

FACTUAL HISTORY

This is the second appeal before the Board. In the prior appeal,² the Board found a conflict in medical opinion between Dr. R. Thomas Grotz, the attending orthopedic surgeon, and Dr. Aubrey A. Swartz, the second-opinion Board-certified orthopedic surgeon. Dr. Grotz found that appellant stretched a local nerve in the course of her employment on June 22, 2007 when she rotated her head to the right to use the telephone. He indicated that it was probably in the context of a muscle spasm, further tempting the nerve. Appellant had severe multiple disc protrusions, extrusions and areas of extremely tight clearance of neural foramina. When she rotated her head, Dr. Grotz explained, she heard a pop and felt searing pain in her neck radiating to the right greater than the left shoulder and distally, with aching, burning and stabbing pain over the C6 distribution proximally and involving the median and ulnar nerve distributions distally.

Dr. Swartz found no evidence of substantial injury. He noted that appellant was implicating her commute. Dr. Swartz did not believe that reaching for the telephone on June 22, 2007 triggered the constellation of symptoms, findings and problems she described. He concluded there was no aggravation of a preexisting condition and did not believe the incident caused her work stoppage that date.³

To resolve this conflict, OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Howard Sturtz, a Board-certified orthopedic surgeon who related her history and complaints. Dr. Sturtz described his findings on physical examination and diagnosed degenerative disc disease, cervical spine, without myelopathy. He thoroughly reviewed appellant's medical record. Dr. Sturtz found that it was not medically reasonable that she would sustain any significant injury as a result of the June 22, 2007 work incident. Further, it appeared from Dr. Grotz' records that appellant was symptomatic from her long commute rather than from the work episode itself.

Dr. Sturtz concluded that appellant had an underlying degenerative disc disease that was present for many years and that increased with the natural aging process. He did not believe that the June 22, 2007 episode caused a temporary or permanent aggravation of that underlying condition. Dr. Sturtz explained that he based his opinion on the absence of consistent positive objective physical findings to go along with her symptomatology. He noted that initially appellant's symptomatology was in the right upper extremity and more recently was in the left.

In a September 22, 2011 decision, OWCP denied appellant's traumatic injury claim. On May 7, 2012 an OWCP hearing representative affirmed, finding that the opinion of Dr. Sturtz represented the special weight of the medical opinion evidence.

² Docket No. 10-2298 (issued May 13, 2011).

³ The facts of this case as set out in the Board's prior decision are hereby incorporated by reference.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

To resolve the conflict between Dr. Grotz, the attending orthopedic surgeon, and Dr. Swartz, the second-opinion orthopedic surgeon, OWCP properly referred appellant to Dr. Sturtz, a Board-certified orthopedic surgeon.

Dr. Sturtz thoroughly reviewed appellant's medical record and concluded that it was not medically reasonable that appellant would sustain any significant injury as a result of the June 22, 2007 work incident. He observed that she did not have consistent positive objective

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

findings to go along with her symptomatology, which changed from the right upper extremity to the left. Dr. Sturtz noted that appellant appeared to implicate her long commute.

OWCP provided Dr. Sturtz with appellant's case record and a statement of accepted facts so he could base his opinion on a proper factual and medical background. Dr. Sturtz' opinion is unequivocal. OWCP directly answers the question to be resolved. Dr. Sturtz explained why he believed that appellant did not sustain an injury on June 22, 2007. His reasoning appears sound and logical. Accordingly, the Board finds that Dr. Sturtz' opinion is entitled to special weight in resolving whether the June 22, 2007 incident at work was sufficient to cause an injury.

As the weight of the medical opinion evidence establishes that appellant did not sustain an injury in the performance of duty on June 22, 2007, the Board finds that she has not met her burden of proof. The Board will affirm OWCP's May 7, 2012 decision. Appellant's representative indicated that a supporting statement would be submitted to the Board. However, nothing was received.

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 met her burden to establish that she sustained an injury in the performance of duty on June 22, 2007.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2013
Washington, DC

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

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

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