

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed an occupational disease due to factors of her federal employment.

FACTUAL HISTORY

On July 26, 2010 appellant, then a 50-year-old psychology technician, filed an occupational disease claim alleging that she developed neck, shoulder and wrist injuries due to excessive computer and telephone usage in the performance of duty. She alleged that she did not have proper equipment.

In a letter dated October 20, 2010, OWCP requested additional factual and medical evidence in support of appellant's claim. Appellant submitted a report dated August 24, 2010 from Dr. Aurora P. Dela Rosa, a physician Board-certified in physical medicine and rehabilitation, who noted appellant's history of left shoulder, neck and wrist pain for one year. Dr. Dela Rosa diagnosed chronic left cervical pain, chronic left cervical and upper trapezius myofascial pain dysfunction, left supraspinatus tendinitis, left ulnar neuritis across the elbow, median neuritis across the wrists and left extensor pollicis tendinopathy across the wrists. She recommended physical therapy and diagnostic testing as well as proper ergonomic equipment in the workplace for proper body posture.

Appellant submitted a narrative statement dated November 11, 2010 and described her work activities including printing out reports and entering new data into the computer for 125 charts. She stated that she made 100 telephone calls. Appellant reported writing notes or typing while engaging veterans therapeutically. She indicated that she typed from 10:30 a.m. to 12:45 p.m. and printed reports and entered new data from 1:00 p.m. to 2:00 p.m. Appellant noted that, after conducting individual therapy sessions, she typed clinical progress notes from 2:30 p.m. to 4:00 p.m. She stated that her workload increased in April 2010 and that her work hours increased from 8 to 11 hours a day. Appellant attributed her condition to "holding the telephone while typing and writing simultaneously."

Dr. Dela Rosa completed a work capacity evaluation on November 5, 2010 and diagnosed severe shoulder pain aggravated by work as well as low back pain aggravated by prolonged sitting. She provided work restrictions. On the same date, Dr. Dela Rosa completed a form report and diagnosed left cervical pain, left shoulder pain due to sub deltoid bursitis, left cervical radiculitis and low back pain. She indicated with a checkmark "yes" that she believed that appellant's condition was caused or aggravated by an employment activity and stated, "constant lifting and use of arm at work."

By decision dated November 23, 2010, OWCP denied appellant's claim finding that she had not submitted sufficiently detailed medical opinion evidence to establish a causal relationship between her diagnosed condition and her established employment duties.

Dr. Dela Rosa completed a report on November 5, 2010 and repeated her earlier diagnoses and findings. Appellant underwent an electromyogram (EMG) on January 5, 2011 which demonstrated a bilateral median nerve neurapraxia or bilateral chronic mild carpal tunnel syndrome and chronic C5-6 cervical radiculopathy. Dr. Laura E. Ross, an osteopath, examined appellant on February 28, 2011 and noted appellant's history of working in an awkward position,

making excessive telephone calls and typing simultaneously. She performed a physical examination and noted crepitus in appellant's left shoulder and tenderness as well as loss of range of motion. Dr. Ross found positive Tinel's and Phalen's signs in both wrists with decreased sensation in the median nerve distribution of both hands. She diagnosed left shoulder impingement syndrome and bilateral carpal tunnel syndrome greater on the left based on magnetic resonance imaging (MRI) scan and EMG studies. Dr. Ross stated, "I find her injuries to her left shoulder and bilateral wrist to be directly related to the repetitive trauma at work." She indicated that appellant was typing seven hours a day and writing eight hours a day with movement in her left upper extremity.

Appellant, through counsel, requested reconsideration on March 2, 2011. She submitted a report dated December 17, 2010 from Dr. Raymond Ragland, III, a Board-certified orthopedic surgeon, diagnosing bilateral carpal tunnel syndrome greater on the left. Dr. Ragland recommended a left carpal tunnel release and stated that to a reasonable degree of medical certainty appellant's bilateral carpal tunnel syndrome was the result of her employment duties.

The employing establishment responded on May 10, 2011 and stated that appellant stopped work on November 2, 2010 after receiving a proposed removal from the employing establishment on October 22, 2010 following a failed Performance Improvement Plan (PIP). It stated that as a psychology technician appellant was required to make notes in the medical record of her patient and maintain weekly progress reports but was not successfully performing these duties. The employing establishment stated that her major responsibility was delivery of psychological services to patients, participation in treatment planning and serving as a member of an interdisciplinary team. It submitted an April 7, 2010 notification that appellant failed to deliver psychological services by failing to make follow-up calls to the 69 patients assigned. During appellant's PIP period she was responsible for telephone calls for 132 patients and was deficient in 38 percent. Appellant responded and submitted additional information regarding her PIP.

By decision dated June 3, 2011, OWCP reviewed the merits of appellant's claim and denied modification of its November 23, 2010 decision. It found that Dr. Ross's report was not based on an accurate factual history as appellant's account of her daily activities differed significantly from the employing establishment.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."³ 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

³ 20 C.F.R. § 10.5(q).

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.⁴

ANALYSIS

Appellant has attributed her neck, shoulder and wrist conditions to typing, talking on the telephone and taken written notes for several hours a day in the performance of her job duties. The employing establishment has provided information that she was responsible for calling between 69 and 132 patients during various periods. While it indicated that appellant did not meet her standards, the record establishes that telephoning patients was part of her job duties. Appellant has also provided medical evidence diagnosing several conditions including bilateral carpal tunnel syndrome, upper trapezius myofascial pain dysfunction, left supraspinatus tendinitis, left ulnar neuritis across the elbow, median neuritis across the wrists, sub deltoid bursitis, left cervical radiculitis, left shoulder impingement syndrome and left extensor pollicis tendinopathy across the wrists. Appellant has therefore met the first two requirements of an occupational disease claim.

Appellant must also submit rationalized medical opinion evidence establishing a causal relationship between her diagnosed condition and her implicated employment duties. Dr. Dela Rosa submitted a form medical report supportive of causal relationship between appellant's medical conditions and her employment. On November 5, 2010 she diagnosed left cervical pain, left shoulder pain due to sub deltoid bursitis, left cervical radiculitis and low back pain indicating with a checkmark "yes" that she believed that appellant's condition was caused or aggravated by an employment activity. Dr. Dela Rosa attributed appellant's conditions to "constant lifting and use of arm at work." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Dr. Dela Rosa did not explain why she believed that appellant's diagnosed conditions were due to her implicated employment duties of typing, writing and talking on the telephone. Instead she attributed appellant's condition to lifting and use of her arm. Appellant has not provided a history of lifting and this report does not correlate the implicated activities and the diagnosed condition such that she has established a causal relationship.

In a report dated February 28, 2011, Dr. Ross noted appellant's history of working in an awkward position, making excessive telephone calls and typing. She diagnosed left shoulder impingement syndrome and bilateral carpal tunnel syndrome greater on the left based on an MRI scan and EMG studies. Dr. Ross attributed appellant's conditions to repetitive trauma at work including typing seven hours a day and writing eight hours a day with movement in her left upper extremity. The Board finds that appellant's factual statement does not support the levels of activities reported by Dr. Ross. Appellant indicated that she typed less than four hours a day in her factual statement. As her reported activities are not as great as Dr. Ross's history, this report is of diminished probative value and cannot meet appellant's burden of proof.

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Dr. Ragland completed a report on December 17, 2010 and diagnosed bilateral carpal tunnel syndrome. He stated that to a reasonable degree of medical certainty appellant's bilateral carpal tunnel syndrome was the result of her employment duties. As Dr. Ragland did not specify the employment duties to which he attributed appellant's condition, his report is not sufficient to meet appellant's burden of proof. Without a clear and accurate statement of the specific employment activities which appellant performed and to which she attributed her conditions, this report is not based on an accurate factual background and cannot establish causal relationship between appellant's employment and her diagnosed conditions.

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence based on a proper factual background to establish that any of her diagnosed medical conditions are causally related to her accepted employment duties of typing, writing and making telephone calls. Due to this deficiency, she has failed to meet her burden of proof.

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 has not submitted the necessary medical opinion evidence to establish that she developed an occupational disease due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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