United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 16-0758**
	)	**Issued: August 12, 2016**
DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Falls Church, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal from a January 11, 2016 merit decision and a February 17, 2016 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a bilateral hand injury causally related to factors of her federal employment; and (2) whether OWCP properly denied her request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 22, 2014 appellant, then a 58-year-old legal assistant, filed an occupational disease claim (Form CA-2) under file number xxxxxx913 alleging that she sustained tendinitis in

[1] 5 U.S.C. § 8101 *et seq.*

both hands as a result of her repetitive work duties. On January 8, 2015 she filed an additional Form CA-2 alleging that she sustained right wrist carpal tunnel syndrome as a result of repetitive work duties. Appellant stopped work on January 16, 2015. On March 10, 2015 she filed a Form CA-2 under file number xxxxxx911 alleging bilateral hand tendinitis and the relationship between her condition and repetitive work duties. Appellant first became aware of her conditions and the relation to her federal employment on November 25, 2014.

In these claims, appellant listed her work duties as printing hearing notices (N6) and absentia orders (Z1) for master class hearings, manually punching holes into forms, flipping through forms and inserting them into file folders, pulling and filing file folders, sorting through N6 forms and placing them into file folders, filing records of proceedings (ROPs), pulling ROPs for hearings, and data entry. She claimed that she overused her right hand while performing her work duties which caused cramping in that hand, tingling and a burning sensation in all five fingers on her left and right hands, a swollen right thumb, and trembling in her left and right hands. On the reverse of the three claim forms, Raymond E. Edwards, appellant's supervisor and court administrator, stated that he received notice of appellant's injury on December 3, 2014.

On December 29, 2015 OWCP combined appellant's claims under master file number xxxxxx911.

In a December 12, 2014 progress note, Dr. Adrienne C. Evans, an attending Board-certified internist, provided a history of injury that appellant had right hand difficulties for the past month with pain near the tip of her thumb (on the pad) and also at the base. She reported that appellant's pain was aggravated when she struck a keyboard hard. The intermittent base pain seemed worse with appellant's use of her hands. Dr. Evans noted that appellant performed repetitive work such as, hole punching, filing, and lifting documents. Appellant used her right hand more due to chronic left arm pain and an episode of cramping in her left hand. She wore a soft sleeve brace on the left wrist during the day. Dr. Evans reviewed appellant's medical, social, and family history, and reported findings on physical examination. She provided an impression of bilateral hand pain, right hand paresthesia, and right wrist tendinitis. On January 9, 2015 Dr. Evans provided findings and diagnosed right carpal tunnel syndrome. She limited appellant's data entry to 25 cases a day and restricted her from folding and stuffing envelopes, using a manual hole puncher, and filing more than one hour a day to reduce repetitive wrist motion. The period for the restrictions was eight weeks.

By letter dated February 10, 2015, and on the reverse of the March 10, 2015 Form CA-2, Mr. Edwards controverted the claims. He contended that appellant claimed November 25, 2014 injuries but had not filed a claim until January 8, 2015. Appellant worked the morning of November 25, 2014, was on sick leave for right hand pain in the afternoon, and for all of November 26, 2015. She did not notify management of her injury until December 3, 2014. Mr. Edwards asserted that her job duties did not include traditional data entry and typing. He noted that court notices and orders were generated by automated software. N6 and Z1 forms were printed in bulk with no repetitive movement required. Court files were prepared weeks in advance to avoid last-minute printing. Mr. Edwards noted that appellant was counseled several times from January 16 to March 26, 2014 about her case processing as she did not comply with her physician's limitations. Appellant was restricted from overhead lifting more than five pounds due to a torn left rotator cuff which was reported on January 15, 2014. She requested assistance with lifting files weighing more than five pounds. In a December 3, 2014 e-mail,

appellant claimed that her right hand fingers had been tingling and burning for several weeks, but she had not notified her immediate supervisor about her condition and continued to work. She placed large correspondence into ROPs instead of asking for assistance. Mr. Edwards noted that appellant refused to comply with the reasonable accommodation that she specifically requested. Management assisted her by shadowing her in the courtroom and lifting heavy files, filing, and performing other clerical tasks for her. Appellant's later reasonable accommodation requests were denied as she had not provided medical documentation. In February 2014 she refused to submit medical documentation to support her request to refrain from lifting more than one pound. On December 1, 2014 appellant withdrew her request for courtroom reconfiguration. She never requested an ergonomic keyboard, automatic hole puncher, prehole punched paper, software changes to print more efficiently, or any other similar accommodation for her alleged tendinitis and/or carpal tunnel syndrome.

In an April 7, 2015 letter, OWCP notified appellant of the deficiencies of her claim and requested that she submit factual and medical evidence, including a detailed description of the work activities that she believed contributed to her claimed condition, and a physician's opinion explaining how her work activities caused or aggravated her medical condition. It requested that the employing establishment respond to appellant's allegations.

By letter dated April 22, 2015, Dina Finkel, the employing establishment's associate general counsel, submitted a description of appellant's legal assistant position and Mr. Edwards' February 10, 2014 letter. Appellant's duties included being a contact for telephone callers and visitors, preparing reports, maintaining automated information systems and legal case files, and processing of legal correspondence and documents. The physical demands of the position were mainly sedentary, but possibly required periods of walking, standing, and bending. The demands also included frequent carrying of case files and other similar materials. Ms. Finkel also submitted December 3, 2014 correspondence in which appellant stated that she planned to file a workers' compensation claim following a visit to her physician on December 12, 2014 for an evaluation of her right hand conditions.

In a May 19, 2015 decision, OWCP denied appellant's claim finding that she failed to establish the claimed work events and she had failed to submit medical evidence showing a causal relationship between her condition and work events.

By letter dated June 16, 2015, appellant, through counsel at the time, requested reconsideration. Counsel asserted that, as an administrative assistant, appellant was engaged in repetitive motion activity throughout her workday.

In an undated statement, appellant related that in January 2013 she was assigned to enter over 180 file boxes into a computer system. She processed 15 boxes a day from 7:00 a.m. to 4:00 p.m. and had sharp right-side pain when she picked up the boxes. Appellant reported this to the court administrator. The next day, she had a sore on her right side. The court administrator placed a work table in appellant's cubicle and put files on the table. Appellant entered the files alone although the job was previously done by two people. In mid-January 2013, a ganglion cyst returned which she reported to the court administrator. Appellant was then assigned to work a front desk window from 7:00 a.m. to 4:30 p.m. daily until August 2013. This involved retrieving weekend mail from a mailbox and processing it for up to three or more hours. Appellant also processed and date stamped three or four volumes of files in two to three large boxes delivered

by Federal Express (FedEx). She stamped 50 to 100 notices to appear, entered information into a computer system, and created a file folder for the notices. Appellant printed and mailed hearing notices and worksheets, placed them in folders, and printed folder labels. She opened, processed, and date stamped regular mail and motions, including computer entries. Appellant answered 100 or more telephone calls a day and handled filings until closing at 4:00 p.m. On master calendar hearing days, she answered questions from attorneys and respondents and burned compact discs (CDs) for attorneys. Appellant attributed her throbbing right hand pain to excessive movement while performing these work duties. She reported her condition and requested assistance. The court administrator gave her no assistance and suggested she contact a reasonable accommodation coordinator.

In August 2013 appellant was assigned to a judge and returned to her desk. She received minimal training for her to return to the courtroom. After her November 13, 2013 left wrist surgery, appellant returned to work on December 2, 2013. She increased the use of her right hand to compensate for her left hand. Appellant's physician placed her on light duty, but the court administrator put her on full duty. Appellant's healing left hand caused her to fall behind in her work, including processing cases for master calendar hearings because her workload increased. In November 2014 she began feeling tingling and burning in her right hand and fingers. Appellant dropped objects from her hand and it took longer to pick them up. On November 25, 2014 her right hand began to cramp while manually punching holes into 70 to 80 forms. Appellant had thumb pain and swelling. She reported her condition to Mercedes Torres, a legal assistant supervisor, and left work that date. Appellant returned to work on November 27, 2014. On December 12, 2014 she was diagnosed with tendinitis in both hands. On January 8, 2015 appellant was diagnosed with carpal tunnel syndrome.

In a medical reports and progress notes dated February 22, 2013 to June 11, 2015, Dr. Evans provided appellant's history of injury, examination findings, and test results. She reiterated her diagnoses of right wrist carpal tunnel syndrome, bilateral hand pain, right hand paresthesia, and right wrist tendinitis. Dr. Evans diagnosed myofascial muscle pain and left hand ganglion cyst. She noted that appellant's work duties as an administrative assistant included data entry of 70 to 80 cases a day, filing, lifting above shoulder height, carrying large files weighing up to 16 pounds, stapling, manual hole punching, and keyboarding. Dr. Evans opined that the diagnoses were caused by her work duties.

In July 6 and 17, 2015 letters, Ms. Finkel refuted appellant's allegations about receiving assistance and reasonable accommodations. She noted that appellant was initially provided with reasonable accommodations on a temporary basis pending receipt of medical documentation, but after she refused to submit the requested documentation, the accommodations were terminated. Appellant's leave requests were denied according to an April 11, 2014 leave restriction letter. Her leave was restricted because she repeatedly called out of work at the last minute, particularly on days when master calendar hearings were held, and she excessively used leave. Ms. Finkel disputed that appellant processed 15 boxes of filings every day. Employing establishment records noted that she processed 185 boxes over a five-month period. In an e-mail, appellant reported to Mr. Edwards that she had processed five boxes in one day. Ms. Finkel related that appellant's requests for reasonable accommodation in the winter and spring of 2015 were denied

because granting her requests would have imposed an undue burden on court operations. Instead, Mr. Edwards granted her long-term leave which she accepted.[2]

In reports and progress notes dated February 22, 2013 to June 11, 2015, Dr. Evans noted appellant's history of injury, provided findings on examination, and reiterated her diagnoses of bilateral hand pain, right hand paresthesia, right wrist tendinitis, ganglion cyst of the wrist, and right carpal tunnel syndrome. In the May 15, 2015 report and June 11, 2015 partial report, she opined that appellant's chronic and recurrent hand and wrist problems were exacerbated by her work as an administrative assistant. Dr. Evans related that appellant was at risk for developing this condition based on her gender and obesity. She advised that repetitive motions of appellant's hands and wrists while performing her clerical duties, which included but were not limited to filing, carrying large files, lifting files above shoulder height, stapling, manual hole punching, and keyboarding, triggered her right wrist carpal tunnel syndrome, overuse tendinitis, and wrist sprain.

In a September 3, 2015 decision, OWCP denied modification of the May 19, 2015 decision. It found that the record was unclear as to how often appellant performed the duties she claimed caused injuries to her hands.

On September 13, 2015 appellant requested reconsideration. In September 14 and 16, 2015 letters, she related her hand and wrist conditions to her repetitive work duties. Appellant asserted that neither Mr. Edwards nor a legal assistant helped her enter boxes of Federal Records Center files and that, in September 2012, she processed 13 boxes of 42Bs before going on medical leave.

E-mails dated March 22, 2012 to June 3, 2014 between appellant and the employing establishment indicated that she handled boxes of files and pulled cases without assistance, and requested accommodation of her work restrictions. She reported pain in her left upper arm, right and left shoulders, and neck after processing regular and FedEx mail and pulling ROPs and inserting worksheets and hearing notices for 45 cases.

In a January 11, 2016 decision, OWCP denied modification of the September 3, 2015 decision. It found that the evidence submitted did not resolve factual discrepancies regarding the extent of appellant's work duties. OWCP stated that there was no need to address the medical evidence since the factual aspect of the claim was not established.

By letter dated January 18, 2016, appellant requested reconsideration of the January 11, 2016 decision and submitted evidence. Accompanying the request was a May 20, 2014 e-mail

[2] Supporting documents included January 7, 2013 to March 10, 2014 e-mails between appellant and the employing establishment noting that she processed five boxes in one day, management provided reasonable accommodations from lifting these boxes, management instructed her to request assistance with heavy lifting, and management's request for medical documentation to support accommodation requests. A September 25, 2013 telephone conference summary and an October 30, 2013 e-mail between appellant and the employing establishment addressed her accommodation requests. In February 4, March 5, 2014, January 14, March 25 and 26, 2015 letters, Mr. Edwards noted appellant's disregard for her restriction and her failure to submit medical documentation to support her accommodation requests. On April 11, 2014 Ms. Torres issued appellant a leave restriction letter based on her leave usage over the past six months.

and statement, in which Mr. Edwards scheduled a meeting with appellant and Ms. Torres to discuss work matters.

In a February 28, 2014 report, Dr. Erika Gordon Gantt, a Board-certified orthopedic surgeon, examined appellant and advised that she was doing well three months status post left wrist dorsal ganglion cyst. On January 8, 2015 Dr. Joseph N. Chipman, a Board-certified neurologist, noted that appellant complained about bilateral hand numbness for two to three months. Nerve conduction study/electromyogram (NCS/EMG) results were abnormal with evidence of mild-to-moderate right median mononeuropathy at the wrist (carpal tunnel syndrome).

In a March 20, 2015 report, Dr. Evans opined that appellant would continue having carpal tunnel symptoms if she remained in her current position and performed her current duties. She concluded that appellant's prognosis for recovery was poor. Appellant submitted Dr. Evans' entire June 11, 2015 report which found that her repetitive work duties as an administrative assistant caused her right wrist carpal tunnel syndrome, overuse tendinitis, and wrist sprain. She also resubmitted other evidence previously of record.

In a decision dated February 17, 2016, OWCP denied appellant's reconsideration request finding that the evidence presented was not sufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish 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.[3] 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.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[5] 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.[6]

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

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *S.P.*, *id.*

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

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.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met 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.[8]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[9] Neither the fact that appellant's condition became apparent during a period of employment nor, her belief that the condition was caused by her employment is sufficient to establish a causal relationship.[10]

ANALYSIS -- ISSUE 1

Appellant attributed bilateral hand conditions to her work duties. OWCP found that she failed to establish the factual component of her claim. The Board finds that the evidence establishes that appellant, as a legal assistant, engaged in duties related to this position.

In her claim forms and other statements, appellant identified daily work duties that she believed caused her bilateral hand condition. She printed and mailed N6 notices and Z1 orders for master class hearings, punched holes into forms, inserted forms into file folders, pulled and filed file folders, sorted through N6 forms that she placed into file folders, filed ROPs and pulled them for hearings, and performed data entry. During her front desk window assignment, appellant processed multiple boxes of files a day, retrieved and processed mail and boxes delivered by FedEx, answered 100 or more telephone calls a day, answered questions from attorneys and respondents, and burned CDs for attorneys. A description of her legal assistant position included being a telephone contact, preparing reports, maintaining automated information systems and legal case files, and processing of legal correspondence and documents.

The physical requirements of the job were mainly sedentary, but required periods of walking, standing, bending, and frequently carrying case files and similar materials. Mr. Edwards, appellant's supervisor, acknowledged that she processed oversized files of documents even though he stated that she should have requested assistance. Ms. Finkel, the employing establishment's associate general counsel, contended that appellant processed five

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

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

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, supra* note 4 at 351-52.

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

boxes of filings a day rather than 15 boxes as alleged. Thus, she merely disputed the quantity of boxes of filings processed by appellant and not the fact that she processed these boxes. Mr. Edwards contended that appellant provided late notification of injury as she did not report her injury until December 3, 2014. Appellant's notification of injury on that date was provided only eight days after she became aware of her injury and its relationship to her employment on November 24, 2014. This does not constitute late notification of injury. The Board finds that appellant has sufficiently identified and established the work factors that she believed caused an employment injury.[11] The Board shall therefore set aside the January 11, 2016 merit decision and the February 17, 2016 nonmerit decision and remand this case for consideration of the medical evidence. After any further development that is deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met her burden of proof to establish a work injury causally related to the accepted employment factors.[12]

CONCLUSION

The Board finds that appellant has met her burden of proof to establish factors of her federal employment that she has alleged caused an employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 17 and January 11, 2016 decisions of the Office of Workers' Compensation Programs are set aside and that the case remanded for further action in conformance with this decision.

Issued: August 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] *See Louise F. Garnett*, 47 ECAB 639 (1996); *Loise G. Moore*, 20 ECAB 165 (1968).

[12] Due to the disposition of issue 1, issue 2 is rendered moot and need not be addressed by the Board.