

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted factor of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference.³ The relevant facts are as follows.

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, as well as her neck, shoulder, and elbow pain were due to the removal of voice recognition software on her computer, which had occurred at work on March 30, 2014. She explained that the software had been removed because it was no longer compatible with her computer system. Following removal of the software, appellant gradually developed pain in her shoulders, neck, elbow, wrists, and hands.⁴

OWCP received medical reports from appellant's treating physicians, Dr. John Sonnenberg, a Board-certified orthopedic surgeon, and Dr. Robert Strugala, a Board-certified internist.

By decision dated June 29, 2015, OWCP denied appellant's claim finding that she had not met her burden of proof to establish that the diagnosed conditions had been caused or aggravated by the accepted employment factor.

On July 31, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on March 16, 2016.

By decision dated May 31, 2016, OWCP's hearing representative affirmed the June 29, 2015 decision finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the employment factor of typing.

On July 19, 2016 appellant, through counsel, appealed to the Board. By decision dated August 1, 2017,⁵ the Board affirmed OWCP's May 31, 2016 decision, finding that the medical evidence of record was insufficient to establish that her carpal tunnel condition and neck, shoulder, and elbow pain had been caused or aggravated by increased typing due to the removal of voice activation software on her computer on March 30, 2014.

³ Docket No. 16-1517 (issued August 1, 2017).

⁴ The record reflects that appellant has an accepted January 21, 2003 claim for carpal tunnel syndrome, which is open for medical treatment under OWCP File No. xxxxxx778.

⁵ *Supra* note 3.

On July 19, 2018 appellant, through counsel, requested reconsideration. She submitted a July 17, 2018 report from Dr. Neil Allen, a Board-certified internist and neurologist.

In the July 17, 2018 report, Dr. Allen indicated that he reviewed appellant's medical record and contacted her to obtain a description of her employment duties, to determine whether there was a causal relationship between her cervical spine and upper limb injuries and work-related exposure. He reported appellant's 2014 x-ray interpretations showed C4-5, C5-6, and C6-7 degenerative disc disease. Dr. Allen described her employment duties as an addiction specialist and related appellant's complaints of worsening neck and bilateral upper limb pain following the removal of voice recognition software on March 30, 2014. He opined that appellant's claim should be accepted for cervical sprain/strain and aggravation of cervical degenerative disc disease. Dr. Allen explained that sitting for prolonged periods of time with improper ergonomic positioning resulted in postural muscle fatigue, a compromised cervical spine, and unsupported position, which in turn led to anterior head carriage and loss of normal cervical lordosis and increased stress on facet joints, cervical discs, and muscle strain. He noted the condition of upper cross syndrome was known to be caused by employment requiring prolonged periods of sedentary work. According to Dr. Allen, upper cross syndrome contributed to cervical degenerative disc disease symptomatology, as seen in appellant. He concluded that appellant's cervical spine conditions were aggravated by and became symptomatic as a direct result of her employment duties.

By decision dated October 18, 2018, OWCP denied modification. It found that Dr. Allen had not provided adequate medical rationale explaining how the accepted employment factor had caused or aggravated the diagnosed medical conditions.

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,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁹ (2) a factual

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe Cameron*, 41 ECAB 1153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *C.B.*, Docket No. 19-1075 (issued May 8, 2019); *Michael R. Shaffer*, 55 ECAB 386 (2004).

statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;¹⁰ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹¹

The medical evidence required to establish 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted factor of her federal employment.

Preliminarily, it is unnecessary for the Board to reconsider the evidence appellant submitted prior to the issuance of OWCP's May 31, 2016 decision because the Board evaluated that evidence in its August 1, 2017 decision and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³

In support of her claim on reconsideration before OWCP, appellant submitted a July 17, 2018 report of Dr. Allen who indicated that he had reviewed appellant's medical record and her statement in order to establish whether a causal relationship existed between her cervical spine condition and occupational exposure on and after March 30, 2014. Dr. Allen opined that her claim should be accepted for cervical sprain/strain and aggravation of cervical degenerative disc disease because sitting for prolonged periods of time was known to cause the condition of upper cross syndrome, which contributed to cervical degenerative disc disease. He concluded that appellant's cervical spine conditions were aggravated by and became symptomatic as a direct result of her sedentary job duties.

The Board finds that Dr. Allen's report fails to provide a rationalized opinion explaining how the accepted factor of employment, excessive typing caused by the removal of voice recognition software, caused or aggravated appellant's cervical degenerative disc disease.¹⁴ Dr. Allen did not otherwise sufficiently explain why he had concluded that appellant's removal of voice activation software caused or contributed to the diagnosed conditions. A rationalized

¹⁰ *C.B., id.; Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *C.B., id.; Beverly A. Spencer*, 55 ECAB 501 (2004).

¹² *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

¹³ *See L.E.*, Docket No. 18-1138 (issued February 1, 2019); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹⁴ *See R.L.*, Docket No. 18-1316 (issued March 15, 2019); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

medical opinion is especially necessary in light of appellant's apparent preexisting degenerative cervical condition.¹⁵ Thus, the Board finds that the report from Dr. Allen is insufficient to establish that appellant sustained an employment-related injury.

On appeal counsel contends that OWCP failed to adjudicate appellant's claim in accordance with the proper standard of causation and requests that the Board make its own independent review of the relevant facts after *de novo* review. However, as discussed above, Dr. Allen did not provide a rationalized opinion sufficient to establish that appellant's diagnosed cervical conditions were caused or aggravated by the accepted factor 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 an injury causally related to the accepted factor of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ See *K.W.*, Docket No. 17-1861 (issued March 28, 2018).