United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
	)	**Docket No. 14-1086**
and	)	**Issued: February 26, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 9, 2014 appellant, through her attorney, filed a timely appeal from a December 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 merits of this case.

ISSUE

The issue is whether appellant established that she sustained a bilateral arm injury causally related to factors of her federal employment.

On appeal, counsel contends that appellant has submitted sufficient factual evidence to establish working conditions that could cause her claimed conditions. He further contends that an April 8, 2013 medical report of Dr. Scott M. Fried, a treating orthopedist specializing in hand surgery, clearly describes appellant's work duties and opines that the duties caused her diagnosed

[1] 5 U.S.C. § 8101 *et seq.*

right upper extremity and cervical conditions. Alternatively, counsel contends that the factual and medical evidence of record is sufficient to require further development.

FACTUAL HISTORY

On March 1, 2012 appellant, then a 34-year-old telephone operator,[2] filed an occupational disease claim alleging that she first became aware of pain in both hands and arms and in her shoulder, and realized that her conditions were caused or aggravated by her federal employment during a 16-hour work shift on December 27, 2011. She stated that she felt numbness, pins, and needles in her hand and arm while typing and using a switchboard.

A description of the telephone operator position required appellant to work an eight-hour rotating shift providing coverage 7 days a week, 24 hours a day. The major duties of the position required, among other things, operation of telecommunications equipment 60 percent of the time which included operation of computer-based telephone consoles to access the medical center's telephone system and emergency speed dial lines, receipt of inbound telephone calls as they arrived in the hospital switchboard which involved querying the caller to determine the need and routed calls as appropriate, and facilitation of a connection of overseas calls and outside calls for employing establishment staff during irregular tours for official government use only. The physical demands of the position involved work that was mostly sedentary and using a computer, however, some walking, reaching, and bending were required. The employing establishment's job offer for the telephone operator position, signed by appellant on April 30, 2009, stated that she was required to work 8 hours a day, 40 hours a week, rotating through all shifts including weekends per a supervisor's assignment.

In progress notes dated December 30, 2011, January 26 and March 16, 2012 Dr. Melissa A. Rosato, a Board-certified family practitioner, listed findings on examination and assessed tendinopathy of the upper extremity, carpal tunnel syndrome, impingement syndrome of the right shoulder, and pain in the shoulder, hand, and right elbow. She stated that, while appellant's right shoulder impingement syndrome should not stop her from returning to work, she granted appellant's request to remain off work for two more weeks to heal.

In a progress note dated January 4, 2012, Dr. Malini M. Khanna, a Board-certified physiatrist, obtained a history of appellant's medical treatment, social and family background. She noted that as a telephone operator at the employing establishment, appellant worked at the switchboard and performed a lot of typing. Dr. Khanna listed findings on physical examination and assessed carpal tunnel syndrome, disturbance of skin sensation, pain in the hand, and other disorder of muscle, ligament, and fascia.

[2] Appellant initially worked as a nursing assistant at the employing establishment. OWCP accepted that she sustained employment-related back injury on July 30, 2007 under OWCP File No. xxxxxx261. By letter dated April 21, 2009, the employing establishment offered appellant a telephone operator position. It noted that she had permanent restrictions resulting from an accepted July 30, 2007 employment injury that prevented her from performing her former nursing assistant position.

In a January 4, 2012 progress note, Dr. Francis J. Lopez, a Board-certified physiatrist, also diagnosed carpal tunnel syndrome, disturbance of skin sensation, hand pain, and other disorder of muscle, ligament, and fascia.

In a January 7, 2012 progress note, Katherine Fleming-Cohen, a certified registered nurse practitioner, assessed appellant as having right wrist carpal tunnel syndrome. She had placed her off work commencing December 28, 2011.

By letter dated April 10, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It gave her 30 days to submit a factual statement describing the specific work duties which she attributed as the cause of her claimed right shoulder condition. Specifically, OWCP requested that appellant explain whether the claimed 16-hour shift was her regular shift or if there was a change in her shift. It also requested that she submit a medical report from a treating physician explaining how a right shoulder condition was caused by typing and listing any complications or diagnoses related to her left shoulder. OWCP asked the employing establishment to submit factual evidence regarding appellant's claim and medical evidence if she was treated at its medical facility.

In a January 19, 2012 report, Dr. Lopez advised that the results of an electromyogram and a nerve conduction velocity (EMG/NCV) study of the right upper extremity was normal. There was no electrophysiologic evidence of neuropathy, brachial plexopathy, or cervical radiculopathy. Specifically, there was no electrophysiologic evidence of cubital tunnel syndrome or median neuropathy at the right wrist.

In a March 9, 2012 progress note, Dr. Gerard T. Hart, a Board-certified family practitioner, noted appellant's persistent right hand and arm pain that was aggravated by her work. He obtained a history of her medical conditions and treatment, listed findings on examination, and diagnosed right arm and low back pain and osteoarthritis.

Unsigned x-ray reports contained the printed name of Dr. Jason W. Stephenson, a Board-certified radiologist, and Dr. Benjamin H. Ge, a radiologist, and addressed appellant's right elbow, hand, and shoulder conditions. A March 19, 2012 report found no fracture or effusion of the right elbow. There was apparent widening of the radiocapitellar joint space that was likely due to positioning of clinical correlation for which dynamic instability was recommended. Another March 19, 2012 x-ray found a normal right hand. A March 19, 2012 report found visualized bones and intact joint spaces of the right shoulder.

In a March 21, 2012 progress note, Ms. Fleming-Cohen assessed appellant as having right arm pain. She advised that the etiology of her condition was unclear.

In a March 22, 2012 progress note, Dr. Rosato listed findings on physical examination and reiterated her prior diagnosis of right arm pain.

On April 3, 2012 Dr. David E. Reinhardt, an orthopedic surgeon, reported that appellant presented with a December 27, 2011 work-related injury. He obtained a history that she was a typist and had been employed 12 years as a telephone switchboard operator at the employing establishment. Dr. Reinhardt also obtained a history of appellant's medical treatment, family and social background. He reported findings on examination and diagnosed right rotator cuff

tendinitis and bursitis, right tennis elbow strain, and right wrist extensor tenosynovitis. In a May 9, 2012 report, Dr. Reinhardt noted appellant's chief complaint of pain in her right shoulder, elbow, and wrist. He listed physical examination findings and stated that he was at a loss for her ongoing complaints. Dr. Reinhardt noted that appellant had failed every orthopedic conventional treatment without relief and recommended a second opinion with another orthopedic surgeon or referral to neurology or rheumatology.

By decision dated June 15, 2012, OWCP denied appellant's occupational disease claim. It found that the evidence was insufficient to establish that the claimed event occurred as described. Appellant failed to explain whether her 16-hour shift was her regular shift and to describe her work duties claimed to have caused her injury as requested. OWCP also found that the medical evidence did not contain a firm diagnosis of a condition related to her hands and arms as claimed.

In a June 11, 2013 letter, appellant, through her attorney, requested reconsideration. Counsel contended that OWCP did not consider Dr. Reinhardt's April 3, 2012 report which diagnosed right rotator cuff tendinitis, right tennis elbow and right wrist extensor tenosynovitis, and demonstrated his awareness of appellant's repetitive work at the employing establishment, which included operating a telephone switchboard for 12 years.

In reports dated June 25 and 27, 2013, Joanne Lynch and Lisa Agatone, occupational therapists, addressed the treatment of appellant's right upper extremity and cervical conditions secondary to her described work activities.[3]

By decision dated August 29, 2013, OWCP denied modification of the June 15, 2012 decision. It found that appellant did not submit any additional evidence to establish the work factors she claimed caused her injury.

In letters dated September 3 and October 15, 2013, appellant, through her attorney, requested reconsideration. In an October 8, 2013 statement, appellant related that she initially performed her regular duties as a telephone operator five days a week. After working for one year in the position, her department became short-staffed and employees were mandated to work 16 hours if there were no volunteers to work. Appellant stated that 16-hour shifts did not happen often, maybe once every six months. She was required to work this shift three to six times a week. Appellant could not remember if she worked an 8-hour or a 16-hour shift on December 27, 2011. She just remembered a lot of pain, numbness, and weakness in her right hand, arm, and shoulder. Appellant stated that her position was nonstop essentially all day 8 to 16 hours a day. There was aggressive and regular computer use on a regular basis. Appellant's workstation had a telephone with a keyboard on the right side. During the rush she used a headset. Appellant's computer was located in front of her and a mouse and keyboard were not ergonomically designed. Her telephone was on the right of the keyboard. There was a great deal of work on the computer using the keyboard and mouse. Appellant's chair did not provide proper support because it had a broken right arm. She stated that the described activities were performed on a daily basis, 8 to 16 hours a day, 5 to 7 days a week. Appellant further stated that

[3] The Board notes that neither report from Ms. Lynch nor Ms. Agatone contained a description of appellant's work activities.

she first noticed pain in her right hand, wrist, and fingers in the spring of 2011. She reported it to her supervisor and was sent to and treated in the employee health unit. Appellant experienced continuous pain that was controlled by her pain medication for her back injury. Her symptoms included swelling in the hand and upper right extremities, pain in the right hand, soreness in the elbow, and constant pain in the right shoulder. These symptoms worsened with everyday activities. Appellant concluded that she had no previous injuries to her right hand, arm, or wrist, noting that she never injured her arm while working as a nursing assistant for 11 years at the employing establishment.

In an April 8, 2013 report, Dr. Fried obtained a history that appellant worked initially as a certified nursing assistant for 10 years and later as a telephone operator at the employing establishment. He also obtained a history of her July 30, 2007 employment-related back injury. Appellant stated that, following this injury, she was placed in a modified light-duty job as a telephone operator. She had progressive problems developing from the spring of 2011 and culminating with the formal reporting or her right upper extremity injury on December 27, 2011.

Dr. Fried diagnosed tendinitis, right lateral epicondylitis, low back injury by history, rotator cuff tendinitis, subacromial impingement and capsulitis of the right shoulder, radial neuropathy of the right (radial tunnel), right median neuropathy, brachial plexopathy and right cervical radiculopathy with long thoracic neuritis, and carpal tunnel median neuropathy (repetitive strain injury) secondary to the described work activities. He advised that appellant sustained a classic repetitive strain injury that had progressively worsened. Dr. Fried recommended formal therapy addressing her injuries and avoiding regular job activities. He stated that there was no doubt there was a direct cause and effect relationship between appellant's work activities and her current clinical complaints and physical manifestations of these injuries. Dr. Fried described the medical development of nerve injuries and diseases such as median nerve carpal tunnel and standard treatment for such conditions. He recommended diagnostic testing to determine appellant's work capacity and evaluation of her continued significant nerve symptoms. Dr. Fried listed her physical restrictions. He opined that appellant's clearly described work duties as a telephone operator caused her classic repetitive strain injury with cumulative trauma disorder. Dr. Fried stated that her job was performed in a nonergonomic situation with regular reaching, abnormal posturing, and fingering, keying, and mousing activities. Appellant had progressive onset of symptoms with pain, discomfort, numbness, and tingling about the right upper extremity and clearly was forced to use this in an abnormal manner when performing her work activities. Dr. Fried stated that there was good documentation that her clinical complaints to her initial treating physicians were highly consistent with the nature of her problem and type of work. He stated that the question was not the number of hours she worked, but the work duties she performed on a regular basis that resulted in her problem. Dr. Fried related that appellant's rotator cuff tendinitis with possible partial rotator cuff involvement, significant subacromial bursitis on the right, capsulitis at the right shoulder, and lateral epicondylitis and radial tunnel at the right elbow and forearm were secondary to her mousing and keying activities and the position she was forced to hold her wrist and arm. He noted that she did not have any support of her elbow and forearm due to the broken chair which aggravated the problem. Even with regular support there was a classic and clear correlation between the mousing and keying activities especially in a nonergonomic setup with regular reaching and moving from one keypad to another and from the mouse to the telephone keypad. This resulted in fingering issues that caused extensor tenosynovitis at the right wrist and

especially in the thumb and index digits. Appellant had an aggravation of tendinitis at the wrist and there was evidence of median nerve carpal tunnel involvement at the right hand and wrist. Her dysesthesias classically were in the median nerve distribution in the first through third digits. These were coupled with the regular reaching and tractioning of the nerves up to the neck and paracervical area, giving appellant a third level of fixation at the brachial plexus on the right. Dr. Fried advised that she remained disabled from her certified nursing assistant job secondary to the December 27, 2011 injury and her ongoing low back injury. He concluded that there was overwhelming objective evidence of an ongoing injury, noting positive Tinel's, compression, Roos, and Hunter tests, and evidence of tendinitis and swelling.

In a December 23, 2013 decision, OWCP denied modification of the August 29, 2013 decision. It found that the evidence did not establish the factors of employment that appellant believed caused her claimed conditions. OWCP further found that the medical evidence was not sufficiently rationalized to establish that she sustained an injury causally related to her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[7] To establish fact of injury in an occupational disease claim, 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.[8]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement,

[4] 5 U.S.C. §§ 8101-8193.

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *S.P.*, 59 ECAB 184, 188 (2007).

[8] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[9] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[10]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[11]

ANALYSIS

Appellant claimed that she sustained a bilateral arm condition due to performing her work duties. OWCP found that she failed to establish the factual component of her claim. The Board finds, however, that the evidence establishes that appellant was a telephone operator and that no evidence disputes that she was engaged in duties related to a telephone operator. The Board notes that while there is no evidence to substantiate appellant's contention that she was required to work 16-hour shifts on a regular basis at a workstation that was not ergonomically designed and to put forth an aggressive or fast-paced effort, she identified additional work factors she believed caused or aggravated her claimed employment injury that are substantiated by the record. In her October 8, 2013 statement, appellant related that she performed a great deal of computer work using the keyboard and mouse and used a telephone with a headset during her work shift on a weekly basis. A description of her telephone operator position set forth the claimed computer and telephone duties. The Board notes that there is no evidence refuting that the claimed employment factors, use of a computer and telephone, occurred. Consequently, the Board finds that appellant has established that she used a computer and telephone at work.

The Board further finds, however, that appellant has not submitted sufficient medical opinion evidence to establish a causal relationship between the accepted work activities and her diagnosed conditions. Dr. Fried's April 8, 2013 report found that appellant had tendinitis, right lateral epicondylitis, low back injury by history, rotator cuff tendinitis, subacromial impingement and capsulitis of the right shoulder, radial neuropathy of the right (radial tunnel), right median neuropathy, brachial plexopathy and cervical radiculopathy right with long thoracic neuritis, and carpal tunnel median neuropathy (repetitive strain injury) due to her work activities. He provided an inaccurate factual background, noting that she performed a good deal of work using a mouse and keyboard and that her work was highly aggressive, repetitive and fast paced. The employing establishment stated that appellant had physical restrictions as a former nursing assistant since her July 30, 2007 employment injury and performed sedentary work. Medical conclusions based on an incomplete or inaccurate factual background are of limited probative

[10] *Betty J. Smith*, 54 ECAB 174 (2002).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

value.[12] Moreover, Dr. Fried did not address appellant's January 19, 2012 EMG/NCV study of the upper extremities which was interpreted as normal. He did not explain how the diagnosis of median neuropathy or carpal tunnel syndrome was supported by the normal diagnostic test results. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.[13] For the stated reasons, the Board finds that Dr. Fried's report is insufficient to establish appellant's claim.

While Dr. Reinhardt, in an April 3, 2012 report, noted that appellant's work duties as a telephone switchboard operator involved typing, he stated that he was at a loss for her ongoing right shoulder, elbow, and wrist pain. He failed to provide a definitive opinion on the cause of appellant's right shoulder and arm condition. The Board finds, therefore, that Dr. Reinhardt's report is of diminished probative value.

The progress notes from Drs. Rosato, Khanna, Lopez, and Hart and report from Dr. Reinhardt addressed appellant's bilateral arm, hand, and shoulder conditions and disability for work. None of the physicians, however, provided any opinion on the cause of her conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[14] Thus, the Board finds that the progress notes and report are insufficient to meet appellant's burden of proof.

The normal January 19, 2012 EMG/NCV study of the right upper extremity from Dr. Lopez is insufficient to establish appellant's claim. The test does not establish that appellant had a medical condition causally related to the established work factors.

The January 7 and March 21, 2012 progress notes from Ms. Fleming-Cohen, a certified registered nurse practitioner, and the June 25 and 27, 2013 reports from Ms. Lynch and Ms. Agatone, occupational therapists, have no probative value in establishing appellant's claim. The Board has held that a nurse practitioner and an occupational therapist are not physicians as defined under FECA.[15]

The unsigned x-ray reports which contained the printed names of Drs. Stephenson and Ge are insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[16]

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.[17] The issue of causal relationship is a

[12] *See M.W.*, 57 ECAB 710 (2006).

[13] *M.H.*, Docket No. 12-733 (issued September 5, 2012).

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[15] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

[16] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[17] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's bilateral arm condition was caused or aggravated by the established employment factors. Appellant did not meet her burden of proof.

On appeal, counsel contended that appellant had submitted sufficient factual evidence to establish working conditions that could cause her claimed conditions. He further contended that Dr. Fried's April 8, 2013 report clearly described appellant's work duties and found that the duties caused her diagnosed right upper extremity and cervical conditions. Alternatively, counsel contended that the factual and medical evidence of record is sufficient to require further development. As discussed, Dr. Fried's report was based on an inaccurate factual background and did not provide a rationalized medical opinion supported by objective evidence as to how appellant's right arm condition was caused or aggravated by the established work duties.

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 failed to establish that she sustained a bilateral arm injury causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.[18]

Issued: February 26, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[18] Michael E. Groom, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective December 27, 2014.