

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

C.E., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Lafayette, LA, Employer)

Docket No. 13-2133
Issued: April 2, 2014

Appearances:

Donald L. Mayeux, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 19, 2013 appellant, through her attorney, filed a timely appeal from an April 24, 2013 merit 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 this case.

ISSUE

The issue is whether appellant established that she sustained a left shoulder or left wrist condition in the performance of duty.

FACTUAL HISTORY

On August 9, 2012 appellant, a 52-year-old security officer, filed a Form CA-2 claim for benefits, alleging that she developed a tendinitis condition causally related to employment

¹ 5 U.S.C. § 8101 *et seq.*

factors. She first became aware of her condition on July 17, 2012 and first realized that it was related to her employment on July 24, 2012.

On August 17, 2012 OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive report from a treating physician describing her symptoms, the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit the evidence within 30 days.

By decision dated October 16, 2012, OWCP denied the claim, finding that appellant failed to establish fact of injury. It advised that she had described work duties which allegedly resulted in a tendinitis condition but did not specify the part of the body that had been injured. OWCP further found that she did not provide any medical evidence to support a medical condition causally related to employment factors.

In reports dated August 6, 2012, received by OWCP on October 25, 2012, Dr. Phillip Bacilla, an orthopedic surgeon, listed a history that appellant had been experiencing problems with her left shoulder and left wrist for approximately three weeks. He advised that she performed lifting at work and had experienced pain in her left shoulder when she elevated her arm. Appellant also had pain in her left wrist, with redness and swelling on the dorsum of her hand and wrist. On examination her left shoulder had 110 to 120 degrees of elevation, which was painful, and pain with Hawkins' testing. On examination of her left wrist, she demonstrated tenderness and swelling of the dorsum into her distal forearm and pain with finger flexion and extension. Dr. Bacilla diagnosed rotator cuff tendinitis in her left shoulder, with a possible tear, and tenosynovitis of her left wrist. He was not sure as to the etiology of her left wrist pain. Dr. Bacilla stated that x-rays of her left shoulder revealed a Type 3 acromion with some significant spur formation but x-rays of her wrist showed no abnormalities. He recommended that she refrain from using her left upper extremity and imposed a restriction on lifting no more than 10 pounds. Dr. Bacilla advised that he would schedule appellant for a magnetic resonance imaging (MRI) scan of her left shoulder and wrist if her condition did not improve.

On August 27, 2012 Dr. Bacilla stated that appellant had undergone an MRI scan of her left wrist which was consistent with fourth dorsal compartment tenosynovitis. The MRI scan of the left shoulder showed a high-grade partial thickness bursal-sided tear of the supraspinatus with subacromial fluid and some tendinosis; he also noted an intratendinous cyst at the myotendinous junction of the infraspinatus. Dr. Bacilla prescribed therapy for her left wrist and left shoulder and released her to light duty with a restriction on using her left arm.

In a September 24, 2012 report, Dr. Bacilla advised that physical therapy and injections in her left shoulder had not improved her pain, which was significant. He recommended rotator cuff repair surgery with decompression. With regard to the left wrist, Dr. Bacilla indicated that he would refer her to Dr. Gary Porubsky, a specialist in orthopedic hand surgery, for further evaluation and treatment.

In a report dated October 1, 2012, Dr. Porubsky related that appellant's symptoms began in July 2012 although she could not recall a single episode of injury. Appellant's work duties

included lifting heavy bags, placing them in an x-ray scanner for luggage and patting down passengers. Dr. Porubsky noted that she received injections in her left wrist in July 2012 but did not obtain any relief. On examination of the left wrist, he noted some soft tissue swelling which appeared to be distal to the fourth dorsal compartment and tenderness to palpation of the soft tissue in the area of the second, third, and fourth dorsal compartments of the wrist. Dr. Porubsky advised that the range of motion in the left wrist showed 55 degrees of dorsiflexion, 55 degrees of palmar flexion, 20 degrees of radial deviation and 35 degrees of ulnar deviation. He stated that radiographic tests of the left wrist were unremarkable. Dr. Porubsky diagnosed tenosynovitis possibly involving the second and third and at least the fourth dorsal compartments. He recommended that she be examined and evaluated by a rheumatologist in order to determine whether a rheumatological process caused her current, underlying symptoms.

On November 14, 2012 appellant requested an oral hearing, which was held on March 1, 2013.

In a March 13, 2013 report, Dr. Bacilla related that he was treating appellant for left shoulder pain for which she underwent surgery on December 20, 2012. He advised that she still experienced significant weakness in her left arm. Dr. Bacilla instructed her to remain out of work until her next appointment on April 17, 2013.

By decision dated April 24, 2013, an OWCP hearing representative accepted that appellant performed repetitive duties with her left upper extremity. He found, however, that she failed to submit sufficient medical evidence to establish a left shoulder or left wrist condition causally related to her work as a security officer.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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, that an injury was sustained 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) 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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 the claimant. The medical evidence required to establish causal relationship is usually rationalized medical 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed bilateral carpal tunnel condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish that her left shoulder or left wrist conditions are causally related to factors of her federal employment. For this reason, she did not discharge her burden of proof.

With regard to her claimed left shoulder condition, Dr. Bacilla diagnosed rotator cuff tendinitis, rotator cuff tear and related findings of chronic left shoulder pain. He did not provide a rationalized medical opinion addressing how the claimed left shoulder condition or disability was causally related to her employment factors. Dr. Bacilla noted that appellant experienced problems with her left shoulder for approximately three weeks and that she lifted items at work and experienced pain in her left shoulder when she elevated her arm. Dr. Bacilla diagnosed rotator cuff tendinitis in her left shoulder, with a possible tear, and stated that x-rays of her left shoulder revealed a Type 3 acromion with some significant spur formation and x-rays of her wrist showed no abnormalities. He imposed a restriction on lifting exceeding 10 pounds and advised her not to use her left upper extremity. Dr. Bacilla advised that a left shoulder MRI scan showed a high-grade partial thickness bursal-sided tear of the supraspinatus with subacromial fluid and some tendinosis. He prescribed therapy and injections to ameliorate the left shoulder pain and released her to light duty with a restriction on using her left arm. Dr. Bacilla indicated in his March 13, 2013 report that he was still treating appellant for left shoulder pain and indicated that she underwent rotator cuff repair surgery on December 20, 2012.

The reports of Dr. Bacilla are of limited probative value as he did not provide adequate medical rationale as to why appellant's condition was related to lifting in her employment.⁷ The

⁵ *Id.*

⁶ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Bacilla's reports described his treatment of appellant for a chronic left shoulder condition. He prescribed physical therapy, injections and performed rotator cuff repair surgery to ameliorate this condition. Dr. Bacilla did not sufficiently describe appellant's job duties or explain the medical process by which such duties were competent to cause the claimed left shoulder condition.

Appellant also submitted reports from Drs. Bacilla and Porubsky in support of her left wrist claim. Dr. Bacilla advised that appellant had experienced pain, tenderness and swelling in her left wrist. He diagnosed left wrist tenosynovitis but stated that he was not sure as to the etiology of her pain. Dr. Bacilla referred appellant to Dr. Porubsky, who advised in an October 2012 report that while she reported her symptoms began in July 2012 she could not recall a single episode of injury. He advised that her work duties included lifting heavy bags, placing them in an x-ray scanner for luggage and patting down passengers. Dr. Bacilla did not address how such duties were sufficient to cause the left wrist tenosynovitis. Dr. Porubsky noted some soft tissue swelling on examination which was distal to the fourth dorsal compartment and tenderness to palpation of the soft tissue in the area of the second, third, and fourth dorsal wrist compartments; he also stated that she had some limited range of motion of the wrist, with pain and tenderness. He advised that radiographic tests of the left wrist were normal. Dr. Porubsky concurred with the diagnosis of tenosynovitis, possibly involving the second and third and at least the fourth dorsal compartments, and recommended evaluation by a rheumatologist to determine whether her symptoms were caused by a rheumatological process.

The opinions of Drs. Bacilla and Porubsky are of diminished probative value. The physicians did not provide sufficient rationale explaining how appellant's job duties caused the tenosynovitis to her left wrist. Dr. Bacilla's opinion on causation is of limited probative value for the further reason that it is generalized in nature and equivocal. He stated that he was unsure as to the etiology of appellant's left wrist pain. While both physicians indicated that appellant had experienced chronic left wrist pain since July 2012, they did not explain how appellant's work duties were competent to cause the diagnosed condition. Drs. Bacilla and Porubsky did not provide adequate medical evidence to establish that appellant's claimed left wrist condition was 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 relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, she has not met her burden of proof.

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *Id.*

OWCP properly found that appellant did not establish that the conditions arose in the performance of duty.

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 failed to meet her burden of proof to establish that her claimed left shoulder and left wrist conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 2, 2014
Washington, DC

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

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

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