



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 24, 2016 appellant, then a 53-year-old workers' compensation claims examiner, filed an occupational disease claim (Form CA-2), alleging that she developed bilateral elbow and right shoulder conditions due to factors of her federal employment. She indicated that she first became aware of her condition on April 13, 2016 and first realized it was caused or aggravated by her employment on April 21, 2016. Appellant did not stop work.

In a development letter dated June 6, 2016, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a June 14, 2016 report from Dr. Robert Strugala, a Board-certified internist, who indicated that appellant had been evaluated on May 12, 2016 for pain in both arms, with the most significant pain emanating from her right shoulder. Dr. Strugala asserted that appellant did not recall any definite trauma, but her symptoms had been present since April 2016 and she struggled with pain that seemed to begin with activities at work. Appellant described a nonergonomic work setting where the desk relative to the keyboard was at the wrong height and as a consequence she had to elevate her arms to type and her arms were not in a resting position. Dr. Strugala reviewed diagnostic testing from May 2016 and found acromioclavicular (AC) joint degeneration on the right shoulder. He administered an injection and diagnosed right shoulder pain, which does seem to be consistent with impingement syndrome. Dr. Strugala opined that appellant's condition "seemed to have occurred" with consistently elevating the right shoulder at work due to her desk setting. He further diagnosed adhesive capsulitis of the right shoulder and provided work restrictions of no lifting and no overhead activities with the right arm.

By decision dated July 12, 2016, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted factors of her federal employment.

On July 26, 2016 appellant requested reconsideration and submitted an ergonomic workstation assessment dated July 5, 2016 finding that her workstation was set up with a single monitor, a damaged track ball for a mouse, and an aerodynamic, ergonomic-friendly keyboard. The assessment noted that appellant sat in an upright sitting position at her desk, but many inconsistencies in her workstation set up caused her to constantly adjust her body position. The evaluator made recommendations, including a new mouse, placing the keyboard and mouse in a more neutral position to eliminate the uneven resting of her arms at different heights, and relieving congestion at the desk to increase her work space.

In a July 21, 2016 report, Dr. Strugala diagnosed right rotator cuff syndrome with impingement signs and bilateral lateral epicondylitis. On examination, appellant was tender over

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<sup>2</sup> Docket No. 17-0861 (issued August 13, 2018).

the lateral epicondyle of each elbow and had a positive Hawkins' test for impingement of the right shoulder. Dr. Strugala opined that appellant's conditions were work related based on her description of her workstation, specifically that her desk was at the wrong height relative to the keyboard and it required her to elevate her arms in an unnatural position to type and was unable to maintain her arms in a rested position. He opined that this caused the development of the rotator cuff issues, as well as the lateral epicondylitis in each elbow. Dr. Strugala noted that no other trauma or unusual activity had occurred.

On September 8, 2016 Dr. Strugala diagnosed bilateral shoulder impingement with decreased range of motion and left elbow lateral epicondylitis. He noted that appellant felt that she could continue working if her work schedule was reduced, as she noticed her pain increasing towards the end of her shift.

In a note dated September 14, 2016, Michelle Knezevic, a registered nurse, diagnosed bilateral shoulder impingement syndrome and bilateral lateral epicondylitis. She also provided work restrictions limiting appellant's work shift to no more than 6 hours and requiring 10-minute breaks every hour.

By decision dated October 18, 2016, OWCP denied modification of its prior decision, finding that appellant had not established causal relationship.

On November 10, 2016 appellant requested reconsideration of the October 18, 2016 decision. OWCP did not receive any additional evidence.

By decision dated November 21, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim.

On November 26, 2016 appellant again requested reconsideration and submitted reports dated October 27 and November 17, 2016 from Dr. Strugala who indicated that appellant continued to struggle with left elbow pain consistent with lateral epicondylitis and right shoulder pain with rotator cuff syndrome and impingement. Dr. Strugala opined that the repetitive nature of appellant's work activities, particularly with the arms positioned in a nonergonomic location, was the probable cause of her conditions and, therefore, he believed that her symptoms were "likely" work related. In his November 17, 2016 addendum report, he reiterated his opinion that based upon his clinical diagnosis and the history provided by appellant, he believed the nature of appellant's repetitive work activities, particularly with the arms positioned in a nonergonomic location, was the cause of her work symptoms.

By decision dated January 26, 2017, OWCP denied modification of its October 18, 2016 decision, finding that the evidence of record was insufficient to establish causal relationship.

Appellant subsequently appealed to the Board on March 10, 2017.

By decision dated August 13, 2018, the Board found that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted factors of appellant's federal employment.

On November 9, 2018 appellant requested reconsideration and submitted reports dated October 16 and 25, 2018 from Dr. Steven A. Chandler, a Board-certified orthopedic surgeon. In his October 16, 2018 report, Dr. Chandler diagnosed bilateral lateral epicondylitis, bilateral bursitis, bilateral tendinitis and/or tenosynovitis, bilateral primary osteoarthritis, and adhesive capsulitis (frozen) of the right shoulder. He opined that appellant's workstation contributed to, and was the main factor in, causing her current conditions with her shoulder and elbows. Dr. Chandler indicated that her work desk was positioned so high that her shoulders and elbows were at an awkward position. He diagnosed right frozen shoulder prior to being given a more ergonomic workstation. Dr. Chandler released appellant to light-duty work.

In his October 25, 2018 report, Dr. Chandler asserted that appellant had been working at a desk that was too high for over 7.5 hours per day performing many repetitive motions causing her shoulders to be in an awkward position. He noted that she went on to develop rotator cuff tendinitis, bursitis to the bilateral shoulders, lateral epicondylitis to bilateral elbows, and developed a right frozen shoulder. Dr. Chandler recounted that appellant was given an ergonomic workstation, but by that time it was too late. He noted that she was being treated by Dr. Strugala with injections and physical therapy from July to November 2016, but due to family illnesses she was unable to complete the treatment regimen and now she was presenting with a frozen shoulder, bilateral shoulder and elbow pain, and limited range of motion. Dr. Chandler continued to opine that the repetitive work duties she had with her arms in an awkward, unnatural position caused her shoulder and elbow pathology.

By decision dated December 19, 2018, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 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, 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.<sup>4</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>5</sup> *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> 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 factor(s).<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right shoulder and bilateral elbow conditions causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's January 26, 2017 decision because the Board considered that evidence in its August 13, 2018 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.<sup>10</sup>

On reconsideration appellant submitted October 16 and 25, 2018 reports, wherein Dr. Chandler provided multiple diagnoses and opined that appellant's workstation contributed to and was the main factor in causing her shoulder and elbow conditions. Dr. Chandler noted that she had been working at a desk that was too high for over 7.5 hours a day, performing many repetitive motions, causing her shoulders to be in an awkward position. While he identified the accepted employment factors alleged by appellant, he did not provide a pathophysiological explanation as to how those activities either caused or contributed to appellant's diagnosed conditions.<sup>11</sup> Thus, the Board finds that the reports from Dr. Chandler are insufficient to meet appellant's burden of proof to establish causal relationship.<sup>12</sup>

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<sup>6</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>9</sup> *Id.*; *Victor J. Woodhams*, *supra* note 6.

<sup>10</sup> See *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> See *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

As appellant has not submitted rationalized medical evidence to support her claim that she sustained bilateral shoulder and bilateral elbow conditions causally related to the accepted employment factors, the Board finds that she has not met her burden of proof.

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 right shoulder and bilateral elbow conditions causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board