

FACTUAL HISTORY

On December 13, 2015 appellant, then a 27-year-old sales and services distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained a left upper extremity condition due to her work duties which required repetitive lifting, balancing, carrying, reaching, and pushing. She indicated that she first became aware of the claimed condition on October 19, 2015 and first realized that it was caused or aggravated by her federal employment on November 10, 2015. Appellant did not stop work.

Appellant submitted a November 17, 2015 letter to OWCP which she originally submitted in connection with a prior claim for a work-related cervical radiculopathy which extended into her right upper extremity (File No. xxxxxx365). She noted that, in October 2015, she began experiencing symptoms in her left upper extremity which were similar to those she had experienced in her right upper extremity. Appellant indicated that her attending orthopedic specialist related her left upper extremity symptoms to repetitive and overuse actions at work, especially due to favoring her left upper extremity. She noted that her job required her to engage in repetitive bending, stooping, handling materials to distribute, sort, and collect correspondence/mail. Appellant asserted that her favoring of her left upper extremity contributed to the symptoms in that extremity.

In a December 16, 2015 letter, OWCP advised appellant regarding the deficiencies in the evidence received and afforded her 30 days to provide additional documentation sufficient to establish her claim.

Appellant submitted December 14, 2014 reports from Dr. Jeffrey R. Garst, an attending Board-certified orthopedic surgeon. Dr. Garst noted bilateral shoulder pain, right shoulder weakness, and bilateral elbow pain for which appellant required work restrictions.

In a December 22, 2015 report, Dr. Edward Trudeau, an attending Board-certified physical medicine and rehabilitation physician, referenced a September 22, 2015 document in which appellant described her work activities involving repetitive motions of her arms.³ He noted that the September 22, 2015 document referenced various actions of appellant including lifting, balancing, carrying, reaching, pushing, stooping, handling materials, transporting mail, and using a scanner. Dr. Trudeau mentioned appellant's present claim for a work-related left upper extremity condition (File No. xxxxxx731), as well as her other claim for a work-related right upper extremity condition (File No. xxxxxx365).⁴ He noted that appellant reported that there had been a progressive worsening of symptoms in both upper extremities. Dr. Trudeau reported the findings of the physical examination that he had performed on December 22, 2015 and noted that appellant exhibited tenderness to palpation over the right shoulder girdle and both elbows, positive compression test over the ulnar nerves at both elbows, hypesthesia over the ulnar aspect of both forearms and hands, diffuse weakness of the right upper extremity at both the biceps and triceps, very definite weakness of the ulnar-innervated intrinsic and abductor pollicis brevis on the right hand, as compared to left hand which also showed weakness of the

³ The September 22, 2015 document is not contained in the present case file.

⁴ The record reveals that OWCP denied appellant's claim for cervical radiculopathy.

ulnar-innervated intrinsic and abductor pollicis brevis. He indicated that it “sounds very reasonable that this is indeed a work-related situation,” both brought on and aggravated by the kinds of activities that appellant documented in her September 22, 2015 statement. Dr. Trudeau indicated that December 22, 2015 electromyogram and nerve conduction velocity (EMG/NCV) testing for the bilateral upper extremities showed right elbow cubital tunnel syndrome (moderately severe), right brachial plexopathy, medial cord lesion (improved since a prior study of September 30, 2015), and left elbow cubital tunnel syndrome (mild and neurapraxic, and new since the prior study of September 30, 2015).⁵

In a March 2, 2016 decision, OWCP denied appellant’s claim because the evidence was insufficient to establish that the medical condition was causally related to the accepted work events. It indicated that the reason for this finding was that both appellant, in her November 17, 2015 statement, and Dr. Trudeau, in his December 22, 2015 report, linked the injury to appellant’s left upper extremity to overuse, or favoring, of that extremity in direct relation to the injuries sustained to her right upper extremity (which was assigned case number xxxxxx365). OWCP indicated that appellant should follow the appeal rights afforded her in that case and file her claim for a left upper extremity condition as a consequential injury in her other case file.

Appellant disagreed with the March 2, 2016 decision and, through counsel, requested a telephone hearing with a representative of OWCP’s Branch of Hearings and Review. During the hearing held on November 9, 2016, she testified about her left upper extremity condition and noted that she recently underwent release surgery. Appellant asserted that problems with her right shoulder caused her to favor her left upper extremity and contributed to her development of a left upper extremity condition.

In a January 3, 2017 decision, OWCP’s hearing representative affirmed OWCP’s March 2, 2016 decision denying appellant’s claim for a work-related left upper extremity condition. In explaining the rationale for the denial of the claim, she noted that OWCP accepted that a compensable employment exposure occurred as claimed. The hearing representative indicated that Dr. Trudeau cited the claimed employment factors and repetitive use of both upper extremities “although the claim for cervical radiculopathy and right upper extremity conditions was denied.” She found that Dr. Trudeau did not provide sufficient medical rationale to establish that the diagnosed left upper extremity conditions were causally related to the established work factors and noted that OWCP properly found that appellant did not meet her burden of proof to establish the claim.

LEGAL PRECEDENT

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 timely filed within the applicable time limitation period of FECA, that the 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.⁶ To establish fact of injury, an employee must submit

⁵ The record contains the findings of the December 22, 2015 EMG/NCV testing.

⁶ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.⁷ An employee must also establish that such event, incident, or exposure caused an injury.⁸ 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.⁹

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.¹¹

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹² 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 established employment factors.¹³

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.¹⁴ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.¹⁵

⁷ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁸ *Id.*

⁹ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁰ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹¹ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹³ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁴ *S.S.*, 59 ECAB 315 (2008).

¹⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

Appellant has alleged that she sustained a left upper extremity condition due to the performance of her work duties which required repetitive lifting, balancing, carrying, handling, reaching, and pushing. The record reveals that she had a prior claim for a work-related cervical radiculopathy which extended into her right upper extremity (File No. xxxxxx365). This prior claim is not the subject of the present case. Although appellant suggested that she sustained a left upper extremity condition as a consequence of a work-related right upper extremity condition,¹⁶ there is no indication in the record that OWCP accepted a claim for a work-related right upper extremity condition.¹⁷

The Board finds that appellant did not submit sufficient medical evidence to establish a left upper extremity condition due to factors of her federal employment.

In support of her claim for a work-related left upper extremity condition, appellant submitted a December 22, 2015 report from Dr. Trudeau, an attending physician. Dr. Trudeau noted that appellant reported various repetitive work duties including lifting, balancing, carrying, reaching, pushing, stooping, handling materials, transporting mail, and using a scanner. He reported the findings of the physical examination he performed on December 22, 2015 and noted that appellant exhibited tenderness to palpation over the right shoulder girdle and both elbows, positive compression test over the ulnar nerves at both elbows, hypesthesia over the ulnar aspect of both forearms and hands, diffuse weakness of the right upper extremity at both the biceps and triceps, very definite weakness of the ulnar-innervated intrinsic and abductor pollicis brevis on the right hand, as compared to left which also showed weakness of the ulnar-innervated intrinsic and abductor pollicis brevis. Dr. Trudeau indicated that it “sounds very reasonable that this is indeed a work-related situation,” both brought on and aggravated by the kinds of activities that appellant documented in a September 22, 2015 statement.¹⁸

The Board finds that Dr. Trudeau’s December 22, 2015 report is of limited probative value with respect to appellant’s claim for a work-related left upper extremity condition because he did not provide adequate medical rationale in support of his opinion on causal relationship. The Board has held that 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.¹⁹ Although Dr. Trudeau discussed various findings on examination and indicated that it “sounds very reasonable that this is indeed a work-related situation,” he did not specify which conditions he ostensibly felt were work related. He did not provide a detailed discussion of the work factors implicated by appellant in causing or aggravating her left upper extremity condition and he did not explain the medical process through which such work factors

¹⁶ See *supra* notes 13 and 14 regarding consequential injuries.

¹⁷ In its March 2, 2016 decision in the present case, OWCP indicated that appellant should follow the appeal rights afforded her in her prior case and file her claim for a left upper extremity condition as a consequential injury in her other case file (OWCP File No. xxxxxx365).

¹⁸ The Board notes that the September 22, 2015 statement is not presently in the case record.

¹⁹ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

would be competent to cause or aggravate a left upper extremity condition. In his December 22, 2015 report, Dr. Trudeau indicated that December 22, 2015 EMG/NCV testing for the bilateral upper extremities showed right elbow cubital tunnel syndrome (moderately severe), right brachial plexopathy, medial cord lesion (improved since a prior study of September 30, 2015), and left elbow cubital tunnel syndrome (mild and neuropathic, and new since the prior study of September 30, 2015). However, he did not provide any indication that any of these conditions were caused or aggravated by work factors.

Appellant did not submit any other evidence addressing the cause of her claimed left upper extremity condition and, for the reasons discussed above, she has 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 did not meet her burden of proof to establish a left upper extremity condition due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2017
Washington, DC

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

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

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