

On appeal appellant contends that the employing establishment failed to timely provide an appropriate chair for her and she is asking only for reinstatement of hours she lost when her ergonomic chair was removed.

FACTUAL HISTORY

On April 16, 2013 appellant, then a 56-year-old consumer safety officer, filed an occupational disease claim alleging that on January 7, 2013 she first became aware that she had thoracic outlet syndrome, but did not realize that it was employment related until March 26, 2013. She noted that her condition was due to her work space, chair and general posture and that she was born with the condition of joint laxity which contributes to thoracic outlet syndrome.

By letter dated April 19, 2013, OWCP informed appellant that the evidence was insufficient to support her claim. Appellant was advised as to the type of medical and factual evidence required to support her claim and given 30 days to provide this information.

In response to OWCP's letter, appellant submitted an April 2, 2012 statement noting that she had an ergonomic evaluation of her work space and how the lack of an appropriate chair aggravated her thoracic outlet syndrome. She also submitted a May 1, 2013 progress note from Dr. Virtaj Singh, a treating Board-certified physiatrist, which diagnosed chronic neck, bilateral upper extremity periscapular pain and suspected right sided neurogenic thoracic outlet syndrome. He provided ergonomic recommendations and work restrictions.

By decision dated June 19, 2013, OWCP denied her claim as the record was devoid of any medical evidence establishing that her thoracic outlet syndrome had been caused or aggravated by the employment factors identified by appellant.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease

³ 5 U.S.C. § 8101 *et seq.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee). *See S.M.*, (Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

claim, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁷

If a claimant does establish an employment factor, he or she must submit medical evidence showing that a medical condition was caused by such a factor.⁸ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. 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.⁹

ANALYSIS

Appellant alleged that her thoracic outlet syndrome had been aggravated by her work space and the lack of an appropriate chair. The medical evidence submitted by appellant is insufficient to establish that her thoracic outlet syndrome was caused or aggravated by the lack of an appropriate chair and her work space. Therefore, she has failed to meet her burden of proof.

In support of her claim, appellant submitted a May 1, 2013 progress note from Dr. Singh who diagnosed chronic neck, bilateral upper extremity periscapular pain and suspected right signed neurogenic thoracic outlet syndrome and provided work restrictions. Dr. Singh provided no opinion as to the causal relationship between appellant's work space and chair and her claimed thoracic outlet syndrome. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁰ For these reasons, the Board finds that Dr. Singh's report 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 conditions 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.¹¹ Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

⁷ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

⁸ *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

⁹ *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

¹¹ See *D.U.*, *supra* note 7; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed thoracic outlet syndrome was sustained in the performance of duty.

On appeal appellant argues that her thoracic outlet syndrome had been aggravated by the lack of an appropriate work chair. She stated that she is only requesting to be reimbursed for the nine and a half hours used due to her inability to work due to the lack of an appropriate work chair and pain. As noted above, appellant failed to submit any medical evidence establishing that her thoracic outlet syndrome was caused or aggravated by the lack of an appropriate work chair, or due to any other condition of her federal employment. Thus, appellant has not met 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 failed to establish that her thoracic outlet syndrome was sustained in the performance of duty

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 19, 2013 is affirmed.

Issued: December 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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