

**United States Department of Labor  
Employees' Compensation Appeals Board**

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S.C., Appellant

and

SOCIAL SECURITY ADMINISTRATION,  
Salinas, CA, Employer

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**Docket No. 16-0293  
Issued: May 10, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 1, 2015 appellant filed a timely appeal of an August 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUES**

The issues are: (1) whether appellant established neck, shoulder, or wrist conditions causally related to factors of her federal employment; and (2) whether appellant established an emotional condition causally related to factors of her federal employment.

**FACTUAL HISTORY**

On April 3, 2015 appellant, then a 38-year-old teleservice representative, filed an occupational disease claim (Form CA-2) alleging that on March 30, 2015 she developed dizziness as well as pain and swelling in her neck and shoulder. She alleged that she had

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

experienced these conditions for a long time. Appellant attributed her conditions to constant typing and sitting at the computer all day, as well as to stress regarding an ongoing union issue and a prior supervisor. She also alleged carpal tunnel syndrome in both wrists due to her employment activities.

Dr. Yvonne Torrez, an internist, completed reports on April 29 and May 5, 2015 diagnosing neck pain. She stated that appellant's condition was work related. In notes dated April 29 and May 5, 2015, Dr. Torrez listed appellant's complaints of left neck pain radiating into both arms as well as dizziness. She opined that the precipitating event was typing. Dr. Torrez diagnosed neck pain and trapezius strain. She completed a form report repeating these findings and conclusions. Dr. Torrez found that appellant was totally disabled from April 5 through 29, 2015. On May 19, 2015 she opined that appellant could return to full duty.

In a letter dated June 12, 2015, OWCP requested that appellant provide additional factual and medical evidence supporting her claims.

Appellant's former supervisor, G.G. completed a statement and noted that he supervised appellant from October 2014 through mid-November 2014. He asserted that during that time he had several discussions regarding failures to adhere to policy, service observation errors, extended lunch breaks, leave usage, and family events. G.G. denied that appellant was subject to work-related stress and opined that her performance issues were due to stressful family events.

Appellant's supervisor, D.A. completed a statement dated July 1, 2015 and noted that she supervised appellant from November 3, 2014 through March 1, 2015. She indicated that there was a grievance in process against G.G. regarding a performance rating. D.A. also detailed difficulties that appellant was having with her teenage son.

In an e-mail dated November 14, 2014, appellant denied violating company policies and procedures. She alleged that she was denied leave and researched policy regarding this denial and on paid breaks. Appellant noted that she had four supervisors within the performance review period and asked that all four contribute to her evaluation. She alleged that her rating was decreased due to retaliation because she sought union assistance to remedy her denied leave request. Appellant submitted a statement dated July 8, 2015 from her husband regarding his perception of her work stress.

In an e-mail dated September 19, 2014, the union clarified that appellant would be given nine hours of advance leave and credited nine hours of annual leave. Appellant alleged in an e-mail dated April 21, 2015 that she was denied the opportunity to function as a mentor because she sought union assistance with her denied leave request.

On July 7, 2015 Dr. Joanna Oppenheim, a Board-certified family practitioner, provided work restrictions of no use of the right arm or hand.

Appellant, in a July 8, 2015 statement, alleged that G.G. improperly denied advanced sick leave using an incorrect leave policy. She contacted the union regarding this leave denial. Appellant also asserted that G.G. reduced her performance appraisal and that he attributed this to the amount of time that she was off the telephone. She contended that she was denied a promotion due to her negative appraisal. Appellant also attributed her emotional condition to the workers' compensation process and the lack of knowledge of this process by the employing

establishment. She noted that on July 8, 2015 Dr. Oppenheim restricted appellant's right arm usage and alleged that the employing establishment informed her that there was nothing else for her to do. The employing establishment allegedly indicated that appellant could use her left hand or use leave. Appellant attributed her orthopedic conditions to constantly sitting and typing for eight hours a day while looking at dual computer screens. She alleged that her conditions were related to repetitive motion.

A coworker completed a statement dated July 10, 2015 and asserted that appellant frequently complained of hand and neck pain.

Dr. Torrez completed a note dated July 13, 2015 and diagnosed trapezius strain on the left as well as carpal tunnel syndrome and cervical strain. She concluded, "The precipitating event seems to have been typing." Dr. Torrez indicated that the conditions were work related. She indicated that appellant should perform modified work from July 13 through August 3, 2015 with minimal use of the right hand and wrist. Dr. Torrez repeated her findings on August 5, 2015 and indicated that appellant was partially disabled from August 5 through 18, 2015. She completed a similar note on August 19, 2015 and provided work restrictions from August 19 through September 9, 2015.

By decision dated August 24, 2015, OWCP denied appellant's claim, finding that the medical evidence of record did not establish that she developed neck or shoulder conditions due to her employment, or a diagnosed emotional condition, causally related to factors of her federal employment.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>2</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>3</sup> Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical

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<sup>2</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>3</sup> *T.F.*, 58 ECAB 128 (2006).

certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish causal relationship between her diagnosed physical conditions and factors of federal employment.

Appellant has submitted medical evidence providing diagnosed conditions including cervical strain, trapezius strain and carpal tunnel syndrome. She also provided a narrative statement describing the employment duties which she felt contributed to these conditions including sitting and typing while looking at dual computer screens for eight hours a day.

Appellant submitted a series of reports and notes from Dr. Torrez addressing her physical conditions. Beginning on April 29 through July 13, 2015 Dr. Torrez diagnosed trapezius strain on the left as well as carpal tunnel syndrome and cervical strain. She concluded, "The precipitating event seems to have been typing." Dr. Torrez opined that the conditions were work related. The Board finds that she has failed to provide sufficient detail or medical reasoning to establish a causing relationship between appellant's diagnosed conditions and her implicated employment duty. Dr. Torrez did not explain how or why she believed that appellant's typing at work would have resulted in cervical and trapezius strain or in carpal tunnel syndrome. She did not provide any medical rationale supporting her opinion that appellant's conditions were work related. Without a well-reasoned report explaining the process by which appellant's implicated employment duties of typing at two computer screens resulted in her various diagnoses, Dr. Torrez' reports are not sufficient to meet appellant's burden of proof in establishing an occupational disease.

### **LEGAL PRECEDENT -- ISSUE 2**

To establish that an injury was sustained in the performance of duty in an occupational disease claim for an emotional condition, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

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*,<sup>6</sup> the Board

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<sup>4</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>5</sup> See *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>6</sup> 28 ECAB 125 (1976).

explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>7</sup> There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>8</sup> 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.<sup>9</sup> In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force, nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.<sup>10</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>11</sup> 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.<sup>12</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>13</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish an emotional condition, causally related to factors of her federal employment.

The first element required for any occupational disease claim is medical evidence of a diagnosed condition for which compensation is claimed. Appellant has alleged an emotional condition, stress, as the result of actions by her supervisors. OWCP reviewed these allegations and found that she had not substantiated a compensable factor of employment and had not submitted medical evidence diagnosing an emotional condition. The Board finds that, as appellant has submitted no medical evidence diagnosing an emotional condition, she has failed to

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<sup>7</sup> *Supra* note 1.

<sup>8</sup> *See Robert W. Johns*, 51 ECAB 136 (1999).

<sup>9</sup> *Supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>12</sup> *Kim Nguyen*, 53 ECAB 127 (2001). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>13</sup> *Roger Williams*, 52 ECAB 468 (2001).

establish the first element of her emotional condition claim.<sup>14</sup> Without a medical diagnosis, appellant has not presented *prima facie* evidence of an emotional condition. Due to this deficiency, the Board will affirm the denial of her claim.

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 failed to establish an occupational disease claim for injuries to her neck, shoulder, or wrist causally related to factors of her federal employment. The Board further finds that, as she failed to establish an emotional condition, causally related to factors of her federal employment she has failed to establish a *prima facie* claim for such a condition.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> See *M.M.*, Docket No. 09-1347 (issued December 18, 2009) (finding that as there was no medical evidence diagnosing an emotional condition, appellant failed to establish a *prima facie* claim); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).