

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

D.E., Appellant)

and)

U.S. POSTAL SERVICE, MAIN POST OFFICE,)
Baltimore, MD, Employer)

**Docket No. 12-1850
Issued: March 5, 2013**

Appearances:
Appellant, pro se
No Appearance, for the Director

Oral Argument February 6, 2013

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 31, 2012 appellant filed a timely appeal of the May 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her occupational disease claim. 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 claim.

ISSUE

The issue is whether appellant's claimed right shoulder condition is employment related.

FACTUAL HISTORY

This case was previously before the Board.² Appellant, a 60-year-old retired clerk, has an accepted occupational disease claim for right carpal tunnel syndrome (CTS) and right ganglion cyst, which arose on or about September 1, 1985 (xxxxxx866). On May 8, 2008 she

¹ 5 U.S.C. §§ 8101-8193.

² Docket No. 09-1013 (issued October 26, 2009).

filed another occupational disease claim (Form CA-2) for tendinitis of the right hand and right shoulder. This latest injury arose on or about December 1, 2007. At the time, appellant reportedly had been working in a limited-duty capacity due to her 1985 right hand/wrist injury.³ She attributed her current right hand and shoulder problems to keying two to three hours at a time without proper back support. Appellant indicated that her workstation was not ergonomically safe. Additionally, she noted that there was a continuous flow of cold air blowing directly on her right side. Appellant's then-treating physician, Dr. Margit L. Bleecker, a Board-certified neurologist, diagnosed right CTS, right lateral epicondylitis, right ulnar neuritis, right thoracic outlet syndrome, right rotator cuff tendinitis and myofascial pain syndrome involving the right shoulder, lower neck region and right forearm. Dr. Bleecker also noted shoulder arthritis which appellant treated with Tiger Balm.

In a report dated May 21, 2008, Dr. Bleecker noted that appellant's right shoulder pain reportedly started in the early 1990's and had previously responded to therapy. But the right shoulder had become much more painful since 2004 with appellant's increased data input/keying activities. Appellant's right shoulder had reached the point where it was always aching. The shoulder pain was also accompanied by shooting pain to the right elbow. Dr. Bleecker's May 21, 2008 examination revealed pain and tightness in the right shoulder musculature, as well as loss of motion in the shoulder. She explained that the decreased shoulder motion was most likely due to rotator cuff tendinitis and the shoulder musculature pain represented myofascial pain syndrome attributable to improper monitor placement which was reportedly "to the left and too high." Dr. Bleecker explained that appellant was constantly looking down at the mail and then having to look up to the left to check the monitor to see if the information entered was correct.

OWCP initially denied the claim on August 14, 2008, which the Branch of Hearings & Review affirmed by decision dated December 4, 2008.

When the case was last on appeal, the Board found that, while Dr. Bleecker's opinion was insufficient to establish entitlement under FECA, appellant presented sufficient evidence to warrant further development on the part of OWCP. Accordingly, the Board remanded the case for referral to an appropriate orthopedic specialist. The Board's October 26, 2009 decision also noted the need for further development regarding appellant's specific employment duties on or about December 1, 2007; her claimed date of injury.⁴

On remand, OWCP prepared a February 4, 2010 statement of accepted facts (SOAF) and referred appellant to Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon. Appellant reportedly retired in November 2009. Dr. Gordon examined her on February 24, 2010. He also obtained current x-rays of the right shoulder, right elbow and right wrist. Appellant's right shoulder x-ray revealed mild glenohumeral and acromioclavicular degenerative disease. There was also x-ray evidence of mild coronoid spurring in the right elbow and carpometacarpal (CMC) arthrosis of the right wrist. Dr. Gordon diagnosed right shoulder, right elbow and right wrist arthritis. In one instance, he noted there was no evidence to support that appellant's

³ Appellant's previously accepted right upper extremity injury (xxxxxx866) is not currently before the Board.

⁴ The October 26, 2009 decision is incorporated herein by reference,

orthopedic condition was related to work activity, but he later described appellant's shoulder, elbow and wrist arthritis as "[u]nderlying injury-related factors of disability." Notwithstanding the above-noted "factors of disability," Dr. Gordon concluded that appellant required no restrictions. He explained that appellant's significant subjective complaints did not comport with objective findings.

On March 12, 2010 OWCP denied the claim based on Dr. Gordon's findings, but that decision was later set aside by the Branch of Hearings & Review due to perceived deficiencies in the SOAF concerning appellant's date-of-injury job duties. After additional development regarding appellant's specific job duties, OWCP again denied the claim based on Dr. Gordon's February 24, 2010 findings. That decision was also set aside by the Branch of Hearings & Review because of deficiencies in the SOAF.

On remand, OWCP prepared an amended SOAF dated February 9, 2011 and forwarded a copy of the amended SOAF to Dr. Gordon. In a similarly dated addendum, Dr. Gordon indicated that he reviewed the latest SOAF and his prior opinion remained unchanged. By decision dated May 13, 2011, OWCP relied on Dr. Gordon's February 24, 2010 and February 9, 2011 reports as a basis for denying appellant's right shoulder claim. However, the Branch of Hearings & Review set aside that decision as well. In a January 18, 2012 decision, the hearing representative noted various inconsistencies in the latest SOAF. Accordingly, she remanded the case to OWCP with instructions to correct the noted deficiencies, and then refer appellant for another second opinion evaluation, followed by the issuance of a *de novo* decision.

OWCP prepared another SOAF on April 11, 2012 which noted, *inter alia*, that appellant keyed eight hours per day, two to three hours at a time. Appellant stopped only for a lunch break, two smaller breaks and occasional personal breaks. The SOAF also noted that her chair was not ergonomically correct and that she had been subjected to air blowing on her right side. Additionally, appellant was noted to have retired in November 2009.

Dr. Robert F. Draper Jr., a Board-certified orthopedic surgeon and OWCP-referral physician, examined appellant on April 27, 2012. He reviewed the April 11, 2012 SOAF, as well as appellant's medical records, which included three right shoulder magnetic resonance imaging (MRI) scans. Appellant's latest MRI scan, dated January 12, 2011, showed no evidence of a right rotator cuff tear. However, there was slight degenerative change involving the acromioclavicular (AC) joint with upward spurring. Dr. Draper characterized appellant's physical examination as "normal" and "benign." He found no shoulder residuals related to work activity, and noted that appellant's right AC joint degenerative osteoarthritis was not accident related. Dr. Draper stated that appellant was capable of performing regular-duty work without restrictions.

By decision dated May 16, 2012, OWCP denied appellant's occupational disease claim because she failed to establish that her right shoulder condition was employment related.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, 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 identified employment factors.⁶

ANALYSIS

Appellant argued that OWCP provided misleading information to Dr. Draper. She also took issue with Dr. Draper's finding of a preexisting condition. At oral argument, the Board provided appellant the opportunity to review the April 11, 2012 SOAF; the same SOAF OWCP provided Dr. Draper. Upon reviewing this information, appellant did not argue any specific discrepancies regarding OWCP's characterization of her date-of-injury position. The latest SOAF accurately reflects appellant's self-described date-of-injury duties. Accordingly, appellant's argument that OWCP somehow mislead Dr. Draper is unsubstantiated and without merit.

In the four years since this case was last on appeal, appellant has not submitted any additional evidence from her neurologist, Dr. Bleecker. The only additional medical evidence submitted were the two second opinion examinations obtained by OWCP in 2010 and 2012. The Board previously found Dr. Bleecker's opinion, particularly her May 21, 2008 report, insufficient to satisfy appellant's burden of proof under FECA. With respect to appellant's neck and right shoulder complaints, Dr. Bleecker diagnosed rotator cuff tendinitis and myofascial pain syndrome.⁷ She attributed appellant's diagnoses to a combination of reaching/placing of mail and rotation/extension of the neck from viewing an improperly positioned monitor. However, the work-related activities that Dr. Bleecker identified as the cause of appellant's right shoulder and neck conditions were not entirely consistent with appellant's self-described employment duties. Absent further explanation and clarification from Dr. Bleecker, the Board continues to find her reports insufficient to establish entitlement under FECA.

⁵ 20 C.F.R. § 10.115(e), (f) (2011); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁶ *Victor J. Woodhams, id.*

⁷ Dr. Bleecker had previously diagnosed shoulder arthritis. However, she did not specify what, if any, relationship there was between appellant's shoulder arthritis and her employment duties. The May 21, 2008 report made no mention of the prior diagnosis of arthritis.

Appellant has since retired and the only current right shoulder diagnosis identified by either Dr. Gordon or Dr. Draper was arthritis.⁸ Dr. Draper specifically indicated that the right AC joint degenerative changes were not accident related. He explained there was no evidence that appellant's job duties aggravated or precipitated her current right shoulder condition. Dr. Draper further explained that, if appellant previously had tendinitis in the right shoulder, there was no record or documentation of this condition. Moreover, he characterized appellant's three MRI scans as normal and noted that the current physical examination was normal as well. Apart from the latest MRI scan evidence of arthritis, Dr. Draper was unable to identify any specific right shoulder pathology.

According to appellant, Dr. Draper did not adequately explain why her right shoulder degenerative osteoarthritis was not employment related. First, it is noteworthy that appellant's neurologist diagnosed shoulder arthritis in October 2007 and did not indicate the condition was employment related. Appellant initially filed a claim for right rotator cuff tendinitis, but she currently claims that her right shoulder degenerative osteoarthritis is employment related. Regardless of the condition claimed; be it osteoarthritis or rotator cuff tendinitis, appellant bears the burden of proof under FECA. As noted, appellant has not submitted any medical evidence in support of her claimed right shoulder injury since 2008. Based on Dr. Bleecker's reports, appellant's shoulder arthritis predated her December 1, 2007 employment injury. Contrary to appellant's assertion, Dr. Draper has adequately explained that there is no evidence that appellant's job duties aggravated or precipitated her current right shoulder condition.

The fact that the etiology of a disease or condition is unknown or obscure does not relieve an employee of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to OWCP to disprove an employment relationship.⁹ Accordingly, the Board finds that the evidence of record fails to establish that appellant's claimed right shoulder condition is causally related to her accepted employment exposure. Therefore, OWCP properly denied appellant's occupational disease claim.

CONCLUSION

Appellant has not established that her claimed right shoulder condition is employment related.

⁸ Appellant voluntarily retired in November 2009 at the age of 56. She had accumulated approximately 35 years of federal civilian service at the time of her retirement.

⁹ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.¹⁰

Issued: March 5, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁰ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision. *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.