dated August 9, 2013, appellant, through her attorney, requested a telephone hearing. She continued to submit additional evidence. A July 18, 2013 report, signed by Dr. Larry Kjeldgaard, an orthopedic surgeon, as well as a physician's assistant, noted that appellant presented with complaints of cervical pain with a gradual onset that began many years earlier. He noted her 2009 fusion and constant pain that radiated to both arms. Dr. Kjeldgaard reported findings and diagnosed spondylosis with radiculopathy and degenerative disc disease. He stated that appellant showed him "a paper describing her job activities." Dr. Kjeldgaard opined that, although there were work activities that are repetitive, there was no "lifting, pushing, or pulling that would greatly exacerbate her condition." He advised that "she would probably have discomfort whether she was working or not." Dr. Kjeldgaard indicated that appellant could continue her current work activities.

In a January 20, 2014 report, Dr. Kjeldgaard advised that an August 30, 2013 magnetic resonance imaging (MRI) scan revealed diffuse degenerative changes of the cervical spine appearing most pronounced at C4-5. Imaging also showed a mild central canal stenosis with severe left and moderate right neural foraminal stenosis at C4-5, moderate left and mild right neural foraminal stenosis at C7-T1, and mild bilateral neural foraminal stenosis at C3-4 and C5-6. Dr. Kjeldgaard stated that appellant described her condition as being work related and opined that, if the history as reported by appellant was true, then he believed that there was causal relationship between her spinal complaints and her work activities.

A telephone hearing took place on January 9, 2014. Appellant stated that she believed that her work duties aggravated her stenosis and that she missed over 100 hours of work as a result. She also stated that she has been employed by the employing establishment for eight years and that she previously had carpal tunnel in 2003 and surgery to repair her cervical stenosis in 2009. The hearing representative advised appellant and her attorney that he would hold the record open for 30 days for the submission of medical opinion evidence.

In a January 22, 2014 report, Dr. Kjeldgaard advised that appellant previously underwent a cervical fusion by another physician and that recent x-rays showed those levels to be fused with excellent alignment. He stated that she was having some cervical neck and shoulder pain that was bothersome at appellant's workstation. Dr. Kjeldgaard stated that he did not know whether appellant's duties aggravated her condition because her condition predates her being seen in his office.

By decision dated April 23, 2014, an OWCP hearing representative affirmed the August 6, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

the employment injury.² 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.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, 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.⁴

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁵ 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.⁶

ANALYSIS

Appellant claimed that she began experiencing shoulder, arm, and neck pain on April 20, 2013 as a result of her work activities. There is no dispute that appellant types, as part of her job, and the evidence supports this. However, the medical evidence is insufficient to establish that the medical condition was causally related to the employment duties.

In a July 18, 2013 report, Dr. Kjeldgaard reported findings and diagnosed spondylosis with radiculopathy and degenerative disc disease. He stated that appellant showed him a description of her job activities. Dr. Kjeldgaard advised that, while her work activities were repetitive, there was no "lifting, pushing, or pulling that would greatly exacerbate her condition." He opined that "she would probably have discomfort whether she was working or not." This report seems to negate causal relationship. In his January 20, 2014 report, Dr. Kjeldgaard advised that appellant described her condition as being work related and opined that, if the history as reported by appellant was true, then he believed that there was causal relationship between her spinal complaints and her work activities. He simply stated the history as provided to him by appellant. The Board has held that a physician's opinion regarding causal relationship

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

⁶ *James Mack*, 43 ECAB 321 (1991).

that is primarily based on appellant's own representations rather than objective medical findings is of limited probative value.⁷

Even considering the history provided by Dr. Kjeldgaard and his own opinion regarding causal relationship; the report fails to provide adequate medical rationale. He failed to explain how appellant's work activities aggravated her diagnosed conditions. In his January 22, 2014 report, Dr. Kjeldgaard advised that she was having some cervical neck and shoulder pain that was bothersome at her workstation. He stated that he does not know whether appellant's duties aggravated her condition because her condition predated her being seen in his office. In his January 20, 2014 report, Dr. Kjeldgaard found that her conditions were causally related. He did not explain why he changed his opinion in his January 22, 2014 report. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.⁸

In his June 11, 2013 report, Dr. Haider diagnosed backache, pain in the joint involving the shoulder, and cervicgia. He noted that appellant experienced cumulative trauma from the use of her keyboard at work. Although Dr. Haider's comments can be construed as an opinion supporting causal relationship, he does not provide adequate rationale explaining how the use of a keyboard aggravated appellant's diagnosed conditions. As a result, it is insufficient to discharge appellant's burden of proof.

Other medical reports submitted by appellant, including reports of diagnostic testing, do not offer an opinion on causal relationship. Therefore, they are insufficient to discharge appellant's burden of proof. Appellant also submitted reports by a physician's assistant. However, records from physician's assistants do not constitute competent medical opinion in support of causal relation. A physician's assistant is not a physician as defined under FECA.⁹ Thus, records from physician's assistants are insufficient to establish the claim.¹⁰

Consequently, appellant has submitted insufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.¹¹ The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.¹² Because appellant has not provided such medical opinion

⁷ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

⁸ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

⁹ *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹⁰ *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

¹¹ *See supra* note 5.

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

evidence in this case, she has failed to meet her burden of proof. The need for rationale by a physician is particularly important since the record indicates that appellant has preexisting degenerative cervical and lumbar conditions that required surgery.

Appellant may submit new evidence or argument as part of a formal 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 establish that she sustained an occupational disease caused by work-related events.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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