

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

V.G., Appellant

and

DEPARTMENT OF THE ARMY,
Fort Bragg, NC, Employer

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**Docket No. 12-1513
Issued: February 1, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 5, 2012 appellant filed a timely appeal of the May 1, 2012 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On March 21, 2012 appellant, then a 61-year-old cashier, filed an occupational disease claim, alleging that she developed tendinitis as a result of repetitively scanning items. She

¹ 5 U.S.C. §§ 8101-8193.

became aware of her condition on June 30, 2010 and realized it was causally related to her employment on December 15, 2010.

On March 27, 2012 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a reasoned physician's opinion addressing the relationship of her claimed condition and specific work factors. OWCP advised that medical evidence must be submitted by a qualified physician and that nurse practitioners and physician's assistants do not qualify as a physician under FECA.

In an undated statement, appellant indicated that she experienced right arm and wrist pain beginning two years earlier after working on a cash register for five to six hours a day and repetitively scanning groceries with her right arm. She was treated by Dr. Renan Pierre-Louis, a Board-certified internist, who noted in a December 15, 2009 certificate that appellant was treated and was disabled from work until December 19, 2009. Dr. Pierre-Louis noted that her pain was aggravated by her work duties and her medication caused dizziness and difficulty driving. On March 10, 2011 he treated appellant for right neck pain radiating into the shoulder. Appellant reported pain over the right supraspinatus area exacerbated by abduction and rotation of right arm and pain in the right pectoral area and the adjacent chest wall in the axilla. She reported working as a checker for 14 years where she used her right hand to scan merchandise. Dr. Pierre-Louis noted examination findings of tenderness over the right supraspinatus and the cervical spine, normal range of motion of the cervical spine, no sensory abnormalities and normal deep tendon reflexes. He diagnosed tendinitis of the right rotator cuff. On March 10, 2011 Dr. Pierre-Louis treated appellant and returned her to work with restrictions. He noted that she experienced overuse of the right hand when scanning merchandise and required rest from this particular job requirement for two weeks.

Appellant submitted March 3 and May 18, 2011 certificates from a physician's assistant who advised that her shoulder injury was healing and she could return to work with restrictions for one week. On November 29, 2011 the physician's assistant treated her and advised that she was disabled until December 2, 2011. Also submitted was a March 16, 2011 certificate from Dr. Laurence W. Gebler, a Board-certified internist, who treated appellant and advised that she was disabled for one day and could return to work on March 18, 2011. On January 24, 2012 appellant was treated by Juanita Perkins, a nurse practitioner, for right wrist and elbow burning and pain radiating from the elbow to the wrist, beginning three months prior. Ms. Perkins noted findings, set forth diagnoses and released appellant to work with restrictions. In a February 23, 2012 report, she treated appellant for recurrent right wrist pain and recommended continued light duty for another week. Also submitted were referrals for occupational therapy, dated January 24 and February 23, 2012, prepared by Ms. Perkins.

Appellant submitted occupational therapy notes dated January 28 to February 21, 2012 for right shoulder, elbow and wrist pain. She reported working as a checker at the commissary and using her right hand to pull items across the scanner. Appellant was diagnosed with enthesopathy of the wrist and carpus, pain in the joint of the upper arm and hand.

In a decision dated May 1, 2012, OWCP denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the claimed work factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.²

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) 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 claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.³

ANALYSIS

It is not disputed that appellant's duties as checkout cashier included repetitive scanning of items using her hands while performing her duties. It is also not disputed that she has been diagnosed with tendinitis of the right rotator cuff. However, appellant has not submitted sufficient medical evidence to establish that her tendinitis of the right rotator cuff is causally related to specific employment factors or conditions.

Appellant submitted a certificate from Dr. Pierre-Louis, dated December 15, 2009, who noted that appellant's pain was aggravated by her duties at work. Dr. Pierre-Louis advised that she was disabled from work until December 19, 2009. On March 10, 2011 he treated appellant for right neck pain radiating into the shoulder and down the right arm and diagnosed tendinitis of the right rotator cuff. Appellant reported that she worked for 14 years at a checkout counter where she used her right hand to scan merchandise. Similarly, in a March 10, 2011 certificate, Dr. Pierre-Louis noted that she experienced overuse of the right hand when scanning

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Solomon Polen*, 51 ECAB 341 (2000).

merchandise and required rest from her job for two weeks. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's tendinitis of the right rotator cuff and the factors of employment.⁴ For example, Dr. Pierre-Louis did not explain the process by which scanning an item would cause the diagnosed condition or why such condition would not be due to any nonwork factors. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a March 16, 2011 certificate from Dr. Gebler who treated appellant and advised that she was disabled for one day and could return to work on March 18, 2011. However, Dr. Gebler's report is insufficient to establish the claim as the physician did not provide a history of injury⁵ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁶

Appellant submitted certificates from physicians' assistants and documents from Ms. Perkins, a nurse practitioner. However, this evidence is of no probative medical value as the Board has held that physicians' assistants and nurses are not competent to render a medical opinion under FECA.⁷ Likewise, evidence submitted from an occupational therapist is of no probative medical value in establishing appellant's claim.⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

The Board finds that the medical evidence does not establish that appellant has a right shoulder condition causally related to her employment. 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.⁹ Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP therefore properly found that she did not meet her burden of proof in establishing her claim.

⁴ See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physicians' assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ See *id.*; *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

On appeal, appellant asserts that her right arm, shoulder, elbow and wrist condition was caused by her repetitive work duties as a cashier and Dr. Pierre-Louis' reports support her claim. As noted above, the medical evidence does not establish that her right shoulder tendinitis was causally related to her employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining how her tendinitis was causally related to particular employment factors.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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