

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

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G.A., Appellant )

and )

**DEPARTMENT OF JUSTICE, EXECUTIVE  
OFFICE FOR IMMIGRATION REVIEW,  
Falls Church, VA, Employer** )

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**Docket No. 12-308  
Issued: June 8, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 28, 2011 appellant, through her attorney, filed a timely appeal from a June 1, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision which denied her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she developed hand, wrist, neck and shoulder conditions in the performance of duty causally related to factors of her federal employment.

On appeal, appellant's attorney contends that OWCP's decision was contrary to fact and law.

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

## **FACTUAL HISTORY**

On November 30, 2009 appellant, then a 58-year-old legal assistant, filed two occupational disease claims (Form CA-2) alleging that she developed severe advanced arthritis of the right hand and wrist, a ganglion cyst on the left wrist and chronic neck and shoulder pain due to factors of her federal employment, including repetitive motions associated with her daily work duties.

By letter dated December 23, 2009, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical evidence. It allotted 30 days for submission.

Appellant submitted a narrative statement received by OWCP on January 26, 2010. She stated that the work activities which contributed to her conditions included examining, preparing, processing, assembling and filing legal documents, maintaining electronic files using a keyboard and mouse, conducting searches for case information *via* electronic filing using many keystrokes and the mouse, conducting manual searches by pulling and lifting folders out of a filing cabinet, answering the telephone, lifting and moving reams of paper, assembling, folding and processing mail.

In a July 30, 2007 report, Dr. Mark B. Kruse, a chiropractor, stated that he was treating appellant for chronic pain resulting from a motor vehicle accident. He requested modification of her workstation such that she utilize a keyboard wrist pad or an ergonomic keyboard and adjustable chair with lumbar and all arm supports, the ability to place the top edge of her monitor even with her eyes when seated and a headset for telephone work.

On September 26, 2007 Dr. Richard L. Meyer, Jr., a Board-certified orthopedic surgeon, advised that appellant should use a telephone headset, a drop down keyboard and a foot rest for medical reasons.

In a November 25, 2009 report, Dr. Claude S. Williams, a Board-certified orthopedic surgeon, diagnosed axial neck pain, history of cervical strain, cervical degenerative disc disease, bilateral shoulder pain and possible subacromial bursitis. He reported that a cervical spine x-ray demonstrated degenerative disc space narrowing at C5-6 and C6-7 and x-rays of the shoulders demonstrated no apparent osseous abnormality and no degenerative changes. Dr. Williams noted that appellant's job duties included filing and using a computer. Appellant also reported involvement in a motor vehicle accident in 2002.

In a November 23, 2009 report, Dr. Eric R. George, a Board-certified hand surgeon, diagnosed basilar joint arthritis and extensor tenosynovitis, right index. He reported that x-rays of the hands showed advancing arthritis at the trapeziometacarpal (TMC) joint. On December 17, 2009 Dr. George noted that appellant had made progressive improvement in physical therapy, but still complained of neck and back pain.

Appellant submitted physical therapy notes dated November 30 and December 16, 2009 and January 8, 2010.

In a January 25, 2010 report, Dr. Kruse diagnosed cervical and thoracic joint dysfunction with muscle spasm. He reported that he treated appellant throughout 2007 and early 2008 for

cervical, bilateral trapezius muscle and upper back pain and stiffness. Dr. Kruse opined that her condition was chronic and exacerbated due to work position and activities.

On January 26, 2010 the employing establishment submitted a position description for legal assistant, which included processing legal correspondence and documents, serving as the contact representative for callers and visitors, preparing reports and maintaining automated information systems. The physical demands of the position were mainly sedentary, but could require periods of walking, standing, bending and frequently carrying case files and other similar materials.

By decision dated March 23, 2010, OWCP denied the claim finding that the medical evidence of record failed to establish the causal relationship between appellant's claimed conditions and the implicated employment factors.

On March 3, 2011 appellant, through her attorney, requested reconsideration and submitted additional evidence in support of her claim.

In a January 25, 2010 report, Dr. Thomas R. Lyons, a Board-certified orthopedic surgeon, diagnosed bilateral shoulder rotator cuff tendinitis *versus* partial thickness tears and acromioclavicular (AC) joint arthritis. He indicated that appellant filed documents and lifted occasionally heavy objects overhead at work which resulted in shoulder complaints.

A February 3, 2010 magnetic resonance imaging (MRI) scan of the bilateral shoulders revealed hypertrophic osteoarthropathy of the AC joint and narrowing of the proximal aspect of the shoulder outlet, possible external subacromial impingement, a small subdeltoid bursitis and mild tendinitis of the supraspinatus tendon.

On February 12, 2010 Dr. Lyons found that the February 3, 2010 MRI scans were consistent with impingement as well as tendinitis of the rotator cuff tendons without evidence of full thickness rotator cuff tear. In a February 18, 2010 report, he reported that appellant fell the day before and caught herself with both upper extremities, resulting in reinjuries to bilateral shoulders. Dr. Lyons indicated that radiographs of both shoulders revealed no interval change and no fracture appreciated. On July 9, 2010 he indicated that appellant reported bilateral shoulder complaints worsening, right more severe than left, related to lifting and carrying heavy boxes at work as a legal assistant.

In a December 17, 2010 report, Dr. George provided a brief medical history and diagnosed arthritis of the basilar joints of her thumb. He stated that appellant was a legal assistant. Dr. George explained that arthritis can be exacerbated by repetitive use. He indicated that he was unsure as to whether this was unique and peculiar to the occupation of legal secretary in that an arthritic condition can occur in multiple types of vocations as well as in a sedentary population. Dr. George opined that appellant had an arthritic condition at the base of the thumb that would be exacerbated by heavy pinching, filing or repetitive use.

On December 20, 2010 Dr. Lyons reported that a physical examination of appellant's right shoulder was unchanged. He reviewed an MRI scan dated February 3, 2010 and recommended surgery.

On January 18, 2011 appellant underwent a right shoulder arthroscopy with debridement, subacromial decompression and Mumford procedure performed by Dr. Lyons.

By decision dated June 1, 2011, OWCP denied modification of its March 23, 2010 decision on the grounds that the medical evidence submitted was not sufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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 timely filed within the applicable time limitation period of FECA, and that an injury<sup>3</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the implicated employment factors.<sup>6</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 condition and the specific employment factors identified by the employee.<sup>7</sup>

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> OWCP’s regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>4</sup> *See J.C.*, Docket No. 09-1630 (issued April 14, 2010). *See also Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Id.* *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> *See D.N.*, Docket No. 10-1762 (issued May 10, 2011).

<sup>7</sup> *See D.E.*, Docket No. 07-27 (issued April 6, 2007). *See also Victor J. Woodhams*, 41 ECAB 345 (1989).

## ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she developed an occupational disease in the performance of duty. The record reflects that she has hand, wrist, neck and shoulder conditions and that her federal employment requires walking, standing, bending, carrying, pulling, lifting and using a keyboard and mouse. However, appellant did not establish that her conditions are causally related to the factors of her federal employment.

In his reports, Dr. George diagnosed basilar joint arthritis and right index extensor tenosynovitis based upon x-rays of appellant's hands which showed advancing arthritis at the TMC joint. He opined that she had an arthritic condition at the base of the thumb that would be exacerbated by heavy pinching, filing or repetitive use. Dr. George obtained a history that appellant was a legal assistant and explained that arthritis can be exacerbated by repetitive use; however, he was unsure as to whether this was unique and peculiar to the occupation of legal secretary in that an arthritic condition could occur in multiple types of vocations as well as in a sedentary population. He failed to adequately address the issue of causal relationship as he did not provide a rationalized medical opinion explaining how specific factors of appellant's federal employment, such as carrying, pulling, lifting and using a keyboard and mouse, caused or aggravated her conditions. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.<sup>8</sup> Lacking thorough medical rationale on the issue of causal relationship, the reports of Dr. George are insufficient to establish that appellant sustained an employment-related injury.

Dr. Lyons diagnosed bilateral shoulder rotator cuff tendinitis and impingement, as well as AC joint arthritis and provided varying histories of injury. He indicated that appellant filed documents and lifted occasionally heavy objects overhead at work which resulted in shoulder complaints. In a February 18, 2010 report, Dr. Lyons reported that she fell on February 17, 2010 and caught herself with both upper extremities, resulting in reinjuries to bilateral shoulders. On July 9, 2010 he indicated that appellant reported bilateral shoulder complaints worsening, right more severe than left, related to lifting and carrying heavy boxes at work as a legal assistant. On December 20, 2010 Dr. Lyons reviewed an MRI scan dated February 3, 2010 and recommended surgery, which he performed on January 18, 2011. Although he provided firm diagnoses, he did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as filing, lifting and carrying heavy objects and occasionally lifting them overhead, caused or aggravated her shoulder condition. Dr. Lyons attributed her condition to a specific February 17, 2010 incident and failed to clarify whether or not it was employment related. Thus, his reports are of limited probative value and insufficient to meet appellant's burden of proof to establish a claim.

In a November 25, 2009 report, Dr. Williams diagnosed axial neck pain, history of cervical strain, cervical degenerative disc disease, bilateral shoulder pain and possible subacromial bursitis. He reported that a cervical spine x-ray demonstrated degenerative disc

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<sup>8</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

space narrowing at C5-6 and C6-7 and x-rays of the shoulders demonstrated no apparent osseous abnormality and no degenerative changes. Although Dr. Williams indicated that appellant's job duties included filing and using a computer, he did not provide a rationalized medical opinion explaining how those factors of her federal employment caused or aggravated her neck and shoulder conditions. Lacking thorough medical rationale on the issue of causal relationship, the report of Dr. Williams is insufficient to establish that appellant sustained an employment-related injury.

In a September 26, 2007 report, Dr. Meyer advised that appellant should use a telephone headset, a drop down keyboard and a foot rest for medical reasons. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> As such, the Board finds that appellant did not meet her burden of proof with the submission of Dr. Meyer's report.

The reports of Dr. Kruse, a chiropractor, are of no probative value. The Board has held that a chiropractor is a physician as defined under FECA to the extent that the 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>10</sup> There is no indication in the reports that the doctor diagnosed a subluxation as demonstrated by x-ray to exist. Dr. Kruse is not a physician as defined under FECA and thus his reports do not constitute competent medical opinion evidence.

Similarly, the physical therapy notes dated November 30 and December 16, 2009 and January 8, 2010 are of no probative value as physical therapists are not physicians under FECA.<sup>11</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

The February 3, 2010 MRI scan is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

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<sup>9</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> 20 C.F.R. § 10.311(a). *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>11</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>12</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

On appeal, counsel contends that OWCP's decision was contrary to fact and law. For the reasons stated, the Board finds that the medical evidence is not sufficient to establish appellant's claims.

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 meet her burden of proof to establish that she developed hand, wrist, neck and shoulder conditions in the performance of duty causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2012  
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