

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

K.O., Appellant)	
)	
and)	Docket No. 18-1422
)	Issued: March 19, 2019
DEPARTMENT OF THE TREASURY, U.S.)	
MINT, West Point, NY, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
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 July 17, 2018 appellant, through counsel, filed a timely appeal from a May 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On December 27, 2016 appellant, then a 53-year-old metal forming machine operator, filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx828, claiming that she sustained a recurrence of disability on December 8, 2016.³ She indicated that pain from a March 2012 employment injury had recurred which also negatively affected her blood pressure. Appellant stopped work that day.

In an undated statement, appellant further explained that, following the March 2012 employment injury, she eventually returned to full duty. On the morning of December 8, 2016 she was scheduled to work on a bullion press which required lifting 30 to 100 pounds every 15 minutes throughout the day. Appellant related that she asked three supervisors for reassignment because her neck was hurting, and even though a coworker volunteered to switch with her, the request was denied. She noted that she had a meeting at 1:30 p.m. on another matter and, following the meeting, she left work. Appellant reported that on the following day she went to urgent care because her blood pressure was elevated and she was experiencing neck pain.

In e-mail correspondence dated February 6, 2017, K.D., an employing establishment supervisor, indicated that on the morning of December 8, 2016 appellant was assigned to a coining press as a press operator. He confirmed that she had mentioned shoulder pain to Supervisor D.B. when she asked to switch duties. K.D. acknowledged that the job description indicated that carrying 30 to 100 pounds was required, but that 35 to 40 pounds in day-to-day pressing was average, with heavier weights done by 2 people. The employing establishment also forwarded a job description for metal forming machine operator.

Medical evidence submitted included a December 9, 2016 report in which Lora Lyon, a nurse practitioner, indicated that appellant was under her medical care and should be excused from work until December 12, 2016. On December 12, 2016 Dr. Klein advised that appellant could return to work on December 28, 2016.

By letter dated March 16, 2017, OWCP informed appellant that, based on the circumstances described in the December 2016 recurrence claim, it appeared that she was claiming a new occupational disease due to repetitive work/exposure. It indicated that a new file number would be assigned.

³ The record reflects that, on August 20, 2012, under OWCP File No. xxxxxx828, OWCP accepted appellant's May 17, 2012 occupational disease claim for sprain of neck and cervical radiculitis. In an October 12, 2012 report, Dr. Arthur Klein, an osteopath who is Board-certified in family medicine, advised that appellant could return to full duty with no restrictions commencing October 15, 2012. Appellant's current claim was adjudicated under OWCP File No. xxxxxx241. OWCP combined the claims, with the latter becoming the master file.

In reports dated December 16, 2016, Dr. Enrique Sanz, a Board-certified physiatrist, noted treating appellant for her 2012 employment injury. He described physical examination findings and noted that appellant had an exacerbation of symptoms the previous week and had to stop work due to persistent right-sided neck pain with some radicular symptoms. Dr. Sanz noted that x-rays of the cervical spine showed some straightening of the normal lordotic curve with some mild disc space narrowing at C5-6 and that right shoulder x-rays were essentially normal. He opined that appellant's symptoms were causally related to injuries sustained in a motor vehicle accident, and that she was totally disabled.

On January 11, 2017 Dr. Esteban Cuartas, an orthopedic surgeon, noted that he last saw appellant on August 30, 2012 and that beginning in December 2016, she had sharp neck pain that radiated into her shoulders. He noted her physical examination findings and diagnosed cervical disc degeneration at C5-6, right cervical radiculopathy, sprain of ligaments of cervical spine, and bilateral shoulder impingement syndrome. Dr. Cuartas advised that appellant was totally disabled and opined that her current symptoms were causally related to the injury at work, her complaints were consistent with the history of injury, and the history of injury was consistent with his objective findings.

By report dated January 12, 2017, Dr. Sanz reported that appellant's symptoms were unchanged. He reiterated that she was totally disabled and advised that her current symptoms were causally related to the injury at work, were consistent with the history of injury/illness, and her history of injury/illness was consistent with his objective findings.

Dr. Barry S. Hyman, a Board-certified orthopedic surgeon, treated appellant on January 20, 2017. He described the March 2012 employment injury, and that she had returned to see Dr. Sanz in 2016 for pain in the neck and both shoulders, and that she had also recently seen Dr. Cuartas and noted his diagnoses. Following physical examination, Dr. Hyman injected appellant's right shoulder and recommended physical therapy and a right shoulder magnetic resonance imaging (MRI) scan. He opined that her bilateral shoulder and neck symptoms were causally related to her employment.

In reports dated January 24, 2017, Dr. Sanz noted that appellant's symptoms were unchanged. He reiterated his findings and conclusions.

A February 14, 2017 MRI scan of the cervical spine demonstrated multilevel disc degenerative and osteoarthritic changes, mild canal narrowing at C4-5 and C5-6, significant right foraminal narrowing at C5-6, and no cord abnormality.

On February 17, 2017 Dr. Cuartas noted his review of the February 14, 2017 cervical spine MRI scan. He advised that appellant's symptoms of axial neck pain and radicular pain were moderate and most likely related to cervical strain and shoulder dysfunction. Dr. Cuartas recommended an electrodiagnostic study to evaluate radiculopathy and advised that she was totally disabled. Dr. Sanz continued to report that appellant was totally disabled.

By development letter dated April 5, 2017, OWCP informed appellant that additional factual and medical evidence was needed to establish her occupational disease claim. It advised

her of factual and medical evidence needed and provided a questionnaire for her to complete. OWCP afforded appellant 30 days to submit additional evidence.

Subsequently submitted evidence included a February 24, 2017 report in which Dr. Hyman noted his review of the February 24, 2017 MRI scan of the cervical spine. He injected appellant's left shoulder and recommended physical therapy for both shoulders. Dr. Hyman reiterated his findings and conclusions and advised that appellant could not work.

On April 24, 2017 Dr. Sanz reported that appellant's symptoms were worsening with radiating right-sided neck pain. He noted the cervical spine MRI scan findings. Dr. Sanz advised that the repetitive nature of her job involving lifting 30-pound cassettes and packaging with constant movement of her neck and shoulders for eight hours daily caused her chronic condition, and that it would be detrimental for her to continue this type work. He reiterated his conclusions and advised that appellant could not work.

By decision dated May 17, 2017, OWCP found that the medical evidence submitted was insufficient to establish that the claimed medical condition was causally related to the accepted work factors and denied the claim.

On June 20, 2017, appellant requested a review of the written record by an OWCP hearing representative.

In reports dated May 22 to September 5, 2017, Dr. Sanz described physical examination findings, noted that appellant's symptoms were unchanged, reiterated his conclusions that appellant's conditions were employment related, and advised that she could not work. In correspondence dated June 21, 2017, he indicated that she currently felt incapable of returning to work since work duties were too strenuous on her body, noting that she worked eight hours daily with duties of constant lifting and carrying up to 50 pounds, was expected to constantly feed a coin press, and reach above shoulder levels. Dr. Sanz concluded that it appeared that the constant heavy lifting, carrying, and reaching overhead caused appellant constant symptoms such that she was no longer able to perform her job duties.

By decision dated September 25, 2017, an OWCP hearing representative found the medical evidence of record was of limited probative value because it was, at best, speculative. She affirmed the May 17, 2017 decision concluding that appellant failed to submit a physician's report that clarified and explained how her specific work factors caused or aggravated the diagnosed neck, bilateral shoulder, or blood pressure conditions.

On February 27, 2018 appellant, through counsel, requested reconsideration. He asserted that her current conditions were an aggravation of the accepted March 2012 claim and that the medical evidence submitted was sufficient to establish causal relationship.

In a June 22, 2017 report, Dr. Hyman reiterated his findings and conclusions. In correspondence dated February 7, 2018, he noted that appellant's work required her to lift from 30 to 100 pounds of coins about every 30 minutes each day, and that she also polished coins by hand. Dr. Hyman reviewed appellant's medical treatment which began on January 20, 2017. He noted that she was 100 percent temporarily impaired per Dr. Sanz and maintained that the type of repetitive work she did, without a history of trauma or prior injury, resulted in an overuse injury

and that it was probable that this caused her neck and bilateral shoulder symptoms which began in March 2012 and were exacerbated in January 2016 [sic]. Dr. Hyman opined that this type of lifting could cause both cervical disc bulging/herniation, shoulder tendinitis, and possible rotator cuff tearing. He concluded that she was permanently disabled as she had not improved after treatment for more than a year. Dr. Hyman advised that he did not think additional treatment would change her disability status, indicating that he did not think she could return to the same type of work.

Dr. Sanz submitted reports dated September 5, 2017 to April 16, 2018. In each report he indicated that appellant's symptoms were unchanged, described physical examination findings, and advised that in regards to her job, he felt that its repetitive nature, which involved lifting 30-pound cassettes and packaging with constant movement of her neck and shoulder, had caused her chronic condition. Dr. Sanz reported that she had to perform those repetitive movements each day during an eight-hour shift, but was currently unable to do so. He opined that, due to appellant's persistent symptoms, it would be detrimental for her to continue performing this type of work. Dr. Sanz indicated that her current symptoms were causally related to the injury at work, noting that they were consistent with the history of the injury/illness, that her history of the injury/illness was consistent with his objective findings, and that appellant could not return to work.

By decision dated May 25, 2018, OWCP denied modification of its prior decisions. It found that the medical evidence of record was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.⁵

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; (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 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.⁶

⁴ *Supra* note 2

⁵ *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

⁶ *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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

The Board finds that appellant has not met her burden of proof to establish cervical, shoulder, or hypertensive conditions causally related to the accepted factors of her federal employment.

The record reflects that appellant sought emergency treatment on December 9, 2016. This report was completed by Ms. Lyon, a nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁰ As such, the December 9, 2016 report is of no probative value and is found to be insufficient to establish appellant's claim.¹¹

Dr. Sanz, who treated appellant for a 2012 employment injury, submitted a report on December 16, 2016 in which he described examination findings and noted an exacerbation of preexisting neck and shoulder pain. He opined that appellant's symptoms were causally related to a motor vehicle accident. On April 24, 2017 Dr. Sanz advised that her symptoms were worsening and that he felt the repetitive nature of appellant's job, lifting heavy weights for eight hours daily caused her chronic condition. On June 21, 2017 he advised that it appeared that appellant's job duties cause her constant symptoms, and in reports dated September 5, 2017 to April 16, 2018 repeated that he felt appellant's job duties caused her chronic condition. The Board finds that Dr. Sanz's opinion on causal relationship was not supported by medical rationale, explaining the nature of the relationship between the diagnosed conditions and appellant's specific employment

⁷ *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

⁸ *K.L.*, Docket No. 18-0937 (issued December 28, 2018).

⁹ See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁰ See *H.B.*, Docket No. 16-1753 (issued March 14, 2018).

¹¹ See *K.C.*, Docket No. 16-1181 (issued July 26, 2017).

factors.¹² His initial December 16, 2016 report noted a motor vehicle accident, rather than appellant's accepted employment factors. As such it was not based upon a proper history of injury. The Board has held that medical reports which are not based on a proper history of occupational exposure are insufficient to establish a causal relationship between federal employment duties and the diagnosed condition.¹³ In his subsequent reports, Dr. Sanz related that appellant's repetitive job duties caused her symptoms and chronic condition. The Board has previously held that conclusory statements not fortified by medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹⁴ As Dr. Sanz failed to provide a well-reasoned opinion on causal relationship, his reports are insufficient to establish appellant's claim.¹⁵

Dr. Hyman couched his opinions in equivocal terms, noting only that the accepted employment factors could be a cause of her diagnosed conditions. On February 7, 2018 he indicated that appellant was required to lift 30 to 100 pounds of coins every 30 minutes every day and indicated that she was totally disabled from work. Dr. Hyman maintained that appellant's repetitive work resulted in an overuse injury and that it was probable that this caused her neck and shoulder symptoms which were exacerbated in January 2016, opining that this type of lifting could cause both cervical disc bulging/herniation, shoulder tendinitis, and possible rotator cuff tearing. As he couched his opinion in equivocal terms, it, too, is insufficient to meet appellant's burden of proof.¹⁶

Dr. Cuartas' opinion is also insufficient to meet appellant's burden of proof. While he advised beginning in January 2017 that she was totally disabled and that her cervical and shoulder objective findings were consistent with her history of injury, he did not sufficiently explain how her work duties caused her disabling conditions. Without explaining how physiologically the specific movements involved in appellant's job caused or contributed to a diagnosed condition, Dr. Cuervas' opinion is of limited probative value and insufficient to establish causal relationship.¹⁷

The record contains a February 14, 2017 MRI scan of the cervical spine. Diagnostic studies however lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.¹⁸

Finally, the Board also notes that the record does not contain medical evidence of the negative effect on her blood pressure. Therefore, the Board finds that appellant has not established

¹² See *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ See *J.H.*, Docket No. 16-1094 (issued November 18, 2016).

¹⁴ See *E.P.*, Docket No. 18-0194 (issued September 14, 2018).

¹⁵ *Id.*

¹⁶ *D.B.*, *supra* note 12; *M.V.*, Docket No. 18-1141 (issued January 3, 2019).

¹⁷ *Id.*

¹⁸ See *T.C.*, Docket No. 18-1498 (issued February 13, 2019).

that she sustained a hypertensive condition which was caused or aggravated by factors of her federal employment.¹⁹

As the record lacks rationalized medical evidence establishing causal relationship between appellant's accepted employment duties and her diagnosed conditions, she has not met her burden of proof to establish her claim.²⁰

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 appellant her burden of proof to establish cervical, shoulder, and hypertensive conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 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

¹⁹ See *supra* note 8.

²⁰ *Supra* note 8.