

in his cervical spine as a result of his nonergonomic workspace. He stated that he was in need of a wireless headset. Appellant first became aware of his condition on April 14, 2014 and of its relationship to his employment on February 27, 2015. He did not stop work.

In medical reports dated March 2 through April 7, 2015 Dr. Hongjing Tan, Board-certified in physical medicine and rehabilitation, diagnosed right arm paresthesia and cervical radiculopathy. Appellant related a history, beginning on April 14, 2014 that his “pinky” started to go numb. His workstation was evaluated by an occupational therapist who informed him that the numbness could be associated with his nerves. Appellant also related to Dr. Tan that on February 27, 2015 he had right arm numbness, pain, and tingling as well as right shoulder pain. Appellant stated that he was right-hand dominant and his job involved using a telephone and computer repetitively. For years he frequently held his telephone between his shoulder and head. In his March 2, 2015 report, Dr. Tan noted that he was unable to determine whether appellant’s employment contributed to his complaints without further medical investigation and job analysis. On March 16, 2015 appellant informed Dr. Tan that he would be provided a blue-tooth headset at work soon.

By letter dated April 16, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence necessary to establish his claim and was asked to respond to a questionnaire within 30 days. OWCP requested that he describe in detail the employment-related activities which he believed contributed to his condition, how often he performed the activities described, the length and period of the described activities, how long he worked for his employing establishment as a medical clerk, and activities he engaged in outside of his federal employment.

In an April 23, 2015 narrative statement, appellant responded to an OWCP questionnaire, stating that he held his current position for the past nine years, which entailed sitting at a computer workstation, and making and answering telephone calls. He explained that his station was not ergonomically correct and he was never provided with a wireless headset, which he believed contributed to his current cervical condition. Appellant further stated that he performed his work activities daily. The average telephone call duration was approximately 5 minutes and longer calls could take 10 to 15 minutes. Appellant answered calls throughout the day while sitting at a computer except when taking breaks and at lunch time. He stated that his work activities caused him pain, numbness, and tingling which affected his right hand, arm, shoulder, and right side of his neck on a daily basis. Appellant described his hobbies which included jogging two to three times a week and occasional fishing one to two times a month.

In support of his claim, appellant submitted medical reports dated April 6 through June 24, 2015 from Dr. Tan documenting his treatment for cervical radiculopathy and right arm paresthesia.

By decision dated July 9, 2015, OWCP denied appellant’s claim finding that the evidence of record failed to establish that the occupational exposure occurred as alleged. It noted that he failed to establish fact of injury because the description of his employment duties was too vague.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

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.⁴

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place, and manner of injury, a resulting personal injury, and that his injury arose in the performance of duty. In its July 9, 2015 decision, OWCP found that appellant had not established that the occupational exposure occurred as alleged. The Board finds, however, that the evidence of record is sufficient to establish that he engaged in repetitive employment duties as a medical clerk.

On his Form CA-1, appellant stated that his workstation was not ergonomically sound and that he was in need of a wireless headset. OWCP provided him with a series of questions on April 16, 2015 requesting additional information pertaining to the employment factors alleged to have caused his injury. Appellant responded to each question posed on April 23, 2015. He sufficiently explained that he was a medical clerk for nine years which entailed sitting at a computer workstation daily to make and receive telephone calls. Appellant stated that, as he was not provided with a wireless headset to facilitate answering and making daily telephone calls, this necessitated him having to hold the telephone between his right shoulder and his head. He pointed out that he was right-hand dominant and his job required him to use the telephone and computer continually. Appellant specified that he was not provided a wireless headset and thus, the daily calls contributed to his condition. He further noted that the average telephone call was 5 minutes while longer calls could take 10 to 15 minutes. Appellant explained that his duties

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

entailed answering telephone calls all day other than when he was at lunch or on a break and described the injuries he believed were work related. He further described his hobbies.

Appellant has provided sufficient detail to establish that an occupational exposure occurred as alleged and there has been no evidence presented to dispute these alleged employment factors.⁵ The Board finds that he adequately described the circumstances of his injury, what his injury was, how he injured his right shoulder, arm, and hand, and the duties he was performing which caused his injury. Thus, the Board finds that, given the above-referenced evidence, appellant has alleged with specificity that the occupational exposure occurred at the time, place, and in the manner alleged.⁶

Given that appellant has established his repetitive employment duties as a medical clerk, the question becomes whether he sustained an injury due to this occupational exposure. OWCP's July 9, 2015 decision did not make findings related to the medical evidence of record. Given that appellant established an occupational exposure, consideration of the medical evidence is necessary.⁷ As fact of injury is a material point in a compensation case and, because of its materiality, OWCP must clearly state whether fact of injury is accepted and, if fact of injury is not accepted, OWCP must clearly specify the basis for denial.⁸

Appellant has submitted medical evidence which has not been evaluated by OWCP. OWCP procedures specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.⁹

For these reasons, the case will be remanded to OWCP to enable it to properly consider all of the evidence in determining whether appellant had an injury causally related to factors of his employment. Following such further development as OWCP deems necessary, it shall issue an appropriate *de novo* decision on the claim.

CONCLUSION

The Board finds that appellant established that an occupational exposure occurred as alleged. The case will be remanded to determine if he developed an injury as a result of his accepted employment duties as a medical clerk.

⁵ *C.f. Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *See Willie J. Clements*, 43 ECAB 244 (1991).

⁷ *C.f. Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

⁸ *See Elaine Pendleton*, *supra* note 2.

⁹ *See L.R.*, Docket No. 15-0255 (issued April 1, 2015); *see also* 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2015 decision of the Office of Workers' Compensation Programs is modified and the case is remanded for further action consistent with this decision.

Issued: November 17, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board