

ISSUE

The issue is whether appellant met her burden of proof to establish an occupational disease claim.

FACTUAL HISTORY

On April 1, 2015 appellant, then a 60-year-old addiction specialist, filed an occupational disease claim (Form CA-2) alleging that on December 17, 2014 she first realized that her carpal tunnel condition and neck, shoulder, and elbow pain were due to the removal of voice recognition software on her computer, which had occurred on March 30, 2014. She explained that the software had been removed because it was no longer compatible with her computer system. Following the removal of the software, appellant gradually developed pain in her shoulders, neck, elbow, hands, and wrists.³

In an April 16, 2015 letter, the employing establishment controverted the claim. It noted that appellant had been provided with new voice recognition software along with disks and written instructions regarding the use of the program. The employing establishment noted that appellant had not used the new program as she related that she had not been provided sufficient instructions or training regarding the new software program.

By correspondence dated April 24, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised regarding the medical and factual evidence required to support her claim and was afforded 30 days to provide this information.

Appellant submitted the following evidence in response to OWCP's request for additional evidence.

In an employing establishment health unit progress note dated December 8, 2014, Thomas Arvia, a registered nurse, reported that appellant was seen for complaints of sharp neck pain radiating into her left shoulder and right arm. He noted that appellant had been diagnosed with employment-related carpal tunnel syndrome. Appellant related that she had been issued a new computer without voice recognition software and that she had been unsuccessful in getting the software installed on her computer. She noted that since the removal of the old software her symptoms had been aggravated. The nurse reported good shoulder range of motion with some discomfort.

In a December 17, 2014 report, Dr. John Sonnenberg, an examining Board-certified orthopedic surgeon, noted that appellant had been seen for complaints of increased shoulder, neck, right elbow, and bilateral hand pain, which she attributed to the 2014 removal of her voice recognition software. Appellant stated that since the software had been removed from her computer, thus all of her notes had to be manually typed. Her physical examination revealed tenderness over multiple cervical and thoracic spine trigger points, full neck and bilateral

³ The record reflects that appellant has an accepted January 21, 2003 claim for carpal tunnel syndrome which is open for medical treatment in OWCP File No. xxxxxx778.

shoulder range of motion, painful shoulder range of motion, right elbow lateral epicondyle and cubital tunnel tenderness, positive elbow Tinel's sign, and positive wrist Phalen's and Tinel's signs. Dr. Sonnenberg reviewed an x-ray interpretation which showed C4-5, C5-6, and C6-7 degeneration disc disease, and slight left inferior humeral spur formation osteoarthritis. Diagnoses included cervical myositis, cervical radiculitis, bilateral carpal tunnel syndrome, right elbow early cubital tunnel syndrome, periscapular myositis, and right elbow lateral epicondylitis. Dr. Sonnenberg attributed appellant's diagnosed conditions to increased typing following the removal of voice recognition software on her computer approximately nine months prior.

In a May 11, 2015 office visit report, Dr. Robert Strugala, an examining Board-certified internist and sports medicine physician, provided examination findings, reviewed an x-ray interpretation, and noted that appellant was seen for neck pain. Appellant's examination findings included no cervical spinous processes tenderness, complaints of neck pain with cervical rotation, flexion and extension, and right paraspinal muscle tenderness in the upper right trapezius muscles. Dr. Strugala diagnosed upper extremity issues and neck pain. He opined that it was reasonable that appellant's excessive typing caused by the transition from her dictation "could aggravate cervical disc disease" especially if her keyboard and monitor were not placed in an ergonomically correct cervical position.

On May 13, 2015 appellant was seen by Dr. Sonnenberg who reported that appellant was last seen on December 17, 2014 when he diagnosed cervical myositis, cervical radiculitis, bilateral carpal tunnel syndrome, right elbow early cubital tunnel syndrome, periscapular myositis, and right elbow lateral epicondylitis. Dr. Sonnenberg again attributed the diagnosed conditions to increased typing, which had been caused by the elimination of her voice recognition software nine months prior to her last visit.

By decision dated June 29, 2015, OWCP denied appellant's claim. It found that she failed to establish that the diagnosed conditions were caused or aggravated by the identified work factor. It found the December 17, 2014 and May 13, 2015 reports from Dr. Sonnenberg failed to provide a rationalized opinion explaining how the increased typing caused or aggravated the diagnosed conditions. OWCP also found that the report from Mr. Arvia was of no probative value as nurses are not considered physicians under FECA.

On July 25, 2015 appellant requested a telephonic hearing before an OWCP hearing representative. Counsel referenced a May 2015 report from Dr. Sonnenberg, which he argued had not been considered by OWCP in its decision.

A telephonic hearing was held on March 16, 2016. Appellant testified that, after March 30, 2014, the voice recognition software was removed from her computer, she was not initially given any new software and she had to type approximately six hours per day. She testified that the voice recognition software minimized her typing and that, when it was no longer available, her neck, bilateral shoulder, right elbow, and bilateral hand pain gradually increased and caused a lot of distress. By December 2014, appellant's pain increased to the point where she sought medical care. She testified that she resigned from her position with the employing establishment in July 2015 because, when she was given new voice recognition software, the employing establishment failed to retrain her on the voice recognition software.

By decision dated May 31, 2016, OWCP's hearing representative affirmed the June 29, 2015 decision. The hearing representative found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the employment factor of typing following removal of voice recognition software. In addition, none of the physicians referenced any prior medical findings or symptoms, described any change in appellant's preexisting conditions, or explained how the typing caused an aggravation of the diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.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

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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹⁰

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

Appellant filed an occupational disease claim alleging that her carpal tunnel condition and neck, shoulder, and elbow pain had been caused or aggravated by her increased typing due to the removal of voice recognition software on her computer on March 30, 2014. OWCP denied her claim as it found that the medical evidence of record insufficient to establish that the diagnosed condition had been caused or aggravated by the identified employment factor of increased typing due to the removal of voice recognition software.

Appellant submitted reports from Dr. Sonnenberg dated December 17, 2014 and May 13, 2015 diagnosing cervical myositis, cervical radiculitis, bilateral carpal tunnel syndrome, right elbow early cubital tunnel syndrome, periscapular myositis, and right elbow lateral epicondylitis. In both reports, Dr. Sonnenberg opined that the diagnosed conditions were caused by appellant's increased typing due to the removal of voice recognition software. Although Dr. Sonnenberg's reports contained an accurate description of appellant's employment duties, they do not contain a sufficient explanation, based on medical rationale, of how increased typing would have caused or contributed to her cervical myositis, cervical radiculitis, bilateral carpal tunnel syndrome, right elbow early cubital tunnel syndrome, periscapular myositis, and right elbow lateral epicondylitis.¹¹ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹² Thus, the Board finds that Dr. Sonnenberg's reports are insufficient to establish appellant's claim

The record also contains a May 11, 2015 report from Dr. Strugala, who diagnosed upper extremity issues and neck pain. Regarding the cause of appellant's condition, Dr. Strugala opined that it was reasonable to assume that her cervical disc disease could have been aggravated by the excessive typing caused by the removal of the voice recognition software particularly if her keyboard and monitor were not placed in an ergonomically correct cervical position. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.¹³ Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is insufficient to meet appellant's burden of proof.¹⁴ A rationalized medical opinion is especially necessary in light of appellant's apparent preexisting and degenerative cervical condition.¹⁵ Thus, Dr. Stugala's report is of limited probative value.

¹¹ See *M.M.*, Docket No. 15-607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006).

¹³ See *S.E.*, *id.* (opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

¹⁴ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁵ See *N.M.*, Docket No. 16-0403 (issued June 6, 2016).

The remaining medical evidence is also insufficient to establish appellant's claim. The report from Mr. Arvia does not constitute competent medical evidence in support of appellant's claim as nurses are not considered physicians as defined under FECA.¹⁶ This report is therefore of no probative value.

Therefore, the Board finds that appellant failed to meet her burden of proof.

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 met her burden of proof to establish an injury causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 31, 2016 is affirmed.

Issued: August 1, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁶ 5 U.S.C. § 8101(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. *See B.B.*, Docket No. 09-1858 (issued April 16, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005) (nurses are not physicians under FECA).