United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 14-818**
	)	**Issued: August 7, 2014**
SOCIAL SECURITY ADMINISTRATION, TELESERVICE CENTER, Oakland, CA, Employer	)	

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2014 appellant, through counsel, filed a timely appeal of the November 15, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which denied her occupational disease claim. 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 merit and nonmerit decisions of the case.

ISSUE

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

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On June 13, 2012 appellant, then a 44-year-old transportation security officer, filed an occupational disease claim alleging that she developed left shoulder pain due to prolonged sitting. She first became aware of her condition on February 18, 2011 and realized that it was causally related to her employment on February 1, 2011. Appellant did not stop work.

On July 6, 2012 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed shoulder condition to specific work factors.

Appellant was treated by Dr. James Eichel, a Board-certified family practitioner. On July 15, 2011 she presented with left shoulder pain and radiculitis which occurred after prolonged sitting. The left shoulder examination revealed limited extension and adduction and mild pain. Dr. Eichel diagnosed adhesive capsulitis and left shoulder sprain and recommended physical therapy. On December 2, 2011 he diagnosed left shoulder bursitis and impingement and performed therapeutic injections. In a work excuse slip dated December 2, 2011, Dr. Eichel noted that appellant was excused from work from November 28 to December 2, 2011 and could return to work on December 5, 2011. On May 8, 2012 he noted appellant's continued complaints of left shoulder pain and diagnosed left cervical radiculopathy, sensory only, bursitis resolved. In a prescription slip, Dr. Eichel diagnosed cervical radiculopathy and pinched nerve and prescribed an ergonomic chair. In a June 26, 2011 report, he opined that, based on appellant's description, her symptoms were industrial related.

In a June 15, 2012 report, Dr. Roman Kownacki, a Board-certified physiatrist, noted that appellant reported sitting at a desk for eight hours daily answering the telephone, using a keyboard and experiencing severe left shoulder pain radiating down the arm with numbness. Appellant felt her current symptoms were due to her job functions. Dr. Kownacki noted findings of paresthesias of the left index and pinky finger, tenderness of the paracervical spine and trapezius, positive Spurlings, negative impingement, intact strength and sensation. He diagnosed cervical radiculopathy. Dr. Kownacki opined that appellant's "current condition, more likely than not, was not caused or aggravated by factors of employment." He based his opinion on her preexisting multilevel cervical spondylosis and mild-to-moderate foraminal narrowing at C5-6, C6-7 and C4-5. Further, appellant did not isolate any particular incident or trauma. Dr. Kownacki returned her to work regular duty on June 15, 2012.

In a June 26, 2012 work slip, Dr. Timothy C. Shen, a Board-certified physiatrist, noted treating appellant on June 26 and July 18, 2012 for a long-standing history of neck pain radiating down the left arm. Appellant attributed her symptoms to cumulative trauma from her job which began in February 2011 and noted her symptoms were exacerbated by prolonged sitting. Dr. Shen noted findings of diffuse tenderness on palpation in the cervical paraspinals and bilateral upper trapezius, intact motor strength and sensation and normal range of motion of the cervical spine. He diagnosed cervical discogenic pain and chronic neck pain and recommended physical therapy and epidural steroid injections.

In a June 15, 2012 industrial work status report, a nurse diagnosed cervical radiculopathy and returned appellant to full duty. A July 16, 2012 magnetic resonance imaging (MRI) scan of

the cervical spine revealed loss of the cervical lordotic curvature, C5-6 left lateral disc protrusion, C4-5 lateral osteophytic ridge formation with disc bulge, C6-7 left lateral osteophytic ridge and disc bulge, C3-4 lateral osteophytic ridge with mild neural foraminal stenosis and scoliosis.

In an August 13, 2012 decision, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship.

On August 19, 2013 appellant requested a review of the written record. She submitted evidence previously of record together with an August 9, 2012 work excuse slip which noted that she was treated and excused from work on August 9, 2012.

In a December 10, 2012 decision, an OWCP hearing representative affirmed the August 13, 2012 decision. He found that the medical evidence did not establish that work factors caused or contributed to her claimed medical condition.

On January 18, 2013 appellant requested reconsideration. She submitted a December 18, 2012 health care provider certificate from Dr. Eichel who noted that appellant's neck condition began on December 1, 2011. Appellant experienced moderate-to-severe left neck pain with significant weakness in the left arm. Dr. Eichel advised that an MRI scan of the cervical spine revealed disc protrusions and bilateral foraminal stenosis. A December 2, 2012 lumbar spine MRI scan showed stable mild spondylosis and multilevel early neural foraminal and spinal canal encroachment.

Appellant was treated by Dr. Gordon Tang, a Board-certified neurologist, from January 23 to April 8, 2013 for progressive neck pain. Dr. Tang noted findings of weakness of the left elbow with diminished sensation of the right C6 dermatome. He diagnosed cervical spinal stenosis with radiculopathy and myelopathy and recommended surgical intervention. On February 12, 2013 Dr. Tang performed surgery for a C4-6 anterior cervical discectomy with interbody arthrodesis, with implantation of interbody prosthetic device and C4-6 anterior segmental fixation with a plate. He diagnosed cervical spondylosis, cervical radiculopathy and cervical myelopathy. Appellant also submitted reports of postsurgical diagnostic testing and records from a physician's assistant.

On April 23, 2013 OWCP denied modification of its December 10, 2012 decision.

On August 15, 2013 appellant requested reconsideration. She submitted a May 29, 2013 report from Dr. Eichel, who stated that it was "difficult to believe that anyone familiar with cervical disc pathology could come to the conclusion that the broad-based disc protrusions at the C5-6 and C6-7 levels that were found on her MRI scan and at the time of the cervical disc fusion were not related to the repetitive stress that her lifting on the job required."

In a July 29, 2013 report, Dr. Shen noted findings of well-healed posterior and anterior surgical scars, diffuse tenderness in the mid cervical paraspinals, limited range of motion of the cervical spine, intact motor strength and sensory testing. He diagnosed cervical discogenic pain, cervical radicular pain and chronic neck pain. Dr. Shen opined that, based on his examination, the history described by appellant and the results of imaging studies, to a reasonable degree of

medical certainty appellant's symptoms developed as a result of her job as a contact representative. He noted that appellant's symptoms were industrially related, and that it was medically possible that the prolonged periods of sitting, frequent computer use and telephone use led to the degenerative disc changes noted on the imaging studies. Dr. Shen noted that she was totally disabled. In an August 2, 2013 addendum, he reviewed the May 8, 2012 MRI scan of the cervical spine. Dr. Shen diagnosed cervical discogenic pain, cervical radicular pain, chronic neck pain and cervical foraminal stenosis. He stated that, given appellant's description of her job duties and onset of symptoms, the findings on the MRI scan could have been caused by cumulative trauma from her job and therefore it was medically probable that her symptoms were work related.

In an August 1, 2013 report, Dr. Tang noted that appellant presented with neck pain extending down the right arm and workup demonstrated evidence of multilevel degenerative disc which indeed "could have" come as a byproduct of cumulative injuries that "could potentially" come as a byproduct of being a representative. He noted that appellant had cervical spondylosis which required an anterior cervical fusion that relieved her symptoms.

In a decision dated November 15, 2013, OWCP denied modification of the April 23, 2013 decision.

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 the 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

[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).

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 work duties included prolonged sitting and use of a keyboard and telephone. The Board finds that appellant has not submitted sufficient medical evidence to establish that her diagnosed conditions are causally related to specific employment factors.

In the June 26, 2011 report, Dr. Eichel opined that based on appellant's description her symptoms were industrial related. In a May 29, 2013 report, he opined generally that it was difficult to believe that anyone familiar with cervical disc pathology could conclude that the broad-based disc protrusions at C5-6 and C6-7 found on her MRI scan and at the time of the cervical disc fusion were not related to repetitive stress and lifting required on her job. Dr. Eichel noted it was clear that appellant sustained an industrial injury. The Board finds that, although Dr. Eichel generally supported causal relationship, he did not provide adequate medical rationale explaining the basis of his opinion regarding causal relationship.[4] Dr. Eichel did not explain the process by which appellant's particular work duties would cause or contribute to the diagnosed condition or why such condition would not be due to any nonwork factors. Appellant originally was treated for a left shoulder condition for which Dr. Eichel diagnosed bursitis in 2011. Dr. Eichel subsequently diagnosed a cervical condition with radiculopathy. His reports are insufficient to meet appellant's burden of proof.[5]

Dr. Shen treated appellant for a long-standing history of neck pain radiating down the left arm. He attributed her symptoms to cumulative trauma from her job which began in February 2011 and noted her symptoms were exacerbated by prolonged sitting. Dr. Shen diagnosed cervical discogenic pain and chronic neck pain. As to the issue of causal relationship, he appears to repeat the history of injury as reported by appellant without providing his own rationale explaining how appellant's condition was work related. Dr. Shen failed to provide a rationalized opinion explaining the causal relationship between appellant's cervical condition and the factors of employment believed to have caused or contributed to such condition.[6] In a July 29, 2013 report, he opined that, based on his examination, the history described by appellant and the results of imaging studies, to a reasonable degree of medical certainty appellant's symptoms did develop as a result of her job as a contact representative. Dr. Shen also noted that

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

[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] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

appellant's symptoms were industrially related, and that it is "medically possible" that the prolonged periods of sitting, frequent computer use and telephone use lead to the degenerative disc changes noted on the imaging studies. In an August 2, 2013 addendum, he noted that, given appellant's description of her job duties and onset of symptoms, the findings on the MRI scan "could have" been caused by cumulative trauma from appellant's job and therefore medically probable that her symptoms are industrial related. In an August 1, 2013 report, Dr. Tang noted workup demonstrated evidence of multilevel degenerative disc which "could have" come as a byproduct of cumulative injuries that "could potentially" come as a byproduct of being a representative. At best, these reports provide only speculative support for causal relationship. Drs. Shen and Tang qualified their opinions by noting that it was "medically possible" that appellant's employment "could have" caused her condition. They provided an insufficient explanation to support their opinion on causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof.[7]

Appellant submitted a June 15, 2012 report from Dr. Kownacki who treated her for cervical radiculopathy. Dr. Kownacki opined that appellant's condition, "more likely than not, was not caused or aggravated by factors of employment." He based his opinion on a preexisting history of multilevel cervical spondylosis and mild-to-moderate foraminal narrowing at C5-6, C6-7 and C4-5 Dr. Kownacki did not support a work-related cervical condition.

The remainder of the medical evidence, including reports of diagnostic testing, are insufficient to establish the claim as they fail to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions. The record also contains reports from nurses and therapists. However, the Board has held that document notes signed by such lay persons are not considered medical evidence as these providers are not physicians under FECA.[8]

On appeal, appellant disagrees with the denial of her claim for compensation and contends that she submitted sufficient evidence to establish her claim. As noted, the Board finds that the medical evidence does not establish that appellant's left shoulder or cervical conditions are causally related to her employment. The reports from her physician's fail to provide sufficient medical rationale explaining how the conditions were caused or aggravated by particular employment duties. The need for such rationale is particularly important in view of appellant's preexisting degenerative conditions.

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.

[7] Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

[8] *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's 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).

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 November 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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