

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

R.D., Appellant

and

DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Dallas, TX, Employer

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**Docket No. 13-2182
Issued: June 4, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 30, 2013 appellant filed a timely appeal from the May 16, 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 in this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease claim causally related to factors of her federal employment.

FACTUAL HISTORY

On September 25, 2012 appellant, then a 49-year-old claims examiner, filed an occupational disease claim alleging that she sustained trigger finger and tendinitis in both hands in the performance of duty. She indicated that her workload had increased by "double" due to

¹ 5 U.S.C. § 8101 *et seq.*

staff shortages. Appellant noted that this caused her to have more repetitive motions of her hands and, at the end of each week, her hands were aching, swollen and very painful. She alleged that her injury began on March 15, 2012 and that she first became aware of the injury and its relation to her work on August 9, 2012.²

By letter dated October 12, 2012, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

On December 4, 2012 Kim Macklin, an employing establishment workers' compensation coordinator, controverted the claim. She denied that appellant's "workload increased by double." Ms. Macklin explained that this was not factual and provided a chart comparing appellant's duties from 2011 and 2012. She noted that some areas were higher in 2012 and some were lower, but advised that none of the areas had doubled with the exception of two areas "self-reported" by appellant. Ms. Macklin explained that appellant only reported 79 pieces of mail to track/respond to during 2011 but that she identified 271 pieces of mail to track/respond to during 2012. She asserted that the chart demonstrated that the workload did not double. The accompanying chart included 15 categories of appellant's duties and revealed that she had: 1,157 calls in 2011 and 1,815 calls in 2012; 738 threads in 2011 and 637 in 2012; general correspondence of 79 in 2011 and 271 in 2012 (self-reported); congressional inquiries of 21 in 2011 and 26 in 2012; mail of 28,564 in 2011 and 21,645 in 2012; "Tls" of 107 in 2011 and 113 in 2012; "NLT" of 106 in 2011 and 108 in 2012; "Recurr" of 11 in 2011 and 12 in 2012; "Basic OD" of 49 in 2011 and 55 in 2012; "Ext OD" of 20 in 2011 and 18 in 2012; "QCM ref" of 34 in 2011 and 63 in 2012; "LWOP" of 335 in 2011 and 264 in 2012; "LBB" of 6 in 2011 and 6 in 2012; "SA" of 47 in 2011 and 49 in 2012 and "pmt certs" of 182 in 2011 and 253 in 2012.

In an August 9, 2012 report, Dr. Olayinka Ogunro, a Board-certified orthopedic hand surgeon, noted that appellant presented for follow up of right upper extremity complaints of pain and swelling in the right ring finger of two weeks duration. She noted that appellant also complained of numbness over the transverse carpal ligament of the right wrist and of difficulty grasping objects. Dr. Ogunro indicated that appellant was postendoscopic carpal tunnel release of the right wrist performed on July 31, 2009. She related that appellant indicated that "in the past two months her workload has tripled." Dr. Ogunro advised that an x-ray of the right hand revealed no abnormalities and appellant was working full duty. She diagnosed tendinitis of the right ring finger.

In a December 6, 2012 report, Dr. Ogunro noted that appellant presented for follow-up evaluation of the right upper extremity to include pain in the middle and ring fingers. She examined that right hand which revealed more tenderness over the A-1 pulley of the ring finger than middle finger A-1 pulley. Dr. Ogunro noted that appellant was working full duty and diagnosed trigger finger of the right, middle and ring finger. She opined that this is "most likely work induced."

By decision dated December 20, 2012, OWCP denied appellant's claim. It found that the evidence did not support that the injury or events occurred as alleged. OWCP found that the

² The record reflects that appellant also had a claim for a traumatic injury on April 28, 2005 under Claim No. xxxxxx434 and an occupational disease claim for an injury on or about February 22, 2011 under Claim No. xxxxxx459. These other claims are not presently before the Board.

documentation from the employing establishment did not support that her workload had doubled. It noted that only one out of 15 areas, a self-reported area, had doubled.

On February 13, 2013 appellant requested reconsideration. She noted that, in March 2012, her workload began to increase almost every other month. Appellant explained that she managed a workload block of 43 numbers. She noted that, in her unit, three new employees were terminated within a year and one left for a new position, leaving the unit under staffed. Appellant alleged that, each time an examiner left, an employee had to take on extra work. She noted that, by July 2012, the workload was redistributed and her number block increased to 47 numbers, the next month, August 2012, her number block increased to 51 numbers. Appellant advised that by October 2012, her number block increased to 57. She stated that, from March to October 2012, this was a 14 number block increase. Appellant also noted that she received additional duties because of being short staffed. The additional duties included telephone duties for one to two hours a day to help contact service representatives. Appellant alleged that her hands began to swell and ache at the end of each week after working all day to process work and some days she would have to leave work because her hands were so swollen and painful. She noted that she had an accepted claim for bilateral carpal tunnel syndrome and had surgery on both wrists in 2009. Appellant noted that she initially thought it may be a recurrence but her physician indicated that she had developed a new condition in her right hand and fingers that were work related. She also provided documentation to support that her workload increased. The documentation included: that on March 23, 2012 appellant had 43 numbers; on July 2, 2012 she had 47 numbers; on August 3, 2012 she had 51 numbers and on October 9, 2012 she had 57 numbers. Appellant also included copies of leave requests in which she indicated that her fingers were swelling and she needed to rest.

In a May 15, 2013 response, Ms. Macklin again controverted the claim. She asserted that appellant's workload had not "doubled." Ms. Macklin referred to the chart of appellant's duties and indicated that appellant's allegations were factually incorrect and noted that the numbers in the chart spoke for themselves. She explained that some of the case management activities decreased. In particular, Ms. Macklin noted that appellant had a smaller volume of incoming mail, which meant that she had fewer documents to read and provide case management-related activities and to categorize and she had fewer claims for wage loss, thus allowing more time to address other case management activities. She also noted that while general correspondence increased, this was self-reported and less likely to represent the actual changes between 2011 and 2012. Ms. Macklin also noted that, even if they did increase, it would have been offset by the activities that decreased during 2012. She also alleged that certain important areas related to case management activities actually decreased approximately 25 percent, thus allowing her to perform fewer key strokes during 2012. Ms. Macklin further noted that, although appellant's caseload increased from 43 to 57 digits, this was not "double" the workload.

In a May 16, 2013 decision, OWCP denied modification of the prior decision. It found that an increase overtime of 43 to 57 digits did not represent doubling of appellant's workload.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 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, generally, is 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 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

The Board has held that a variety of work factors are compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.⁶ Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.⁷ Additionally, conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.⁸

ANALYSIS

Appellant alleged that her work factors caused an emotional condition. OWCP denied her claim on the basis that no compensable factors had been established. The Board must review whether the allegations are sufficient to establish compensable factors under FECA. The Board finds that appellant has not established a compensable factor of employment.

Appellant alleged an emotional condition due to overwork at the employing establishment. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁵ *Id.*

⁶ *Bobbie D. Daly*, 53 ECAB 691 (2002).

⁷ *Ezra D. Long*, 46 ECAB 791 (1995).

⁸ *Trudy A. Scott*, 52 ECAB 309 (2001).

compensable.⁹ The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.¹⁰

In support of her claim that she was overworked, appellant indicated that her caseload doubled. Her basic argument was that her workload increased and her position required numerous key strokes such that her fingers and hands swelled after performing these increased tasks. The documentation provided by the employing establishment included 15 categories of appellant's duties for the years 2011 and 2012. The Board notes that Ms. Macklin from the employing establishment explained that appellant's allegations were not supported by facts. She provided a chart comparing appellant's duties from 2011 and 2012. Ms. Macklin noted that some areas were higher in 2012 and some were lower, but advised that none of the areas had doubled with the exception of the two areas "self-reported" by appellant. For example, she explained that appellant only reported 79 pieces of mail to track/respond during 2011 but that she identified 271 pieces of mail to track/respond during 2012. Ms. Macklin asserted that the overall chart reflected that the volume of mail did not double, but in fact, had decreased dramatically by 7000 pieces. In her February 13, 2013 reconsideration request, appellant alleged that in March 2012, her workload began to increase almost every other month. She explained that she managed a workload block of 43 numbers and three new employees were terminated within a year and one left for a new position, leaving the unit under staffed. Appellant indicated that, each time an examiner left, an employee had to take on the extra work. She alleged that, by October 2012, her number block increased to 57 numbers, a 14 number block increase since March. Appellant also noted that she was overworked because additional telephone duties of one to two hours per day were placed upon her as a result of being short staffed. As a result her hands began to swell after working all day and some days she would have to leave work because of hand swelling and pain. Appellant provided documentation of the increase in her number blocks.

However, in a May 15, 2013 response, Ms. Macklin again asserted that appellant's workload had not "doubled." She referred to the chart of appellant's duties and explained that the allegations provided by appellant were factually incorrect based on the date. Furthermore, some of appellant's case management activities decreased. In particular, Ms. Macklin explained that appellant had a smaller volume of incoming mail, which meant that she had fewer documents to read and to provide case management-related activities and to categorize and she had fewer claims for wage loss, thus allowing more time to address other case management activities. She also noted that, while general correspondence increased, this was self-reported and less likely to represent the actual changes between 2011 and 2012. Ms. Macklin also noted that, even if it did increase, it was offset by activities that decreased in 2012. She advised that certain important areas related to case management activities actually decreased about 25 percent, thus allowing her to perform fewer key strokes during 2012. Ms. Macklin further explained that, although appellant's caseload increased from 43 to 57 digits, this was not "double" the workload. The Board finds that appellant's arguments are not convincing in light of the documentation provided by the employing establishment. The Board finds that she has not

⁹ *Supra* note 7.

¹⁰ *Bobbie D. Daly*, 53 ECAB 691 (2002).

submitted sufficient evidence substantiating her workload claims.¹¹ Since appellant has not substantiated a compensable factor of employment as the cause of her emotional condition, the Board will not address the medical evidence.¹²

Appellant submitted arguments on appeal. Her arguments included her opinion that the reports from the employing establishment did not accurately depict her workload. However, as found above, the evidence was insufficient to establish a compensable factor of employment as the cause of her emotional condition.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an occupational disease claim causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.¹³

Issued: June 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Lillian Cutler*, 28 ECAB 126 (1976).

¹² See *Karen K. Levene*, 54 ECAB 671 (2003).

¹³ Richard J. Daschbach participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014.