

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

Y.G., Appellant)	
)	
and)	Docket No. 19-1188
)	Issued: November 6, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
SAN JUAN VETERANS MEDICAL CENTER,)	
San Juan, PR, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2019 appellant filed a timely appeal from an April 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 cervical spine condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 15, 2019 appellant, then a 40-year-old social worker, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her neck, arm, and back, as well as

¹ 5 U.S.C. § 8101 *et seq.*

a severe headache as a result of her federal employment. She explained that “daily I have to load a gate to get out of the VA official car and to enter the car too.” Appellant noted that she first became aware of her claimed condition and realized that it was caused or aggravated by factors of her federal employment on February 12, 2019. She did not stop work.

In an accompanying narrative statement, appellant provided that she began working at her current position during the last week of September and again described her mechanism of alleged injury. She noted that she had been experiencing symptoms of her condition as early as January 2019, but did not realize her federal employment was causing her injury at that time. Appellant explained that, after a February 2019 visit with her primary care provider, she realized that the lifting of the “clinic gate” was the only repetitive lifting of a heavy object that she performed daily. She also provided two photographs of the clinic gate.

Appellant submitted a February 19, 2019 magnetic resonance imaging (MRI) scan of appellant’s cervical spine performed by Dr. Ana Maria Gomez, a Board-certified radiologist, revealed straightening of the normal cervical lordosis, mild multilevel spondylotic changes of the cervical spine and mild left neural foraminal narrowing at C5-6.

In a March 12, 2019 medical report, Dr. Juan Valentin Carro, a Board-certified physiatrist, noted appellant’s history of cervical pain and stiffness related to lifting a heavy object at work. He diagnosed cervical facet arthropathy, spondylosis, and myositis. Dr. Carro also opined that the lifting appellant performed as a part of her employment duties may have been a cause of her symptoms.

By development letter dated March 18, 2019, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for FECA benefits. It requested that she respond to its questionnaire and submit medical evidence which contained a physician’s opinion supported by a medical explanation as to how work activities in her federal employment caused, contributed to or aggravated her medical condition. OWCP afforded appellant 30 days to submit the requested evidence.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant’s occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s statements, and a copy of her position description and physical requirements of her position. It afforded the employing establishment 30 days to submit the necessary evidence.

In an April 12, 2019 response to OWCP’s questionnaire, appellant described her employment-related activities as lifting a gate twice daily since October 2018 whenever she had to leave to visit her patients. She also explained that the pain she has experienced in her neck, back, and arm as a result has caused her a lot of anxiety.

In a partially illegible April 22, 2019 medical note, Dr. Carro provided that appellant’s symptoms were related to her lifting heavy objects at work. He also advised that she avoid lifting the gate to the parking lot.

By decision dated April 24, 2019, OWCP denied appellant’s occupational disease claim. It accepted her duties as a social worker as described, but denied her claim because the medical

evidence of record was insufficient to establish causal relationship between her diagnosed cervical conditions and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim including 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,³ 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.⁴ 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

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.⁶

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a cervical spine condition causally related to factors of her federal employment.

In his March 12, 2019 medical report, Dr. Carro diagnosed cervical facet arthropathy, spondylosis and myositis and opined that the lifting she performed as a part of her employment

² *Id.*

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

duties may have been a cause of her symptoms. Dr. Carro's opinion that the repetitive lifting of the gate "may" have been a cause of her symptoms is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁹ 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).¹⁰ For these reasons, Dr. Carro's March 12, 2019 report is insufficient to establish appellant's burden of proof.

Dr. Carro's April 22, 2019 medical note provided that appellant's symptoms were related to her lifting of heavy objects at work. He also advised that she avoid lifting the gate for the parking lot at work. Although his opinion generally supported causal relationship between the accepted employment factors and appellant's diagnosed conditions, Dr. Carro's medical note did not offer rationale sufficient to explain how or why he believed appellant's work activities resulted in or contributed to the diagnosed conditions.¹¹ For this reason, Dr. Carro's April 22, 2019 medical note is also insufficient to establish appellant's burden of proof.

Additionally, appellant submitted a February 19, 2019 cervical spine MRI scan conducted by Dr. Gomez. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.¹² Accordingly, the February 19, 2019 MRI scan is also insufficient to establish causal relationship.

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated her conditions, appellant has not met her burden of proof to establish her 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 a cervical spine condition causally related to the accepted factors of her federal employment.

⁹ *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 8.

¹¹ *Id.*

¹² *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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