United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 18-1280**
	)	**Issued: March 12, 2019**
DEPARTMENT OF THE AIR FORCE, 99th MEDICAL GROUP, NELLIS AIR FORCE BASE, NV, 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 June 11, 2018 appellant filed a timely appeal from an April 20, 2018 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant met her burden of proof to establish cervical, lumbar, and shoulder conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 10, 2015 appellant, then a 63-year-old nurse educator, filed an occupational disease claim (Form CA-2) alleging that she sustained an aggravation of her preexisting degenerative disc disease as a result of constant sitting, viewing a computer screen, and inputting data while in the performance of duty. She indicated that she first became aware of her condition on December 26, 2012 and realized that it resulted from her federal employment on September 13, 2013. On the reverse side of the claim form, the employing establishment controverted appellant's claim, noting that there was no evidence indicating a work-related injury. It further noted that she had previously fallen in 2013 and 2014, and that the 2014 fall occurred outside of her home. Appellant resigned from the employing establishment, effective March 13, 2015.

In a May 7, 2015 development letter, OWCP acknowledged receipt of appellant's claim and advised her of the additional factual and medical evidence needed to establish her claim. It provided her a factual questionnaire to complete and return. OWCP afforded appellant 30 days to submit the necessary information. It similarly requested additional factual information from the employing establishment.

In letters dated May 11 and 12, 2015, the employing establishment controverted appellant's claim and asserted that she did not produce any documentation from her medical provider. It also contended that her previous falls in 2013 and 2014 had no documentation to substantiate the incident and had no correlation to her work. The employing establishment explained that appellant had an ergonomic mouse pad, key board, and chair while she performed her duties. It also noted that she was allowed to take rest breaks and alternate duties as needed.

The employing establishment submitted several statements from appellant's coworkers regarding her previous falls in 2013 and 2014.[3] It also provided a list of her medical appointments for which she had requested leave.

OWCP received an unsigned and undated duty status report (Form CA-17), which noted a description of injury of "constant work on computer, eye, neck, shoulders, hands, [and] wrists."

In her May 19, 2015 response to the development letter, appellant explained that she was diagnosed with degenerative disc disease and arthritis from her cervical spine to her thoracic and lumbar spine areas before she began to work for the employing establishment on August 27, 2012. She noted that she had not been employed or used computers regularly for the past three years. Appellant asserted that constant computer usage was a requirement of her federal employment.

[3] In a May 11, 2015 statement, S.T., a nurse educator, related that in October 2014 appellant told M.P. that she fell at home while going to her mailbox. In another statement, J.M., superintendent of education and training, reported that in 2013 appellant reportedly fell on the sidewalk to the west of building 1305 while she was taking a break.

She alleged that she spent six out of eight hours daily on the computer and experienced constant sitting, staring at the screen, and inputting data. Appellant related that she experienced painful, cramping hands, eye strain, headaches, back pain, facial pain, and disorientation at times. She related that she initially sought medical treatment in September 2013 and described the medical treatment she received. Appellant also explained that on October 23, 2014 she fell down in front of her house after work, which aggravated her bilateral shoulder and wrist pain.

OWCP also received several diagnostic test reports. An August 27, 2013 x-ray scan report of the thoracolumbar spine, demonstrated multilevel degenerative disc disease and lower thoracic facet arthritis. An October 23, 2014 right and left wrist x-ray scan report revealed no acute fractures. An October 23, 2014 right shoulder x-ray scan report demonstrated a focal irregularity of the greater tuberosity. A November 6, 2014 cervical spine x-ray report demonstrated degenerative disc disease at C3-C7. A December 23, 2014 right shoulder magnetic resonance imaging (MRI) scan report showed a partial-thickness partial width tear of the supraspinatus tendon, associated with mild infraspinatus muscle atrophy, mild subacromial/subdeltoid bursitis, and moderate acromioclavicular joint osteoarthritis.

In a July 22, 2014 report, Dr. Shirley Rodriguez, an osteopath, noted that appellant was seen for a follow-up examination of complaints of mid-thoracic, left-sided pain. She conducted an examination and reported abnormal edema bilaterally in appellant's extremities. Dr. Rodriguez diagnosed hypertension, osteoarthrosis, gastroesophageal reflux disease, thoracic region strain, and venous insufficiency.

In an October 28, 2014 report, Dr. Wesley Johnson, a Board-certified orthopedic surgeon, related that appellant had worked as a nurse for a number of years and complained of chronic pain issues in her neck and back. Upon physical examination of her left wrist, he observed tenderness and mild swelling, but overall a normal examination. Examination of appellant's right shoulder showed some mild reduction in range of motion and some tenderness over the tuberosity. Dr. Johnson reported that she had a chronic condition that may have been exacerbated through her primary care.[4]

By decision dated June 16, 2015, OWCP denied appellant's occupational disease claim. It accepted her duties as a nurse educator and diagnosis of multilevel degenerative disc disease of the thoracic and lumbar spine, but denied her claim because the medical evidence of record failed to establish that her diagnosed condition was causally related to the accepted employment factors.

On June 29, 2015 appellant requested reconsideration and submitted additional medical evidence.

In reports dated November 6 and December 10, 2014, Dr. Rodriguez related that on October 20, 2014 appellant fell down and hurt her shoulders. She noted that appellant began to

[4] Additional medical reports were also submitted, which described appellant's medical treatment for other conditions. In reports dated September 13 and October 21, 2013, Blanca Tenhet, a certified physician assistant, conducted an examination for appellant's complaints of loss of circulation on the fingers of her right hand. She diagnosed hypothyroidism, lumbar disc degeneration, allergic rhinitis, anemia, and depression. In a June 2, 2014 report, Lynn Kasch, a nurse practitioner, related that appellant was seen for complaints of thumb pain and history of anemia. She reviewed appellant's history and provided findings on examination.

experience severe right shoulder pain, neck pain, and left wrist pain. Dr. Rodriguez reported that examination showed that appellant's paraspinal musculature in her lumbar spine was tight with no midline tenderness. She diagnosed right shoulder pain, cervicalgia, degenerative joint disease, and fracture.

Dr. Rodriguez further indicated in reports dated January 12 to April 20, 2015 that appellant was seen for a follow-up examination of her right shoulder. She reported an abnormal examination of appellant's extremities. Dr. Rodriguez diagnosed tenosynovitis of the thumb and supraspinatus tendon tear.

In a June 12, 2015 attending physician's report (Form CA-20), Dr. Rodriguez reported a December 26, 2012 date of injury. She reported a history of injury of "continued neck, shoulder, [and] wrist pain stemming from a fall in Oct 2014, making it difficult for [appellant] to work." Dr. Rodriguez noted a history of degenerative joint disease of the spine. She diagnosed supraspinatus tendon tear and degeneration of the cervical and lumbar spine. Dr. Rodriguez checked a box marked "yes" indicating that appellant's condition was caused or aggravated by her employment. She explained that appellant worked at a desk job, which placed a strain on her spine, shoulders, and wrist and exacerbated her pain. Dr. Rodriguez related that due to appellant's injuries she would need frequent breaks in order to not exacerbate her pain.

By decision dated September 25, 2015, OWCP denied modification of the June 16, 2015 decision. It found that the medical evidence submitted was insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment.

On November 20, 2015 appellant requested reconsideration.

In reports dated July 16 to December 14, 2015, Dr. John M. Baldauf, a Board-certified orthopedic surgeon, related that appellant experienced right shoulder pain after a slip and fall injury approximately seven months ago. Upon examination of her shoulders, he observed moderate tenderness and pain. Neer and Hawkins signs were positive. Range of motion was active. Dr. Baldauf diagnosed shoulder impingement syndrome, bilateral shoulder joint pain, and lumbago.

By decision dated February 9, 2016, OWCP denied modification of the September 25, 2015 decision. It found that the medical evidence of record was insufficient to establish that appellant's medical conditions were causally related to her accepted employment factors.

On March 21, 2016 appellant again requested reconsideration.

A February 2, 2016 lumbar spine MRI scan report showed mid-bone marrow edema at the L4 and L5 pedicles, multilevel mild-to-moderate degenerative disc disease and facet disease, greater at L4-5 and L5-S1, mild spinal canal stenosis at L3-4, moderate spinal canal stenosis at L4-5, and prominent disc bulging with focal posterior disc herniation at L5-S1.

In a May 11, 2016 statement, appellant related that she continued to be in pain on a level of 7 to 10 on most days. She alleged that it was common for a person with mild-to-moderate

degenerative joint disease to experience a major exacerbation of his or her condition, causing neck, head, shoulder, arm, and back pain due to a sedentary job.

By decision dated June 17, 2016, OWCP denied modification of the February 9, 2016 decision. It found that the medical evidence submitted failed to provide a rationalized opinion explaining causal relationship between her diagnosed conditions and her accepted employment factors.

On September 7, 2016 appellant requested reconsideration.

In January 15 and April 6, 2016 reports, Susan M. Bell, a registered nurse, indicated that appellant was treated for complaints of worsening bilateral hip pain. Physical examination revealed pain in the upper gluteal and sacroiliac joints. Ms. Bell diagnosed lumbago.

In a February 22, 2016 report, Dr. Archie C. Perry, a Board-certified orthopedic surgeon, indicated that he treated appellant for new complaints of low back pain radiating into her bilateral legs. Upon physical examination of her lumbar spine, he observed tenderness to palpation at the lower paraspinal level and mild spasms. Straight leg raise testing produced pain on the left. Dr. Perry diagnosed lumbosacral degenerative disc disease, lumbosacral intervertebral degeneration, lumbar spinal stenosis, lumbago, and acquired lumbar spondylolisthesis.

Dr. Baldauf continued to treat appellant. In March 16 and 30, 2016 reports, he reviewed her history and provided physical examination findings. Dr. Baldauf diagnosed right hip joint pain, lumbosacral degenerative disc disease with radiculopathy, lumbar spinal stenosis, acquired lumbar spondylolisthesis, and lumbago.

In an April 27, 2016 report, Dr. Willis Y. Wu, Board-certified in anesthesiology and pain medicine, reviewed appellant's history and conducted an examination. He reported mildly limited range of motion of the lumbar spine and tenderness in the lumbosacral junction. Straight leg raise testing was positive bilaterally. Dr. Wu diagnosed lumbar intervertebral disc degeneration, lumbar radiculopathy, lumbar spondylosis without myelopathy, and hip osteoarthritis. He noted that he would perform a nerve root block. Dr. Wu provided additional medical reports dated May 13 and June 23, 2016 with similar examination findings and diagnoses.

In a January 12, 2018 statement, appellant requested an update on the status of her claim. She reiterated that her job as a nurse educator aggravated her degenerative joint disease. Appellant alleged that the October 2014 fall ensured her that the aggravation of the degenerative joint disease and degenerative joint disease symptoms were permanent.

By decision dated April 20, 2018, OWCP denied modification of the June 17, 2016 decision. It found that the medical evidence submitted failed to establish that appellant's preexisting cervical condition was temporarily or permanently aggravated by any factors of her federal employment.

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,[5] 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.[6] 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.[7]

In an occupational disease claim, appellant's burden requires submission of the following: (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.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] 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 specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

Appellant submitted several reports by Dr. Rodriguez. In a July 22, 2014 report, Dr. Rodriguez examined appellant for mid-thoracic left-sided pain and diagnosed thoracic region strain. In reports dated from November 6, 2014 to April 20, 2015, she related that on October 20, 2014 appellant fell down and hurt her shoulders. Dr. Rodriguez reported examination findings of tightness in appellant's paraspinal musculature of her lumbar spine. She diagnosed right shoulder supraspinatus tendon tear, cervicalgia, and degenerative joint disease. In a June 12, 2015 Form CA-20, Dr. Rodriguez reported a history of injury of "continued neck, shoulder, wrist pain stemming from a fall in Oct 2014, making it difficult for her to work." She checked a box marked "yes" indicating that appellant's condition was caused or aggravated by her employment.

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

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

[7] *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).

[8] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[9] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Rodriguez explained that appellant was at a desk job, which placed a strain on her spine, shoulders, and wrist and exacerbated her pain.

The Board notes that Dr. Rodriguez provided objective findings on examination and diagnosed right shoulder supraspinatus tendon tear, cervicalgia, and degenerative joint disease. While Dr. Rodriguez related that appellant's job sitting at a desk placed a strain on her spine, shoulders, and wrist and exacerbated her pain, she did not provide medical rationale explaining how appellant's various conditions were either caused or aggravated by her employment.[11] A well-rationalized opinion is particularly needed in this case since she also attributed appellant's current symptoms to a previous October 2014 fall. Dr. Rodriguez did insufficiently explain how appellant's various conditions were caused or aggravated by sitting at a desk job, as opposed to the October 2014 fall outside of her home. Accordingly, these reports are insufficient to establish appellant's claim.[12]

Appellant also submitted various medical reports dated 2014 to 2016. In an October 28, 2014 report, Dr. Johnson related that she had worked as a nurse for many years and complained of chronic neck and back pain. In reports dated July 16, 2015 to March 30, 2016, Dr. Baldauf diagnosed shoulder impingement syndrome, right hip joint pain, lumbosacral degenerative disc disease with radiculopathy, lumbar spinal stenosis, acquired lumbar spondylolisthesis, and lumbago. In a February 22, 2016 report, Dr. Perry treated appellant for lumbosacral degenerative disc disease and lumbosacral intervertebral degeneration. In reports dated April 27 to June 23, 2016, Dr. Wu diagnosed lumbar intervertebral disc degeneration, lumbar radiculopathy, and lumbar spondylosis without myelopathy. None of these physicians, however, offered any opinion or explanation on the cause of appellant's degenerative disc condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] These reports, therefore, are also insufficient to establish causal relationship.[14]

The remaining diagnostic reports, including the August 27, 2013 x-ray scan report, October 23, 2014 bilateral wrist and right shoulder x-ray reports, November 6, 2014 cervical spine x-ray report, a December 23, 2014 right shoulder MRI scan report, a February 2, 2016 lumbar spine MRI scan, lack probative value as diagnostic reports fail to provide an opinion on causal relationship between appellant's employment and her diagnosed condition. For this reason, this evidence is insufficient to meet her burden of proof.[15]

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relationship. Such a relationship must be

[11] *See L.M.*, Docket No. 16-0188 (issued March 24, 2016).

[12] The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician. *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

[15] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

shown by rationalized medical evidence of causal relationship based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[16] Because appellant has failed to provide sufficient medical evidence to establish that her degenerative disc disease was aggravated by the accepted factors of her federal employment, she has not met her burden of proof to establish her occupational disease claim.

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 cervical, lumbar, and shoulder conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2019
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

[16] *Patricia J. Bolleter*, 40 ECAB 373 (1988).