United States Department of Labor
Employees' Compensation Appeals Board

B.R., Appellant	)	
and	)	**Docket No. 19-0309**
	)	**Issued: June 19, 2019**
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, Omaha, NE, 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 November 27, 2018 appellant filed a timely appeal from a November 2, 2018 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] 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 has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On August 27, 2018 appellant, then a 54-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral shoulder and neck conditions as a result

[1] 5 U.S.C. § 8101 *et seq.*

of her repetitive federal employment duties. She explained that on or about July 19, 2018 she spent an entire eight-hour workday at her computer constantly reaching for the scanner. Appellant also reported spending long periods of time on the telephone which would be cradled between her head and shoulders so that she could type at the same time, causing extreme soreness to her neck and shoulders. She further explained that her pain returned whenever she was sitting at her desk in the same position. Appellant first became aware of her claimed conditions and their relationship to her federal employment on July 19, 2018.

In an accompanying narrative statement, appellant reported that she was assigned to a new division causing her workload to more than triple and resulting in stress which contributed to her neck and shoulder conditions. She reported that she typically spent one to two hours daily printing and scanning documents, however, after July 19, 2018, she spent six to seven hours daily completing these same tasks. Appellant explained that she was assigned a number of new duties until new employees could be hired. She reported that her repetitive employment duties caused injury to her neck, bilateral shoulders, and upper back.

In medical notes and reports dated August 30, 2018, Dr. Jeffrey J. Jenkins, Board-certified in family medicine, reported that appellant had complained of pain in the neck and upper back for approximately one month. He reported that, at that time, her employment duties had changed and she was spending several hours per day using a scanner. Appellant's pain worsened throughout the workweek and improved over the weekend. Dr. Jenkins diagnosed myofascial pain and reviewed "images" of her workstation. He noted that the scanner was some distance from her computer terminal, causing her to stretch her left arm excessively. Dr. Jenkins opined that it was "highly likely" that appellant's pain was caused by activities related to her employment. He recommended a course of physical therapy and modification of her workstation.

In an August 31, 2018 note, Dr. Jenkins reported that appellant was evaluated on August 30, 2018 due to complaints of neck and upper back pain. He diagnosed myofascial pain and opined that it was "very likely" that her symptoms were directly caused by activities in the course of her employment.

In a development letter dated September 19, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence needed and afforded her 30 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested the employing establishment provide comments pertaining to the accuracy of appellant's occupational disease claim.

Appellant responded to OWCP's request on October 11, 2018 and described her repetitive employment duties which she believed caused her medical conditions.

In an October 15, 2018 statement from the employing establishment, appellant's supervisor agreed with her statements pertaining to her occupational disease claim. She discussed appellant's employment duties which she noted substantially increased in July 2018 when their district office was converted into a division office. An official position description for appellant's job as a secretary was also submitted.

Physical therapy notes dated September 6 through October 31, 2018 were also submitted documenting treatment to appellant's cervical region.

In a September 26, 2018 progress note Dr. Jenkins reported that appellant was evaluated on August 30, 2018 for myofascial pain and that he had nothing to add beyond what was in the medical record. He further reported that myofascial pain was the appropriate medical diagnosis with an associated international classification of diseases (ICD)-10 code which was adequate for the purposes of evaluation, treatment, coding, and billing. Dr. Jenkins reported that, if this was not adequate, then he would recommend further evaluation by a physical medicine specialist.

By decision dated November 2, 2018, OWCP denied appellant's claim finding that the medical evidence of record failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted federal employment duties. It noted that the medical evidence submitted contained a diagnosis of pain which was a symptom and not a diagnosed medical condition. OWCP concluded, therefore, that the requirements had not been met for establishing an injury as defined by FECA.

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,[2] 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.[3] 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.[4]

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.[5]

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[4] *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).

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

Rationalized medical opinion evidence is required to establish causal relationship.[6] The opinion of the physician must be based on a complete factual and medical background, 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 incident.[7] 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

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.[9]

In support of her claim, appellant submitted medical notes dated August 30 and 31, and September 26, 2018 from Dr. Jenkins. The reports of Dr. Jenkins are insufficient to establish her claim as they fail to provide a firm medical diagnosis which can be attributed to her accepted federal employment duties.[10] The Board notes that Dr. Jenkins only diagnosed myofascial pain. The Board has consistently held that pain is a general description of a symptoms and is not a firm medical diagnoses.[11] Lacking a firm diagnosis, Dr. Jenkins' reports are of little probative medical value.[12]

Appellant also submitted reports dated September 6 through October 31, 2018 from a physical therapist documenting treatment for her conditions. However, physical therapists are not considered physicians as defined under FECA and their opinions, therefore, are of no probative

[6] *See* 20 C.F.R. § 10.110(a); *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[8] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

[9] *J.S.*, Docket No. 18-0726 (issued November 5, 2018).

[10] *E.W.*, Docket No. 18-1423 (issued March 19, 2019).

[11] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain).

[12] *P.Y.*, Docket No. 18-1136 (issued January 7, 2019); *see also Samuel Senkow*, 50 ECAB 370 (1999).

value.[13] As such, this evidence is insufficient to meet appellant's burden of proof to establish her claim.[14]

For these reasons, the Board finds that there is no medical evidence of record establishing a medical condition causally related to the accepted federal employment duties.[15] As such, appellant has not met her burden of proof.

On appeal, appellant argues that her physician disagreed with OWCP's decision and would not provide a diagnosis other than myofascial pain despite her request. The Board notes that it is her burden to submit the evidence necessary to establish her claim for compensation.[16] Appellant further argues that her physical therapist provided a diagnosed medical condition of strain of muscle, fascia, and tendon. As discussed above, physical therapy reports are of no probative value as they are not signed by a qualified physician under FECA.[17]

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 medical condition causally related to the accepted factors of her federal employment.

[13] 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. *See* 5 U.S.C. § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[14] *P.C.*, Docket No. 18-1703 (issued March 22, 2019).

[15] *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

[16] *C.S.*, Docket No. 17-1345 (issued May 24, 2018).

[17] *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2019
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