United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 12-1381**
	)	**Issued: January 17, 2013**
DEPARTMENT OF THE ARMY, U.S. ARMY MEDICAL COMMAND, Fort Carson, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2012 appellant filed a timely appeal from a March 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] (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 right upper extremity conditions in the performance of duty causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 28, 2010 appellant, then a 58-year-old medical support assistant, filed an occupational disease claim (Form CA-2) alleging that she developed right arm, wrist, hand, thumb and finger conditions due to factors of her federal employment, including continuous keyboarding, lifting books and answering telephones. The employing establishment noted that she stopped work on October 31, 2009 due to another claim.[2] Appellant returned to work on January 5, 2010 under a limited-duty capacity for four hours per day with restrictions and accommodations, such as limited keyboarding and a headset for the telephone.

In a February 19, 2010 letter, OWCP informed appellant of the deficiencies of her claim and afforded 30 days for the submission of additional evidence.

In a February 24, 2010 report, Dr. Terry Struck, Board-certified in physical medicine and rehabilitation, diagnosed right wrist tenosynovitis with a myofascial pain syndrome, right carpal tunnel syndrome and right thumb carpometacarpal (CMC) joint arthropathy. She stated that appellant's work required her to do a significant amount of telephone work without a headset, handwriting activities, computer typing, loading, pushing and pulling an x-ray preparation kit cart and lifting patient files, schedules and medical books. Although a headset was prescribed for appellant, it was not provided to her and she was let go from work on February 23, 2010. Dr. Struck reported that appellant already had a workers' compensation injury in regard to her left upper extremity and had to overutilize the right upper extremity to do the tasks of her job in order to compensate for her inability to utilize the left upper extremity. She opined that it was this overcompensation and the static and repetitive upper extremity tasks that she had performed for over 17 years that caused her current employment injury.

By letter dated March 8, 2010, the employing establishment controverted appellant's claim. It stated that she had worked in a light-duty position for four hours a day with very little keyboarding, lifting medical code books, etc. and used a headset. The employing establishment submitted a notification of personnel action form (SF-50) stating that appellant was removed from her position on February 23, 2010 due to physical inability to perform the essential duties of her position.

In a January 28, 2010 report, Dr. Ramona I. Rodriguez, a Board-certified internist, diagnosed numbness and hyperglycemia. She indicated that appellant had worked as a medical support clerk for six years, keyboarding all day and advised that she must avoid repetitive wrist/hand movements. On April 30, 2010 Dr. Rodriguez diagnosed carpal tunnel syndrome, confirmed by electromyography (EMG).

By decision dated June 24, 2010, OWCP denied the claim finding that the evidence of record failed to establish causal relationship.

On July 19, 2010 Dr. Struck reiterated her medical opinion and stated that appellant was known to have fibromyalgia, so any excessive static or repetitive activity was intolerable.

[2] OWCP File No. xxxxxx934.

On July 22, 2010 appellant requested an oral hearing before an OWCP hearing representative. In a July 14, 2010 report, Dr. Robert S. Rudolphi, a Board-certified internist, diagnosed tenosynovitis, carpal tunnel syndrome, Vitamin D deficiency, osteopenia, essential hypertension and chronic pain. He advised that appellant's symptoms of right hand tenosynovitis began several months before she was terminated from her federal service.

By decision dated September 29, 2010, an OWCP hearing representative found that the case was not in posture for a hearing, set aside the June 24, 2010 decision and remanded the case for further development.

In letters dated October 6 and 25, 2010, OWCP requested additional medical evidence from Drs. Struck and Rodriguez. It attached a statement of accepted facts, which set forth that appellant worked in a mostly sedentary light-duty position, which required walking, bending, standing and carrying light items such as files and manuals and afforded 30 days for response.

In a November 2, 2010 report, Dr. Struck opined that appellant's work exposure directly caused and contributed to the diagnosed medical conditions. She concluded that appellant's conditions had not resolved. On February 24, 2010 Dr. Struck reiterated her diagnoses.

In a November 5, 2010 report, Dr. Rodriguez stated that she examined appellant for right upper extremity complaints and opined that appellant's diagnosed conditions had not resolved. Clinically, the symptoms had worsened as was typically expected with bilateral carpal tunnel syndrome. Appellant was left hand dominant and often used her right hand to compensate for painful left hand symptoms.

By decision dated January 25, 2011, OWCP denied the claim on the basis that the evidence was not sufficient to establish causal relationship. It noted that appellant's prior claim for left upper extremity conditions was terminated on April 15, 2009.

On February 8, 2011 appellant requested an oral hearing before an OWCP hearing representative. A March 8, 2010 x-ray of the right thumb revealed degenerative changes. Appellant submitted reports from Dr. Rodriguez dated October 29, 2010 through February 1, 2011, reiterating the diagnosis and medical opinion.

On September 8, 2011 a hearing was held before an OWCP hearing representative. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In a June 29, 2007 work capacity evaluation, Dr. Struck indicated that appellant was able to work with restrictions. A June 11, 2008 statement from appellant's supervisor noted that her work limitations included: 30 minutes of typing at a time with 10- to 15-minute breaks; no more than 2 hours typing per day or handwriting per day; and no pushing, pulling or lifting more than five pounds, occasionally. A February 2, 2010 memorandum from the employing establishment noted that appellant was released to return to work with restrictions of no repetitive use of the right wrist such as keyboarding.

In a September 16, 2011 report, Dr. Struck noted that appellant worked four hours a day and was required to perform static and repetitive telephone, patient care, handwriting, typing, lifting, carrying, loading, pushing and pulling job duties.

In an October 5, 2011 statement, appellant's supervisor noted that she did no heavy lifting, lifted binders two to three times per four hours and repeated handwriting eight times per four hours.

By decision dated December 1, 2011, an OWCP hearing representative affirmed the January 25, 2011 decision on the basis that the medical evidence did not establish causal relationship.

On January 26, 2012 appellant requested reconsideration. A March 7, 2011 report by Dr. Timothy S. Hart, a Board-certified orthopedic surgeon, diagnosed possible bilateral mild carpal tunnel syndrome, left greater than right and possible mild cubital tunnel syndrome. He indicated that appellant had bilateral hand numbness and tingling for the past three years without any specific history of injury or trauma. On March 28, 2011 Dr. Hart noted that her EMGs were normal for both upper extremities and that he did not have an explanation for her ongoing pain and tenderness. It was possible that appellant had numbness, tingling and carpal tunnel that the EMG had not yet detected. In an April 27, 2011 progress report, Dr. Hart opined that clinically she could have had carpal tunnel syndrome, but it was too soon to repeat the nerve test. On August 17, 2011 he indicated that appellant's repeat nerve test in June was normal. Appellant complained of bilateral basilar thumb and radial-sided wrist pain. X-rays of both thumb CMC joints demonstrated moderate CMC space narrowing. Dr. Hart opined that her thumb and wrist pain was probably due to mild to moderate CMC arthritis.

By decision dated March 29, 2012, OWCP denied modification of its December 1, 2011 decision finding that the evidence of record failed to establish causal relationship between appellant's conditions and the implicated employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] 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.[5]

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

[3] 5 U.S.C. §§ 8101-8193.

[4] 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).

[5] *See J.C.*, Docket No. 09-1630 (issued April 14, 2010). *See also Ellen L. Noble*, 55 ECAB 530 (2004).

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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.[7]

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an occupational disease in the performance of duty. The record reflects that she has right upper extremity conditions and that her federal employment requires walking, bending, standing and carrying light items such as files and manuals. However, appellant has not established that her conditions are causally related to any of these factors of her federal employment.

Dr. Struck diagnosed right wrist tenosynovitis with a myofascial pain syndrome, right carpal tunnel syndrome and right thumb CMC joint arthropathy. She stated that appellant's work required her to do a significant amount of static and repetitive telephone work without a headset, patient care, handwriting activities, computer typing, lifting, carrying, loading, pushing and pulling job duties. Although a headset was prescribed for appellant, it was not provided to her. Dr. Struck opined that appellant had to overutilize the right upper extremity to compensate for an employment-related left upper extremity injury, and that the static and repetitive right upper extremity tasks that she had performed on her job for over 17 years had caused her current employment injury. On July 19, 2010 she indicated that appellant was known to have fibromyalgia, so any excessive static or repetitive activity was intolerable. On November 2, 2010 Dr. Struck concluded that appellant's conditions had not resolved. The record establishes that the employing establishment provided appellant a headset for her telephone duties. It also establishes that she had a prior claim accepted for left upper extremity conditions, which was terminated on April 15, 2009. The Board finds that Dr. Struck's reports are of limited probative value as they are not based on a complete factual and medical background of appellant. Dr. Struck failed to provide a fully-rationalized opinion explaining how factors of appellant's federal employment, such as walking, bending, standing and carrying light items such as files and manuals, caused or aggravated her right upper extremity conditions. Thus, her reports are insufficient to establish appellant's claim.

[6] *Id. See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[7] *See I.J.*, 59 ECAB 408 (2008). *See also Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Rodriguez diagnosed carpal tunnel syndrome, numbness and hyperglycemia. She indicated that appellant had worked as a medical support clerk for six years, keyboarding all day, and advised that she must avoid repetitive wrist/hand movements. On November 5, 2010 Dr. Rodriguez opined that appellant's diagnosed conditions had not resolved and that her symptoms had worsened as she often used her right hand to compensate for painful left hand symptoms. 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 appellant's condition and her employment factors.[8] Lacking thorough medical rationale on the issue of causal relationship, Dr. Rodriguez's reports are insufficient to establish that appellant sustained an employment-related injury.

Dr. Hart diagnosed possible bilateral mild carpal tunnel syndrome and possible mild cubital tunnel syndrome. On March 28, 2011 he indicated that EMGs of both upper extremities were normal and that he did not have an explanation for her ongoing pain and tenderness, stating that it was possible that she had numbness, tingling and carpal tunnel that the EMG had not yet detected. On August 17, 2011 Dr. Hart indicated that appellant's repeat nerve test in June was normal and opined that her thumb and wrist pain was probably due to mild to moderate CMC arthritis. He did not provide a firm diagnosis and his opinions are not of reasonable medical certainty. Dr. Hart failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as walking, bending, standing and carrying light items such as files and manuals, caused or aggravated her right upper extremity conditions. Thus, the Board finds that his reports are insufficient to establish appellant's claim.

In a July 14, 2010 report, Dr. Rudolphi diagnosed right hand tenosynovitis and indicated that appellant's symptoms began several months before she was terminated from her federal service. 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.[9] As such, the Board finds that appellant did not meet her burden of proof with the submission of Dr. Rudolphi's report.

The March 8, 2010 x-ray 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.

As appellant has not submitted any 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.

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.

[8] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

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

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she developed right upper extremity conditions in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 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