

FACTUAL HISTORY

On February 20, 2013 appellant, then a 50-year-old distributions clerk, filed an occupational disease claim (Form CA-2) alleging that due to lifting trays and repetitive motion performed during her federal employment she suffered from bilateral shoulder pain. The employing establishment controverted the claim.

In a February 4, 2013 note regarding a visit, Dr. Bassem Adie, an internist,² noted that appellant complained of pain in her arms, shoulders, and neck that started about 10 days ago. He noted that she had no recent trauma. Dr. Adie assessed appellant with shoulder pain, arm pain, and neck pain, most likely from bursitis in shoulder with the possibility of arthritis in the neck or nerve injury in the neck. He suggested that she rest for the next week and avoid heavy lifting of more than 10 pounds. In a February 11, 2013 note, Dr. Adie found that appellant should continue to rest at home for the next week, and that she was disabled from her job at this time.

In a March 5, 2013 report, Dr. Gary Bray, a Board-certified orthopedic surgeon, assessed appellant with neck pain. He noted that her left arm problem began five weeks ago and now occurs continuously. Dr. Bray noted that appellant stated that the injury occurred at work and noted that she lifted trays of mail up to 70 pounds. He noted that her symptoms are severe and are made worse by moving and job requirements.

In a May 15, 2013 report, Dr. Adie noted that appellant's injury began after heavy lifting at work and that her neck injury is related to the heavy lifting and is most likely work related. He noted that she needed to continue to rest at home and was unable to do any heavy lifting.

By decision dated May 21, 2013, OWCP denied appellant's claim, finding that she had not established that fact of injury occurred. It noted that she did not submit medical evidence that established how the alleged employment activities caused or aggravated a diagnosed medical condition.

On June 14, 2013 appellant requested an oral hearing.

In a disability claim form completed on April 17, 2013, Dr. Adie diagnosed appellant with neck and shoulder pain, and possible herniated disc. He checked a box noting that she was currently disabled from her job, and noted that this was due to neck and shoulder pain and numbness, and tingling in her arms.

In a June 18, 2013 report, Dr. Robert C. Pope, an osteopath, noted that he conducted a magnetic resonance imaging (MRI) scan and listed his impression as partial tear of the articular surface of the footplate of the supraspinatus tendon, tendinosis of the subscapularis and infraspinatus, mild degenerative changes of the acromioclavicular joint, and mild subacromial bursitis.

In a June 21, 2013 note, Dr. Adie noted that appellant had a herniated disc in the cervical spine, tendinitis, and tendon tear in the left shoulder. He noted that she was unable to work at

² Dr. Adie is not Board-certified.

that time. In an August 23, 2013 progress report, Dr. Adie noted that appellant's neck and shoulder pain continued with no significant change. He noted that she was still unable to return to work due to her injuries.

At the November 18, 2013 hearing, appellant testified as to the physical duties of her job. She noted that her job duties involved loading, sweeping, feeding, channel dispatching, setting up, twisting, and bending for eight hours a day every day. Appellant noted that Dr. Adie referred her to a neurosurgeon, and this was pending.

In a January 31, 2014 decision, the hearing representative determined that appellant established that she performed heavy lifting during her federal employment and established neck and left shoulder diagnoses. However, she found that appellant's claim remained denied as she had not established causal relationship.

On April 1, 2014 appellant requested reconsideration. Additionally, on January 30, 2015 appellant, through counsel, requested reconsideration.

Appellant submitted a functional capacity evaluation and progress notes by her occupational therapist, Michael Milicia from December 13, 2013. She also submitted nurses notes by Jacelyn R. Golden from July 15, 2004 and notes regarding physical therapy appointments in 2003 by Nadia Buskey.

A March 13, 2003 radiological examination was interpreted by Dr. Bradford Richmond, a Board-certified radiologist, as showing sclerotic change of the greater tuberosity of the humeral head, likely secondary to tendinitis, or stress-related sequela.

In a January 6, 2015 note, Dr. Sandra M. Fakult, an internist,³ diagnosed sprain of unspecified site of shoulder and upper arm. She noted appellant's statement that she was "lifting heavy trays twisting turning repetitive motion pulling and pushing heavy APCs moving heavy racks."

In a January 20, 2015 physician work activity status report, Dr. Richard M. Cole, an osteopath, diagnosed appellant with sprain of unspecified site of the shoulder and upper arm and neck sprain.

By decision dated February 12, 2015, OWCP denied modification of the January 31, 2014 decision.

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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

³ Dr. Fakult is not Board-certified.

the employment injury.⁴ 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.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ 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.⁷

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁸

ANALYSIS

The Board finds that appellant has not established that she suffered from a medically diagnosed condition causally related to the accepted factors of her federal employment.

Appellant submitted medical reports by her treating internist, Dr. Adie, dated from February 4 through August 23, 2013. In his February 4, 2013 note, Dr. Adie noted that she complained of pain in her arms, shoulders, and neck that began 10 days prior to his note. He treated appellant with rest and work restrictions. Although Dr. Adie's initial diagnoses were speculative, with definitive statements only being made with regard to pain, in his June 21, 2013 note he diagnosed a herniated disc in the cervical spine, tendinitis, and tendon tear in the left shoulder. However, he never opined as to a relationship between the specific diagnoses made in his June 21, 2013 note to the accepted factors of appellant's federal employment.

Similarly, none of the other treating physicians makes a definitive statement linking appellant's specific diagnoses to her federal employment duties. Dr. Bray noted in his March 5, 2013 report that appellant's symptoms of neck pain and problems with her left arm began five weeks prior to his evaluation of her and noted that the injury occurred at work, noting that she

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See S.P.*, 59 ECAB 184, 188 (2007).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

lifted trays of mail of up to 70 pounds. The Board notes that pain is a symptom and not a compensable medical diagnosis.⁹ Therefore, Dr. Bray's report cannot establish a medical condition. Dr. Pope and Dr. Richmond conducted diagnostic tests. Dr. Pope interpreted an MRI scan and Dr. Richmond conducted a radiological examination. Although both Dr. Pope and Dr. Richmond made objective findings, neither physician discussed any connection between a diagnosed condition and the factors of appellant's employment. Dr. Fakult noted appellant's statement with regard to her employment duties and diagnosed sprain of an unspecified site of her shoulder and arm, but did not make any independent statement explaining any causal relationship between the listed factors of her employment and the diagnosed conditions. Dr. Cole made no statement with regard to her employment and any possible causal relationship to her medical diagnoses of sprain of the unspecified site of shoulder and upper arm and neck sprain. Appellant also submitted notes and evaluations by her occupational and physical therapists and nurse's notes. However, these reports have no probative medical value as physical and occupational therapists and nurses are not considered physicians as defined under FECA.¹⁰ Because appellant has not provided a medical opinion establishing a causal relationship between a medical diagnosis and the accepted factors of her federal employment, she has not met her burden of proof.

Causal relationship must be based on rationalized medical opinion evidence.¹¹ A physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.¹² As appellant did not submit a rationalized medical opinion supporting that her injuries were causally related to the factors of her federal employment, she did not meet her burden of proof to establish an employment-related traumatic injury.

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 not established that she sustained a specific, medically diagnosed injury to her shoulders, arms, and/or neck, causally related to factors of her federal employment, as alleged.

⁹ V.S., Docket No. 14-2028 (issued June 3, 2015).

¹⁰ 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. 5 U.S.C. § 8102(2); A.C., Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA; *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005). See also *J.G.*, Docket No. 15-251 (issued April 13, 2015).

¹¹ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *G.G.*, Docket No. 15-234 (issued April 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 12, 2015 is affirmed.

Issued: October 26, 2015
Washington, DC

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

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

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