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

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| **F.M., Appellant** | ) | |
| **and** | ) | **Docket No. 16-1848** |
| | ) | **Issued: March 16, 2018** |
| **DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Fargo, ND, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On September 19, 2016 appellant filed a timely appeal from the August 26, 2016 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 a right upper extremity injury causally related to accepted factors of her federal employment.

### ***FACTUAL HISTORY***

On January 19, 2016 appellant, then a 58-year-old criminal program specialist, filed an occupational disease claim (Form CA-2) alleging that she developed achiness and discomfort in her right forearm and elbow while in in the performance of duty. She explained that she engaged

[1] 5 U.S.C. § 8101 *et seq.*

in daily computer keying and entering. Appellant indicated that she first became aware of the injury and of its relation to her federal employment on October 1, 2015. She did not stop work.

By development letters dated January 25, 2016, OWCP informed appellant and the employing establishment of the type of evidence needed to support her claim and afforded appellant 30 days to submit such evidence. It particularly requested that she have her physician provide an opinion, supported by a medical explanation, as to how work activities caused or aggravated her claimed condition.

In a February 3, 2016 narrative statement, appellant noted that on or about October 1, 2015, she started to notice unusual discomfort and achiness in her right forearm and elbow area. She indicated that, over time, it seemed to become relevant in that she had achiness, discomfort; pain, and "overall tiredness in [her] right arm." Appellant explained that in late August 2015 to the present, she was covering more work as her coworker left for advanced training. She noted that the position could not be filled until she had successfully completed her training, and they were finally able to fill it. Appellant also indicated that it would be another three to six months before they had another person in the position to take back the additional duties that she had to undertake. She described her employment-related duties which were repetitive and included extra data and computer entries on a daily basis for at least six to eight hours a day, five days a week. Appellant explained that it was not until she started using her hand more repetitively that she started noticing the aggravation and achiness with pain and discomfort. She indicated that she believed the excessive use of her right forearm and elbow with the daily data entries contributed to her condition as well as overuse of the computer. Appellant denied having any other conditions. She noted that her outside activities included: attending sporting events; school activities; family and church functions; volunteering and charity work. Appellant denied engaging in any sports or physical activity, with the exception of walking on the treadmill and exercise bike riding at her place of employment. She also advised that she did not play any musical instruments or engage in any hobbies that involved nonwork-related computer usage. Furthermore, appellant noted her outside activities were sedentary.

In a February 11, 2106 statement, C.F., an administrative officer with the employing establishment, concurred with appellant's statement that her condition was "likely attributable to repetitive motion related to the high volume of computer data entry she does on a daily basis." She explained that appellant's coworker left at the end of August 2015 and left a temporary vacancy with the administrative staff. Appellant explained that her duties were distributed amongst the staff and appellant's additional duties were related to data entry and encompassed the majority of her workday. C.F. agreed that appellant was spending six to eight hours of her workday on the computer. She also advised that she was not aware that appellant was involved in any other outside activities that would have contributed to the orthopedic condition. C.F. noted that no changes were made to appellant's workstation, but she was encouraged to take breaks and use fit time to step away from her desk during the day. She indicated that appellant's first doctor visit was on December 29, 2015 and she had 15.5 hours of doctor visits. C.F. indicated that new computers were brought to the district in May 2015 and the change in the keyboard and mouse could have played a role in aggravating her arm. She related that the employing establishment was planning on purchasing a spit key board and a roller ball mouse. Additionally, the employing establishment would consider workstation adjustments, if advised by a physician. C.F. noted that

the vacancy would be filled within the next few months and should alleviate some of the data entry duties performed by appellant. A copy of the position description was also provided.

OWCP received records from a physician assistant dating from December 29, 2015 to January 18, 2016.

By decision dated April 13, 2016, OWCP denied appellant's claim. It found that appellant did not submit any medical evidence containing a firm medical diagnosis in connection with the claimed work factors or events. OWCP explained that the evidence from the physician assistant could not be considered to be from a physician, unless counter-signed by a qualified physician.

On May 5, 2016 appellant requested reconsideration. She argued that her condition was caused or worsened by her work activities. Appellant indicated that her daily activities were always computer related and she had to take on extra work due to a staff shortage. She explained that the repetitive work on her computer and data entry performed over the eight-hour day caused her more aggravation and discomfort than normal. Appellant indicated that as time went on, it became apparent that the discomfort and aggravation would not go away with over-the-counter ibuprofen. She enclosed new medical evidence.

The new medical evidence was comprised of an April 22, 2016 report from Dr. Kevin Dahl, a Board-certified orthopedic surgeon.[2] Dr. Dahl noted that appellant presented with complaints of right forearm pain which was present over the last several months and denied any particular injuries. He advised that her pain was localized over the medial *versus* lateral aspect of her right elbow joint and was worse with activity such as computer use and better with rest. Dr. Dahl also related that she had night time discomfort as well and took occasional ibuprofen with some relief in symptoms. He related that she had no numbness or tingling involving the right upper extremity digits and her pain was "more dull at rest and sharp with activity." Dr. Dahl examined appellant and diagnosed right elbow pain, right medial epicondylitis, and right elbow lateral epicondylitis. In the social history narrative, he indicated that appellant was a criminal specialist working with prisoner data filing.

By decision dated August 26, 2016, OWCP modified the April 13, 2016 decision from a denial based on one of the five basic elements for FECA coverage to a denial based on another basic element. It explained that the claim remained denied based on causal relationship as she presented no medical evidence outlining the connection between the diagnosed condition and the accepted factors of her federal employment.

[2] The report was originally from a physician assistant and was subsequently signed by Dr. Dahl on April 22, 2016.

## ***LEGAL PRECEDENT***

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.[4]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[5] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[6]

## ***ANALYSIS***

Appellant alleged that she developed a right arm and elbow condition due to daily repetitive activities which included computer data entry as part of her work as a criminal program specialist. The employing establishment concurred with her statement and explained that she incurred additional repetitive duties while filling in for a coworker that left a position. OWCP properly found that the evidence of record supports that appellant engaged in repetitive data entry activities for six to eight hours per day as part of her criminal program specialist duties.

However, appellant submitted insufficient medical evidence to establish that her condition was caused or aggravated by these activities or any other specific factors of her federal employment.

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[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver,* 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[4] *Victor J. Woodhams, id.*

[5] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[6] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will not be considered medical evidence. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (1) (January 2013).

In his April 22, 2016 report, Dr. Dahl diagnosed right elbow pain, right medial epicondylitis, and right elbow lateral epicondylitis. However, he did not indicate that appellant's work activities as a criminal program specialist either caused or aggravated these 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.[7] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[8] Consequently, Dr. Dahl's report is of limited probative value.

The Board notes that the record contains reports from physician assistants. However, they are not considered physicians as defined under FECA. Thus, the Board finds that their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[9]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving her right arm and elbow, appellant has not met her burden of proof in establishing that she developed a medical condition causally related to accepted factors of her federal employment.

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 a right upper extremity injury causally related to accepted factors of her federal employment.

[7] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[8] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[9] 5 U.S.C. § 8102(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.404; *Roy L. Humphrey*, 57 ECAB 238 (2005). *See also D.B.*, Docket No. 17-0448 (issued October 12, 2017) wherein the Board held that reports from physician assistants are not considered medical evidence as these practitioners are not physicians under FECA.

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2018
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