



## **FACTUAL HISTORY**

On July 8, 2009 appellant, then a 50-year-old patient services assistant, filed an occupational disease claim alleging that her debilitating neck, shoulders, back, ribs, hands and wrist pain were due to the repetitive use of substandard equipment and workstations. She first became aware of her condition on November 21, 2007, but did not realize it was employment related until December 14, 2007. Appellant stopped work on July 9, 2009 and has not returned.

By letter dated July 23, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim and advised her as to the medical and factual evidence required to establish her claim.

Following OWCP's letter, appellant submitted medical and factual evidence including physical therapy reports, her statements, ergonomic evaluations of her workstations, medical reports and disability notes.

In a July 24, 2008 report, Dr. Leslie P. Dean, a treating Board-certified orthopedic surgeon with a subspecialty in hand surgery, diagnosed right wrist pain and ruled out right ulnar impaction and right Kienbock's. The physician obtained a three-to-four month history of right wrist and hand pain and noted appellant's complaints of numbness in her hand and difficulty gripping and lifting. A physical examination revealed tenderness at the right dorsal mid-wrist and lunate with full range of motion in her fingers.

In progress notes dated August 15 and 27, 2008, Dr. Declan R. Nolan, an attending Board-certified orthopedic surgeon, treated appellant for her right hip and shoulder pain. On August 15, 2008 he reported a physical examination was normal and no abnormalities were seen on x-ray interpretations of the hip or shoulder. Diagnoses were right shoulder chronic rotator cuff tendinitis and right hip trochanteric bursitis. On August 27, 2008 Dr. Nolan treated appellant with a steroid injection for her right shoulder chronic rotator cuff tendinitis.

In a December 15, 2008 report, Dr. Kathy J. Hurlburt, a treating Board-certified internist, recommended an evaluation of appellant's workstation. Diagnoses included cervical disc disease, shoulder impingement, wrist and thumb pain, ulnar positive variance, tendinitis in several joints, bursitis, lumbar disc disease and post-traumatic stress syndrome.

In a July 10, 2009 report, Dr. Annie McKinnon, a treating chiropractor, noted that appellant was seen for neck and shoulder pain, which appellant attributed to her workstations setup. She reported biomechanical joint dysfunction over the patient's C1, C6, T4, T12, L5 and right SI vertebral segments. In a separate report dated July 10, 2009, Dr. McKinnon provided physical findings and results from tests she performed.

On July 21, 2009 Dr. Michael S. Fischer, a treating Board-certified family medicine physician, noted that appellant had chronic musculoskeletal pain. He diagnosed rotator cuff syndrome, neck pain, parasthesias, carpal tunnel syndrome and lateral epicondylitis.

On August 6, 2009 Dr. Hurlburt reported that appellant had positive Phalen's and Tinel's signs. She noted that in December 2007 appellant was seen for headaches, right shoulder, neck, wrist and back pain, which she believed were employment related. Dr. Hurlburt stated that

ergonomic recommendations were made, but not implemented by appellant's employer. She opined that appellant's neck, wrist, back, hands, arms, shoulders and rib cage pain correlated with her work activities.

On August 21, 2009 Dr. Loren M. Morgan, a treating chiropractor, cervical subluxation, lumbar subluxation and thoracic subluxation and checked "no" to the question of whether there were x-ray interpretations.

On August 23, 2009 appellant was seen by Dr. Michele L. McCall, a treating Board-certified emergency room physician, for neck and shoulder pain. Dr. McCall diagnosed muscle and cervical strains.

On September 4, 2009 Dr. Morgan attributed appellant's lumbar, cervical and thoracic injuries to her poor work ergonomics.

In a September 15, 2009 report, Dr. Hurlburt diagnosed cervical, lumbar and thoracic segmental dysfunctions, paraspinal muscle spasm, trapezius spasm, cervical strain and sprain, shoulder impingement, loss of flexibility in appellant's trapezius muscle, biceps strain, lumbar strain, thoracic strain, carpal tunnel syndrome, positive ulnar variance, depression, anxiety and post-traumatic stress disorder. She noted that there had been a delay in the ergonomic evaluation and that once it was performed appellant's supervisors failed to carry out the recommendations made.

By decision dated October 1, 2009, OWCP denied appellant's claim finding that the medical evidence was insufficient to establish a causal relationship between the diagnosed medical conditions and employment factors identified by appellant.

Appellant requested an oral hearing before OWCP's hearing representative and a telephonic hearing was held on March 4, 2010.

In a March 11, 2010 report, Dr. Hurlburt diagnosed bilateral shoulder impingement syndrome and cervical strain injury, which rendered appellant totally disabled and was due to appellant's employment duties. She stated that appellant's work duties of reaching for the telephone, reference materials and computer to perform data entry and using a clipboard as a writing surface as well as her work schedule and workstation ergonomics caused her shoulder impingement and cervical strain. Dr. Hurlburt noted appellant's shoulder impingement was caused by repetitively raising her arms above the shoulders and reaching forward at work. As to the cervical strain, she attributed it to appellant's "utilizing a computer keyboard that was too high for use in a horizontal position" and that this height "caused wrist flexion and overuse of the neck muscles while typing." In addition, the placement of appellant's monitor was too low causing her to put her head forward caused stress on her mid-back and neck. Dr. Hurlburt then described physical mechanics of the shoulder impingement and neck strain occurred. She reiterated that recommendations made in an ergonomic evaluation were not implemented by the employing establishment.

By decision dated May 18, 2010, OWCP's hearing representative affirmed the denial of her claim. She found that the record was devoid of any rationalized medical opinion supporting causal relationship with objective evidence.

## LEGAL PRECEDENT

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

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>3</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.

## ANALYSIS

Appellant filed an occupational disease claim alleging debilitating pain of her neck, shoulders, back, ribs, hands and wrist to the repetitive use of substandard equipment and workstations. The employing establishment did not controvert that she performed these duties. The Board notes that appellant performed the duties of a patient services assistant and that ergonomic evaluations were made. OWCP found that the medical evidence did not establish a medical condition arising from these employment factors. The issue is whether the medical evidence establishes a causal relationship between the claimed conditions to the identified employment factors.

The record contains several reports from Dr. Hurlburt who provided physical findings and diagnosed cervical disc disease, shoulder impingement, wrist and thumb pain, ulnar positive variance, tendinitis in several joints, bursitis, lumbar disc disease and post-traumatic stress syndrome. On March 11, 2010 Dr. Hurlburt diagnosed bilateral shoulder impingement syndrome and cervical strain injury which she attributed to appellant's employment duties. She advised that appellant was totally disabled as a result of these conditions. Dr. Hurlburt noted that appellant's work duties involved reaching for the telephone, reference materials and computer to perform data entry. Appellant used a clipboard as a writing surface and addressed the workstation ergonomics as causes of her shoulder impingement and cervical strain. Dr. Hurlburt noted that appellant's shoulder impingement was caused by repetitively raising her arms above

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<sup>2</sup> *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>3</sup> *David Apgar*, 57 ECAB 137 (2005); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

<sup>4</sup> *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

the shoulders and reaching forward at work. As to the cervical strain, she attributed it to appellant's "utilizing a computer keyboard that was too high for use in a horizontal position" and that this height "caused wrist flexion and overuse of the neck muscles while typing." The placement of appellant's monitor was too low causing her to put her head forward caused stress on her mid-back and neck. Dr. Hurlburt provided specific diagnoses and identified appellant's employment activities believed to have caused or contributed to the claimed identified conditions. Although she did not explain in detail how the employment activities were competent to cause appellant's conditions, her report supports a causal relationship between the identified activities and the neck strain and shoulder impingement conditions.

The record also contains reports from Drs. Dean, Fischer, McCall and Nolan. In a July 24, 2008 report, Dr. Dean provided physical finding and diagnoses of right wrist pain and rule out right ulnar impaction and right Kienbock's. On July 21, 2009 Dr. Fischer diagnosed a rotator cuff syndrome, neck pain, parasthesias, carpal tunnel syndrome and lateral epicondylitis. On August 23, 2009 appellant was seen by Dr. McCall who diagnosed muscle and cervical strains. Dr. Nolan, in progress notes dated August 15, 2008, reported a normal physical examination and no abnormalities on x-ray interpretations of the hip or shoulder. His diagnoses included right shoulder chronic rotator cuff tendinitis and right hip trochanteric bursitis. None of these reports are sufficient to support appellant's claim as none of the reports contain an opinion on causal relationship, they are of limited probative value on that issue.

Appellant also submitted reports from her chiropractors, Drs. McKinnon and Morgan. However, none of these reports are sufficient to support her claim or require further development. Dr. McKinnon did not diagnose a subluxation by x-ray interpretation. While Dr. Morgan did diagnose thoracic, lumbar and cervical subluxations, the chiropractor did not base this diagnosis on an x-ray interpretation. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>5</sup> Neither Dr. Morgan nor Dr. McKinnon diagnosed a spinal subluxation based on x-ray. Therefore, the Board finds that these reports are of no probative medical value.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>6</sup>

The Board finds that the medical evidence is consistent in indicating that appellant sustained an employment-related neck and shoulder conditions. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's diagnosed conditions and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>7</sup>

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<sup>5</sup> 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *see A.O.*, Docket No. 08-580 (issued January 28, 2009).

<sup>6</sup> *R.E.*, 59 ECAB 323 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

<sup>7</sup> *See Virginia Richard*, 53 ECAB 430 (2002); *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

The case will be remanded to OWCP to obtain a rationalized opinion from a qualified physician as to whether appellant's neck and shoulder conditions are causally related to the identified work activities. After such development as it deems necessary, OWCP should issue a *de novo* decision in order to protect appellant's rights on appeal.

**CONCLUSION**

The Board finds that this case is not in posture for a decision on whether appellant sustained a neck and bilateral shoulder injuries as a result of established employment activities.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 18, 2010 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: August 9, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board