

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

P.F., Appellant

and

**DEPARTMENT OF JUSTICE, U.S. MARSHALS
SERVICE, San Diego, CA, Employer**

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**Docket No. 14-1295
Issued: September 16, 2014**

Appearances:
David A. Testone, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 13, 2014 appellant, through counsel, filed a timely appeal from an April 3, 2014 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.²

ISSUE

The issue is whether appellant sustained an occupational disease causally related to factors of her employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the April 3, 2014 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On January 13, 2014 appellant, then a 49-year-old administrative support assistant, filed an occupational disease claim alleging that she experienced pain on her neck, shoulders, arms, and both hands and tingling on her fingers, legs and knees as a result of daily computer key entry and processing of documents. She first became aware of her condition and realized it resulted from her employment on June 17, 2013. Appellant's supervisor noted on the claim form that she was last exposed to these work conditions on January 15, 2014.³

In a June 17, 2013 report, Dr. Richard Mantell, a Board-certified internist, related appellant's complaints of pain in her neck, low back, right shoulder and right hand along with numbness and tingling of her right upper extremity. He stated that appellant worked as an administrative support assistant who performed duties of receiving, reviewing, coordinating, maintaining, monitoring and recording a variety of criminal case actions; initiating all necessary documentation to complete the enforcement of the action; serving as the district focal point for prisoner movement services; and receiving criminal writs, court orders, detainers, judgment and commitment orders. Dr. Mantell noted that appellant's work involved repetitive movement of the arms, shoulders, neck and low back. He opined that because of appellant's job duties and pain related to her work it seemed reasonable that the repetitive motions that her job entailed contributed to the pain in her cervical, lumbar, right shoulder and right wrist. Upon examination of the lumbar spine, Dr. Mantell observed mild-to-moderate tenderness at bilateral trapezius and lumbar paraspinal musculature. Sensation was intact and strength measured 3/5. Dr. Mantell also provided findings for cervical and lumbar range of motion. He stated that appellant's injuries that she sustained from her job had responded reasonably well to injection therapy, physical therapy, pain management and chiropractic treatments. Dr. Mantell recommended that she continue this treatment along with pain management once a month as needed.

In July 12 and August 16, 2013 reports, Robert Paul, a certified physician's assistant, stated that appellant received trigger point injections for cervical paraspinals and trapezius muscles. He noted diagnoses of unspecified vertiginous syndromes and labyrinthine disorders, pain in joint involving shoulder region, intervertebral disc disorder with myelopathy, lumbago and unspecified sleep disturbance.

In November 22 and December 16, 2013 electrodiagnostic and nerve conduction study (NCV) reports, Mr. Paul noted a presumptive diagnosis of pain associated with cervical plexopathy without motor deficit. He reported higher than average measures of the right greater occipital nerve, +1 mild, the left greater occipital nerve, +2, right suprascapular nerve, +4, and right radial nerve lateral branch, +2. Mr. Paul noted lower than average measures of the left ulnar nerve, -1, right second thoracic nerve, -1, and left second thoracic nerve, -1. He stated that the lower than average measures suggested irritation which warranted investigation.

In physical therapy reports dated December 6, 2013 to January 10, 2014, James Ward, a physical therapist, related appellant's complaints of cervical and low back pain with numbness and tingling of right upper extremity, especially during work-related computer data entry. He

³ The record reveals that appellant previously filed a traumatic injury claim on December 9, 2013.

noted that appellant had been under his care since June 17, 2013 due to cervical and lumbar pain with radiculopathy. Mr. Ward provided a diagnosis of cervical and lumbar pain with radiculopathy. He provided findings on examination and work restrictions and recommended a treatment plan.

Appellant provided a position description for an administrative support assistant.

In a January 10, 2014 prescription note, Mr. Paul stated that appellant needed medical treatment for her carpal tunnel syndrome, lumbago and degenerative cervical and bilateral wrist osteoarthritis.

On February 4, 2014 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional medical evidence from a physician to establish a diagnosed condition as a result of her employment duties.

In a February 7, 2014 report, Dr. Milnes R. Henson, a Board-certified family practitioner, stated that appellant was his patient. He reported that appellant had a diagnosis of cervical spondylosis. Dr. Henson noted that appellant was referred to physical therapy by Dr. Patrick Kearney, a neurosurgeon.

In a decision dated April 3, 2014, OWCP denied appellant's claim. It accepted that appellant worked as an administrative support assistant and was diagnosed with various medical conditions but denied her claim finding insufficient medical evidence to establish that her conditions were causally related to her employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence⁴ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵ In an occupational disease claim, appellant's burden requires submission of the following: (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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ The opinion of the

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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.⁸

ANALYSIS

Appellant alleges that she sustained chronic pain in her neck, shoulders, arms, hands and fingers as a result of her repetitive duties as an administrative support assistant. OWCP accepted her duties as an administrative support assistant and that appellant was diagnosed with cervical spondylosis. It denied her claim finding insufficient medical evidence to establish that her diagnosed condition was causally related to factors of her employment. The Board finds that appellant did not meet her burden of proof to establish an occupational disease as a result of her employment duties.

The June 17, 2013 report by Dr. Mantell related appellant's complaints of pain in her neck, low back, right shoulder and right hand. He described her duties as an administrative support assistant and noted that her work involved repetitive movements of the arms, shoulders, neck and low back. Dr. Mantell provided physical findings on examination. He opined that because of appellant's job duties and pain related to her work it seemed reasonable that the repetitive motions that her job entailed contributed to the pain in her cervical, lumbar, right shoulder and right wrist. The Board notes that, although Dr. Mantell attributes appellant's pain to her repetitive duties as an administrative support assistant, he does not provide a medical diagnosis other than pain.⁹ Furthermore, his opinion that it "seemed reasonable" that appellant's employment duties contributed to her painful conditions is speculative and equivocal. Dr. Mantell does not affirmatively conclude that appellant sustained an occupational disease as a result of her employment duties. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁰ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹¹ For these reasons, Dr. Mantell's report is insufficient to establish causal relationship.

Appellant also provided a February 7, 2014 report by Dr. Henson, who diagnosed cervical spondylosis. He does not, however, provide any opinion on the cause of appellant's condition. The Board has held that medical evidence that does not offer any opinion regarding

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ Pain is a description of a symptom and not considered a compensable medical diagnosis. *B.P.*, Docket No. 12 1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁰ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹¹ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Accordingly, Dr. Henson's report fails to establish appellant's claim.

The additional treatment reports by Mr. Paul, a certified physician assistant, and Mr. Ward, a physical therapist, are also insufficient to establish appellant's claim as they are not considered "physicians" under FECA. Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As physician's assistants and physical therapists are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease as a result of factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹³ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).