# United States Department of Labor
# Employees' Compensation Appeals Board

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| **L.D., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1581** |
| | ) | **Issued: January 23, 2018** |
| **DEPARTMENT OF VETERANS AFFAIRS, TEMPLE VETERANS ADMINISTRATION HOSPITAL, Temple, TX, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On July 14, 2017 appellant filed a timely appeal from a May 5, 2017 merit 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.

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On September 1, 2016 appellant, then a 53-year-old social worker, filed an occupational disease claim (Form CA-2) alleging that she developed bursitis and tendinitis due to excessive typing in the performance of her federal employment duties. She did not stop work.

By letter dated September 9, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the type of medical and factual evidence needed and was afforded 30 days to submit additional evidence.

By letter dated September 15, 2016, the employing establishment controverted the claim, contending that appellant initially reported that her claimed conditions were not work related. It further argued that, as of September 14, 2016, she was provided with corrective measures to ensure an ergonomic workspace *via* an ergonomic keyboard, gel wrist pad, and gel mousepad.

In an October 8, 2016 narrative statement, appellant reported that she had worked for the employing establishment since January 2001. She explained that her duties involved using a computer and typing on a daily basis. Appellant first noticed left shoulder pain in December 2015 which gradually worsened, causing her to seek medical treatment on March 22, 2016. She noted no history of a left arm or hand injury and described the course of treatment pertaining to her left shoulder. Appellant reported that her physician diagnosed early left carpal tunnel syndrome, left shoulder tendinitis, left shoulder bursitis, and frozen shoulder. An official position description for a Veterans Health Care System social worker was received.

Appellant also submitted medical reports in support of her claim. She submitted physical therapy progress notes dated April 19 through May 12, 2016 documenting treatment of her left shoulder condition.

In a March 22, 2016 medical report, Dr. Mary Gaines Walker, Board-certified in family practice, reported that appellant complained of left shoulder pain since last December and was unable to raise her arm over her head. She noted no history of trauma but related that her symptoms worsened over time. Dr. Walker noted a prior right arm rotator cuff sprain, for which appellant had undergone physical therapy. She diagnosed left shoulder pain and left rotator cuff injury pending a left shoulder magnetic resonance imaging (MRI) scan.

In a March 24, 2016 report, Daniel Moffat, a physician assistant, documented appellant's complaints of left shoulder, arm, and neck pain, which she noted could be related to typing.

In an April 6, 2016 diagnostic report, Dr. Lauren Evans, a Board-certified diagnostic radiologist, reported that an MRI scan of appellant's left shoulder revealed severe supraspinatus tendinosis, no rotator cuff tear, glenohumeral and acromioclavicular osteoarthritis, and small amount of fluid in the subacromial/subdeltoid bursa which could be related to bursitis.

In April 15 and 29, 2016 progress notes, Dr. Rafael Gonzalez-Ayala, Board-certified in internal medicine, reported that appellant was under his care and had been provided work restrictions. In a May 20, 2016 report, he reported that appellant complained of left shoulder pain which had been present for several months. Dr. Gonzalez-Ayala diagnosed left frozen shoulder and provided a lidocaine joint injection. In an August 5, 2016 report, he diagnosed

osteoarthritis of the left acromioclavicular (AC) joint, and osteoarthritis of the glenohumeral left joint.

In a June 21, 2016 progress note, Dr. Gopal Guttikonda, a Board-certified neurologist, documented treatment of appellant's left shoulder and diagnosed left shoulder impingement syndrome, early left carpal tunnel syndrome, and post-traumatic stress disorder.

On September 2, 2016 Dr. Bryan L. Lane, a doctor of osteopathic medicine, diagnosed adhesive capsulitis of appellant's left shoulder.

By decision dated November 2, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

On January 30, 2017 appellant requested reconsideration. In an accompanying narrative statement, she noted her employment duties which required typing daily on a computer. Appellant also described her course of medical treatment for her left shoulder injury. She noted that, on January 11, 2017, she underwent left shoulder surgery, at which time it was discovered that she also had a tear in her rotator cuff. Appellant further reported that a safety representative for the employing establishment inspected her workstation and informed her that she was typing in a nonergonomic position.

In support of her claim, appellant submitted a January 11, 2017 operative report from Dr. William Paul Hamilton, a Board-certified orthopedic surgeon. Dr. Hamilton noted a diagnosis of rotator cuff tear, subacromial impingement, and left shoulder adhesive capsulitis. He provided findings pertaining to appellant's left shoulder arthroscopy and arthroscopic capsular release, arthroscopic rotator cuff repair, and arthroscopic subacromial decompression.

By decision dated May 5, 2017, OWCP denied modification of its November 2, 2016 decision. It found that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to her accepted factors of her federal employment.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[2] 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 or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

[2] *Id.*

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

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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.[6]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

## ***ANALYSIS***

OWCP accepted that appellant engaged in repetitive typing activities in her federal employment as a social worker. It denied her claim, however, finding that the evidence of record failed to establish a causal relationship between those activities and her diagnosed conditions.

The Board finds that the medical evidence of record is insufficient to establish that appellant developed a medical condition or injury causally related to factors of her federal employment.

In a March 22, 2016 medical report, Dr. Walker related that appellant complained of left shoulder pain since last December, but noted no history of trauma. She diagnosed left shoulder pain and rotator cuff injury pending a left shoulder MRI scan. The Board notes that Dr. Walker

[5] *Elaine Pendleton*, *supra* note 3.

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

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *James Mack*, 43 ECAB 321 (1991).

failed to provide a firm medical diagnosis.[9] The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[10] Moreover, the diagnosis of left rotator cuff injury is speculative as she reported that the diagnosis needed to be confirmed *via* MRI scan. A medical opinion need not be of absolute medical certainty, but it cannot be speculative.[11] As Dr. Walker offered no opinion that a diagnosed condition was causally related to appellant's accepted employment factors, her opinion is of limited probative value on the issue of causal relationship.[12] As such, her report is insufficient to meet appellant's burden of proof.

The April 6, 2016 report provided by Dr. Evans interpreted diagnostic imaging studies finding severe supraspinatus tendinosis, no rotator cuff tear glenohumeral and acromioclavicular osteoarthritis, however, provided no opinion on the cause of appellant's injury. Diagnostic studies do not provide a cause of any diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

The medical reports dated April 15 through August 5, 2016 from Dr. Gonzalez-Ayala are also insufficient to establish appellant's claim. While Dr. Gonzalez-Ayala diagnosed left frozen shoulder, osteoarthritis of left AC joint, and osteoarthritis of glenohumeral left joint, he failed to provide any opinion on the cause of appellant's injuries. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[14] Dr. Gonzalez-Ayala did not address why appellant's complaints were not caused by her left shoulder osteoarthritis, nor did he discuss whether her arthritis had progressed beyond what might be expected from the natural progression of that condition.[15] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[16]

For the same reason, the reports from Drs. Guttikonda, Lane, and Hamilton are insufficient to establish appellant's claim. As previously noted, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship as they did not provide an opinion on the cause of appellant's

[9] *See V.S.*, Docket No. 09-2308 (issued September 1, 2010). Medical evidence is of diminished probative value if it fails to provide a firm diagnosis**.**

[10] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *See J.J.*, Docket No. 13-0021 (issued May 8, 2013).

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[13] *See M.S.*, Docket No. 16-1907 (issued August 29, 2017).

[14] *Id.*

[15] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[16] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

conditions.[17] As such, the reports of Drs. Guttikonda, Lane, and Hamilton are of limited probative value and insufficient to meet appellant's burden of proof.[18]

The Board also notes that Mr. Moffat's March 25, 2016 note and the physical therapy progress notes dated April 19 through May 12, 2016 are of no probative value. Registered nurses, physical therapists, and physician assistants, are not physicians as defined under FECA, therefore their opinions are of no probative value regarding causal relationship.[19]

Medical opinion evidence submitted in support of a claim must reflect a correct history and offer a medically sound explanation by a physician of how the specific employment factors, physiologically, caused or aggravated her diagnosed conditions.[20] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[21] Appellant's honest belief that her occupational employment duties caused her medical injury, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.[22] In the instant case, the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties as a social worker and her diagnosed conditions. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 occupational disease causally related to the accepted factors of her federal employment.

[17] *Supra* note 11.

[18] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[19] 5 U.S.C. § 8102(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 also Roy L. Humphrey*, 57 ECAB 238 (2005). The Board has held that reports from physician assistants have no probative value as these practitioners are not considered physicians under FECA. *D.B.*, Docket No. 17-0448 (issued October 12, 2017). Physical therapists are also not considered physicians under FECA and their reports are, therefore, of no probative value. *See J.A.*, Docket No. 17-0119 (issued July 11, 2017).

[20] *T.G.*, Docket No. 14-0751 (issued October 20, 2014).

[21] *D.D.*, 57 ECAB 734 (2006).

[22] *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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