

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

C.F., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Fargo, ND, Employer)

**Docket No. 15-0954
Issued: July 9, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 19, 2015 appellant filed a timely appeal of a March 9, 2015 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right arm condition due to her employment duties.

FACTUAL HISTORY

On October 2, 2014 appellant, then a 49-year-old medical support assistant, filed an occupational disease claim alleging that she developed right arm pain from her elbow to her

¹ 5 U.S.C. § 8101 *et seq.*

wrist with numbness and tingling in her fingers due to constant typing and repetitive work at the computer.

In a letter dated October 16, 2014, OWCP requested additional factual and medical evidence in response to appellant's claim. Appellant submitted a report from Ellen Holloway, a physician assistant, which diagnosed right lateral epicondylitis on October 28, 2014. On October 29, 2014 she attributed her right arm condition to continuous typing, filling out forms and making appointments for eight hours a day. Appellant stated that she experienced tightness in her right arm with numbness and tingling at night. In a note dated October 28, 2014, Ms. Holloway reiterated her diagnosis and indicated that appellant could perform her regular duties. On November 18 and 20, 2014 Katherine L. Friese, a certified nurse practitioner, diagnosed lateral epicondylitis of the right elbow and right carpal tunnel syndrome.

By decision dated December 19, 2014, OWCP denied appellant's claim as she had failed to submit medical evidence from a qualified physician and, thus, she had not established an employment injury.

Appellant requested reconsideration on January 26, 2015. Dr. Joel H. Blanchard, a Board-certified family practitioner, submitted a series of reports beginning October 28, 2014. He reported that appellant was a receptionist and frequently typed, which she felt aggravated her symptoms. Dr. Blanchard diagnosed right lateral epicondylitis. On November 18, 2014 he diagnosed lateral epicondylitis and right carpal tunnel syndrome. Dr. Blanchard indicated that appellant's condition began on February 1, 2014 and was made worse by bending, grasping, lifting, and typing. He reported that she was a right-handed receptionist. In a note dated December 30, 2014, Dr. Blanchard reported appellant's statement that her pain varied with activity level. He repeated his earlier diagnoses and stated that she should limit her grasping and lifting with the right arm.

By decision dated March 9, 2015, OWCP denied modification of its prior decision, noting that, although appellant had submitted medical evidence of a diagnosed condition, there was insufficient medical evidence establishing the causal relationship between her diagnosed condition and her employment.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."² 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 evidence required to establish causal

² 20 C.F.R. § 10.5(q).

relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.

ANALYSIS

Appellant has submitted medical evidence of diagnosed conditions, right lateral epicondylitis and right carpal tunnel syndrome as diagnosed by Dr. Blanchard. She has also submitted factual evidence attributing her diagnosed right arm condition to her job duties of continuous typing, filling out forms and making appointments for eight hours a day. However, the Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed conditions and her employment duties. Therefore, fact of injury is not established.

Appellant initially submitted reports from Ms. Holloway, a physician assistant, and Ms. Friese, a certified nurse practitioner. Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners with the scope of their practice as defined by State law.³ Nurse practitioners and physician's assistants are not physicians under FECA and are not competent to render a medical opinion.⁴ Therefore these reports from Ms. Holloway and Ms. Friese are not considered probative medical evidence to establish a causal connection between a diagnosed medical condition and the accepted employment incident.

The only medical evidence in accordance with FECA consists of the reports signed by Dr. Blanchard dated October 28, November 18, and December 30, 2014. Dr. Blanchard noted that appellant was a federal employee working as a receptionist and listed her implicated employment duties including typing and grasping. He noted her statements that typing aggravated her symptoms. Dr. Blanchard did not provide his medical opinion regarding the cause of appellant's diagnosed conditions or the relationship between her conditions and her employment. Without a clear medical opinion that appellant's diagnosed conditions of right lateral epicondylitis and right carpal tunnel syndrome were caused by her employment duties, appellant's has not met her burden of proof to establish her occupational disease claim. Appellant's belief that her symptoms were aggravated by typing in the performance of duty, without more by way of rationalized medical evidence, is not sufficient to establish her claim. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

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.

³ 5 U.S.C. § 8101(2).

⁴ *S.K.*, Docket No. 15-541 (issued June 3, 2015); *C.B.*, Docket No. 15-570 (issued June 11, 2015); *G.G.*, 58 ECAB 389 (2007).

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

CONCLUSION

The Board finds that appellant has failed to establish a right arm condition due to her employment duties.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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