

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

L.M., Appellant)
and) Docket No. 14-923
DEPARTMENT OF HOMELAND SECURITY,) Issued: August 5, 2014
TRANSPORTATION SECURITY)
ADMINISTRATION, Corpus Christi, TX,)
Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant
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 March 11, 2014 appellant, through her attorney, filed a timely appeal from the February 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her 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 this case.

ISSUE

The issue is whether the cervical condition for which appellant seeks compensation is causally related to her document checking duties in 2012.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 6, 2012 appellant, a 55-year-old transportation security officer, filed an occupational disease claim alleging that her C5-6 spondylotic disc protrusions, cervical stenosis, cervicalgia and cervical radiculopathy were the result of her federal employment. She identified sitting in an unnatural posture to perform her duties for eight hours and repetitively moving her head and arms up and down to check documents.

Appellant returned to modified duty as a document checker in 2012, following surgeries under another claim. She remained seated in a chair at a banquet table for eight hours a day.² Appellant reached up and down, and looked up and down, over 1,000 times a day to handle the documentation from patrons who were two to four feet above her. She stated, “I would have to overreach because my table was very wide and I was lower due to my chair, affording my feet to stay on the ground.” Appellant described retrieving the documents by looking up and raising her arms over her head, then looking down at the documents, then looking up again to verify that the identification matched the photo identification. She marked the boarding pass, gathered all the information given to her, then raised her arms and looked up to finish the checking process for entry to the checkpoint. Appellant advised: “My neck, shoulders and arms were under ... stress and repetitively being injured due to the modified incorrect ergonomic position of my body in relation to the height of the people and repetitive functions of my afforded modified position.”

In a decision dated July 10, 2013, OWCP denied appellant’s occupational disease claim. It found that although the evidence supported that work activities occurred as alleged, she submitted no medical evidence to establish causal relation.

On July 17, 2013 appellant requested a telephonic hearing. OWCP received a September 25, 2013 report from Dr. Leonel Reyes, a family physician, who diagnosed a cervical herniated nucleus pulposus (HNP), cervical radiculitis, bilateral shoulder bursitis and bilateral shoulder impingement. Dr. Reyes noted that an August 21, 2012 imaging study showed degenerative changes of the cervical spine with a slight reversal of the normal lordotic curvature and an apex at the C5 level; and spinal stenosis at C5-6 and C6-7 without other disc herniation, spinal canal stenosis or neural foraminal stenosis.

Dr. Reyes described the mechanism of injury by noting that her job as a transportation security officer primarily entailed frequent and repetitive activities including, but not limited to, reaching and grasping, lifting and carrying, pushing and pulling, bending/stooping and squatting, standing and walking, twisting, fine manipulation, overhead endeavors and “other various physical activities.” He also noted that appellant performed her duties in 2009, which required her to work at a sloped checkpoint checking passengers’ documents. “[Appellant] had to look up, reach up, then [look] down at the documents for verification, then look up and reach up to return them to the passenger. All this was done while sitting down while reaching up and

² The record indicates that appellant filed an occupational disease claim on May 18, 2011 alleging tarsal tunnel syndrome from the stress of standing on an incline to perform her job. OWCP assigned File No. xxxxxx745. It accepted her claim for bilateral tarsal tunnel syndrome and authorized surgery. Appellant returned to modified duty in February 2012 but claimed intermittent disability for a right knee condition from the same work factors that caused her foot and ankle condition. She stopped work on September 9, 2012.

looking over head at least 500 times a day for 8 hours and 5 days a week.” Dr. Reyes explained that the repetitive duties of looking up and down caused strain to appellant’s neck. He noted that she was also required to lift heavy bags overhead as patrons went through her checkpoint. Dr. Reyes stated:

“[These] repetitive duties caused injury to her shoulders bilaterally. In my medical opinion, the repetitive duties of looking up and down as she verified passengers’ documents and verifying IDs [identifications] and doing overhead lifting of heavy baggage of patrons as they went through her checkpoint is what caused her cervical HNP, cervical radiculitis, bilateral shoulder bursitis, and bilateral shoulder impingement. [Appellant’s] condition has occurred over a period of time and is due to repetitive duties that she performed on a daily basis as part of her job description as a [t]ransportation [s]ecurity [o]fficer for the Transportation Security Administration. Her work-related claim requires further care to prevent further disability of her condition. [Appellant’s] condition is a valid claim and requires medical treatment for it.”

Dr. Reyes noted that appellant underwent a cervical fusion on October 15, 2012.

In a decision dated February 10, 2014, an OWCP hearing representative affirmed the denial of appellant’s injury claim. She found that appellant established the employment activities, as alleged; but determined that she did not establish that her cervical condition was causally related to the accepted duties or exposure.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ 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. He or she must also establish that such event, incident or exposure caused an injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the

³ 5 U.S.C. § 8102(a).

⁴ *John J. Carbone*, 41 ECAB 354 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

OWCP does not dispute the modified duties appellant performed as a document checker in 2012. It found that she established that she experienced repetitive work duties at the time, place and in the manner alleged. The question is whether the accepted work activities caused or aggravated her diagnosed medical condition.

The only medical evidence that addresses the element of causal relationship is the opinion given by Dr. Reyes, a family physician. It was his opinion that the repetitive duties of looking up and down as appellant verified documents and identifications, as well as lifting heavy baggage overhead as patrons went through her checkpoint, caused a cervical herniated disc, cervical radiculitis, bilateral shoulder bursitis and bilateral shoulder impingement.

Dr. Reyes' reference to the duties appellant performed in 2009, which required her to work on a sloped surface and lift heavy bags overhead, appears to relate to the prior tarsal tunnel claim.⁹ The record indicates that she worked modified duty as a sedentary document checker for only a period of time in 2012. Otherwise, Dr. Reyes' description of the physical demands of checking documents appears accurate.

Dr. Reyes offered some rationale to support his stated conclusion by explaining that the repetitive activities caused strain on appellant's neck; but he did not make clear, from a biomechanical point of view, how such work duties caused a cervical HNP, cervical radiculitis, bilateral shoulder bursitis and bilateral shoulder impingement. He did not explain on what objective basis he was able to determine that appellant's diagnosed conditions were caused by her repetitive activities. Further, Dr. Reyes did not explain why he diagnosed a cervical HNP when the August 21, 2012 imaging study showed no disc herniation.

Although Dr. Reyes' opinion on causal relationship provides some support for appellant's claim, his factual history mingles different injury claims and fails to provide clear medical reasoning on the subject of causal relationship. This diminishes the probative value of his opinion.¹⁰

Accordingly, the Board finds that appellant has not met her burden to establish the element of causal relationship. The Board will therefore affirm OWCP's February 10, 2014 decision.

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ See *supra* note 2.

¹⁰ E.g., *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

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 not met her burden to establish that the cervical conditions for which she seeks compensation are causally related to her document checking duties in 2012.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2014
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