



these conditions on August 30, 2013. It was not until September 4, 2013 that appellant realized these conditions were caused or aggravated by her employment.

By correspondence dated September 27, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide this information.

In a September 27, 2013 report, Dr. David L. Tate, an examining Board-certified family practitioner, indicated that appellant was seen for right shoulder and finger injuries. Diagnoses included cervical radiculopathy, cervical degenerative disc disease, and cervical spinal stenosis. Under history of illness, Dr. Tate related that appellant “has had ongoing persistent symptoms with her neck and shoulder.” Appellant related that her right finger and arm problems began with her new duties as a secretary answering telephones. A physical examination revealed that appellant was morbidly obese and she had difficulty raising her right arm to shake his hand. Dr. Tate related that he did not assess appellant’s right arm range of motion or strength “due to perceived discomfort and complaints of pain.”

In an attending physician’s report (Form CA-20), Dr. Tate noted September 4, 2013 as the date of injury and diagnosed cervical and spinal stenosis and cervical radiculopathy. Under history of injury, he related that appellant developed new symptoms as a result of her new job duties requiring her to answer telephones. Dr. Tate checked “yes” to the question of whether the diagnosed condition(s) had been caused or aggravated by her employment.

In progress notes dated September 4, 2013, Dr. Shauna S. Kincheloe-Zaren, an examining Board-certified family practitioner, reported that appellant was seen that date for neck pain running into her back and arm pain. She provided a history starting in 2012 when appellant injured both shoulders when she was hit by a window and then hit a wall. In 2013 appellant was hit on the left side of her neck by a patient who had dementia. Following this incident, she was placed on light-duty work answering the telephones. Appellant alleged that she sustained neck pain as a result of holding the telephone between her shoulder and neck due to answering the telephones. She noted that the pain started the prior Friday, she reported the pain on Monday, and that now she feels so bad she is unable to lift a stapler. Appellant described her pain as beginning in her left neck, then radiating down the right side and radiating across into her scapula, and down into the anterior arm and shoulder. A physical examination revealed limited range of motion, inability to touch her chin to her chest, stiff neck muscles, tight right shoulder muscles, inability to lift her arm, tenderness diffusely on palpation of the right shoulder, no thera atrophy, and light grip. Appellant attributed the flare-up of her pain to having to answer the telephones without a headset. Dr. Kincheloe-Zaren stated that appellant appeared “to be uncomfortable and likely has a spasm in the muscles from the type of work she is doing on the telephone.” In an addendum to the report, Dr. Kincheloe-Zaren related that a June magnetic resonance imaging (MRI) scan showed previous cervical surgery which appellant had failed to mention.

In progress notes dated September 6, 2013, Dr. Kincheloe-Zaren reported that appellant was seen for a follow-up visit and that she “has significantly improved.” A physical examination revealed that appellant was able to move her neck to the left and look down, had some reduced

neck range of motion to the right and left, was able to lift the left arm above her head, but could only lift the right arm to shoulder level. Appellant had good left arm strength, reduced right arm strength, reduced right hand grip, good left hand grip, and no erythema or specific neck, shoulders, or hand tenderness. Dr. Kincheloe-Zaren noted that appellant sustained a work injury in 2004 which required a cervical fusion, that she was injured again when a window hit her and when she was kicked in the neck area by a patient. Appellant was injured again on September 4, 2013 when she was assigned to answer the telephone and she held the telephone between her neck and shoulder. As a result of holding the telephone between the neck and shoulder she sustained “an apparent muscle spasm.”

On October 24, 2013 the employing establishment controverted the claim and submitted copies of two traumatic injury claims previously filed by appellant. On June 20, 2013 appellant had filed a traumatic injury claim alleging that on June 14, 2013 she injured her neck, right shoulder, and upper back due to being hit in the neck by a patient with dementia.<sup>2</sup> She had also filed a traumatic injury claim alleging that on July 30, 2012 she sustained a neck injury as the result of a window falling inward on her, striking her left shoulder, and causing her right shoulder and head to hit the wall.<sup>3</sup> The employing establishment noted that both claims had been denied and that appellant alleged that her current neck condition was an aggravation of a prior injury.

By decision dated October 30, 2013, OWCP denied appellant’s claim as the medical evidence insufficient to establish a causal relationship between the diagnosed medical condition and the identified employment factors.

On November 11, 2013 appellant’s counsel requested a telephonic hearing before an OWCP hearing representative, which was held on May 8, 2014.

Subsequent to the hearing OWCP received additional factual evidence from the employing establishment as set forth below. Appellant had been working in a light-duty job since June 24, 2013 and was based on work restrictions set by her nurse practitioner. In an August 14, 2013 memorandum, the employing establishment informed appellant that her limited-duty assignment of answering telephones was terminated. It noted that it could no longer accommodate her work restrictions and she should return to her usual work duties. Appellant was informed that she was expected to return to her regular duties effective August 19, 2013. The employing establishment noted that her claim under OWCP File No. xxxxxx155 had been denied by OWCP on August 8, 2013.

By decision dated July 14, 2014, an OWCP hearing representative affirmed the denial of appellant’s claim.

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<sup>2</sup> OWCP assigned File No. xxxxxx010.

<sup>3</sup> OWCP assigned File No. xxxxxx155.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement 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.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</sup> 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.<sup>10</sup>

## ANALYSIS

OWCP does not dispute that appellant answered telephones in her position. The question that remains is whether her duties caused a diagnosed condition.

To discharge her burden of proof, appellant must submit a well-reasoned medical opinion based on an accurate history explaining how the employment factors caused a diagnosed medical

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

condition. In support of her claim, she submitted medical evidence from Drs. Tate and Kincheloe-Zaren. For the reasons set forth the below, neither physician has provided a report sufficient to support her claim.

In progress notes dated September 4 and 6, 2013, Dr. Kincheloe-Zaren reported that appellant was seen for neck and arm pain. On September 4, 2013 she opined that appellant “likely has a spasm in the muscles from the type of work she is doing on the telephone” and diagnosed apparent muscle spasm. Dr. Kincheloe-Zaren’s reports do not contain medical rationale explaining the nature of the relationship between appellant’s muscle spasm to her duties of answering a telephone. She provided no explanation or rationale addressing the nature or extent of the work performed or how the specific employment duties caused or contributed to appellant’s claimed injury. Further, the Board has noted that muscle spasm is generally a symptom rather than a firm diagnosis.<sup>11</sup> Dr. Kincheloe-Zaren’s impression of muscle spasms in her September 4 and 6, 2013 reports does not explain how the accepted activities aggravated or contributed to any injury.

In an attending physician’s report (Form CA-20), Dr. Tate noted September 4, 2013 as the date of injury and diagnosed cervical and spinal stenosis and cervical radiculopathy. He checked “yes” to the question of whether the diagnosed condition(s) had been caused or aggravated by her employment. The Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>12</sup> Thus, this report is insufficient to meet appellant’s burden of proof.

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>13</sup> 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.<sup>14</sup>

As there is no probative, rationalized medical evidence addressing how her claimed neck and right shoulder conditions were caused or aggravated by the identified employment duties, she has not met her burden of proof. The Board will therefore affirm OWCP’s July 14, 2014 decision.

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.

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<sup>11</sup> *J.S.*, Docket No. 07-881 (issued August 1, 2007); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>12</sup> *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>13</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>14</sup> See *D.U.*, *supra* note 7; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

**CONCLUSION**

The Board finds that appellant has failed to establish neck and right shoulder conditions due to the employment duties she identified.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 14, 2014 is affirmed.

Issued: December 16, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board