

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 21, 2017 appellant, then a 58-year-old legal assistant, filed an occupational disease claim (Form CA-2) alleging that she developed a cervical condition with radiculitis and brachial plexus and nerve impingement conditions as a result of repetitive use of a computer, mouse, and keyboard while in the performance of duty. She noted that she first became aware of her condition on January 1, 2017 and first realized its relation to her federal employment on May 15, 2017. Appellant did not stop work.

In an accompanying statement, appellant discussed the medical treatment she had received for her claimed conditions.

In a development letter dated July 25, 2017, OWCP advised appellant of the type of evidence needed to establish her claim, including a physician's reasoned opinion addressing the relationship between her claimed condition and specific employment factors. It provided a factual questionnaire for her completion and afforded her 30 days to submit the necessary evidence.

In response to the development letter, appellant submitted a July 31, 2017 narrative statement in which she explained that, in addition to her computer duties, her legal assistant position required her to pull down case files and handle/organize documents from the files. In an August 9, 2017 statement, she further discussed her medical treatment.

Appellant submitted a May 18, 2017 report from Dr. Colin Chan, a Board-certified family practitioner, who indicated that she could not lift over 10 pounds. On June 12, 2017 Dr. Duyen Ngo, a chiropractor, noted that x-rays revealed a new pattern misalignment in the upper cervical complex, including C2 rotation which had increased a few degrees to the right. A July 3, 2017 magnetic resonance imaging (MRI) scan of the cervical spine revealed diffuse disc bulge impressing upon the ventral thecal sac at C5-6 and C6-7, and mild central stenosis at C6-7.

In a July 11, 2017 note, Dr. Michael Hadley, an osteopath and family practitioner, diagnosed cervicgia with radiculopathy and right arm weakness. In a separate note of even date, he recommended that appellant not lift with her left arm or use her right arm at all. In an August 10, 2017 report, Dr. Hadley diagnosed cervical stenosis, cervical neural foraminal stenosis, and cervical herniated disc. He advised that appellant was disabled from work from July 10 to November 15, 2017 and that she was then limited to two hours of computer work. In a duty status report (Form CA-17) dated August 10, 2017, Dr. Hadley advised that she complained of worsening symptoms due to her work duties. He reported clinical findings of arm weakness and severe pain, and opined that appellant remained disabled from work.

In an August 5, 2017 note, Paulette Levy, a nurse practitioner, indicated that appellant was treated on August 4, 2017 and advised that she remained disabled from work. In another note of even date, she diagnosed numerous cervical conditions.

By decision dated August 28, 2017, OWCP accepted that the employment factors occurred as alleged. However, it denied appellant's occupational disease claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the accepted factors.

On December 5, 2017 appellant requested reconsideration of the August 28, 2017 decision and submitted additional evidence.

In an August 23, 2017 Form CA-17 report, Dr. Allan M. Spiegel, a Board-certified neurologist, diagnosed cervical radiculopathy, spinal stenosis, and cervical herniated discs. He noted that appellant could resume part-time work for four hours per day with restrictions.

In an August 25, 2017 report, Dr. Spiegel noted that appellant spent 100 percent of her time using a computer, keyboard, and mouse, and pulling files, reaching, and lifting daily. Appellant complained of right arm paresthesia with cervical pain "exacerbated by long-term prolonged computer work and repetitive motion work causing chronic muscle strain and brachial neuropathy." Dr. Spiegel noted restricted range of motion of the neck, tenderness/spasm from the mid cervical spine, diminished sensation in the right upper extremity to pinprick, intact motor strength, and intact reflexes. He diagnosed cervical radiculopathy, cervical degenerative disc disease, right carpal tunnel syndrome, and repetitive stress aggravation of medical condition, and opined that these conditions were a direct result of appellant's employment duties.³

In a November 21, 2017 report, Dr. Spiegel noted appellant's duties and diagnosed paresthesia (right upper extremity), aggravation of displaced discs at C3-4 and C4-5, aggravation of stenosis with nerve impingement, cervical radiculopathy, aggravation of osteophytes at C5-6 and C6-7, and repetitive stress aggravation of her condition. He reviewed a July 24, 2017 MRI scan, noting that it demonstrated a worsening of her condition, specifically, severe left neural foraminal narrowing at C6-7 and an osteophyte complex which extended into the right neural foramen at C6-7.⁴ Dr. Spiegel opined that appellant developed cumulative trauma disorder stemming from prolonged sitting and repetitive arm/hand movements resulting in aggravation to the muscles, tendons, and nerves of the cervical spine and right shoulder. He explained that, during the course of her career with the employing establishment, she spent approximately 10,000 hours sitting in front of a computer screen with her cervical spine in a static position, performing repetitive motions, and remaining sedentary for the majority of her workday. Dr. Spiegel opined that static sitting and performing repetitive movements aggravated appellant's cervical spine conditions by overstressing her spinal ligaments and putting additional pressure on the displaced discs. He indicated that the worsening of her condition occurred without external cause, other accidents, illnesses, or injuries, as no change in job duties, nonwork-related events, or factors

³ In a November 17, 2017 work capacity evaluation (Form OWCP-5c), Dr. Spiegel returned appellant to limited-duty work for 20 to 30 hours a week depending on her pain level. He diagnosed cervical radiculopathy, paresthesia, and displaced disc at C3 to C5 with stenosis.

⁴ Appellant submitted a cervical spine MRI scan dated June 15, 2012 which demonstrated very minor cervical kyphosis from C4 to C6 and minor-to-mild disc bulges from C4-5 to C6-7 with minor neural structure compromise. A right shoulder MRI scan dated June 21, 2012 demonstrated possible minor subacromial bursitis. Appellant also submitted the July 24, 2017 MRI scan referenced by Dr. Spiegel, which contained an impression of C6-7 moderate-to-severe left neural foraminal narrowing, C5-6 moderate-to-severe right and left neural foraminal narrowing, and broad-based central disc bulges at C3-4 and C4-5.

explained the worsening condition. Rather, Dr. Spiegel opined that the current diagnoses arose out of and in the course of her job duties. In conclusion, he opined that, within a reasonable degree of medical certainty, based on examination, imaging studies, reports, and medical records, the cause of appellant's diagnosed conditions was her job duties, which required her to sit for extended periods of time constricting and compressing the vertebrae in her cervical spine and aggravating her cervical conditions. Dr. Spiegel noted that she was disabled from work from July 10 to August 23, 2017.

In a form report also dated November 21, 2017, Dr. Spiegel diagnosed cervical radiculopathy, paresthesia (right upper extremity), displaced disc at C3-4 and C4-5, spinal stenosis with nerve impingement, and repetitive stress aggravation secondary to prolonged computer use. He noted that appellant's condition was permanent and she could work with restrictions.

On December 22, 2017 OWCP requested that Dr. Spiegel clarify his opinion. It specifically requested that he address whether appellant's "age-related" degenerative condition of the spine was aggravated by her work activities, and to differentiate any aggravation caused by work activities from the underlying condition.

In a report dated January 8, 2018, Dr. Spiegel indicated that appellant had underlying cervical spine degeneration which was aggravated and worsened by prolonged, repetitive computer work. He referenced significant changes in the MRI scans dated June 15, 2012 and July 24, 2017 with the current MRI scan detailing cervical flexion and extension bulging discs, bone spur, and osteophyte clusters at C5-6 and C6-7. Dr. Spiegel advised that the changes progressed over time and correlated to appellant's daily prolonged computer use, involving continuous forward and backward head movements, and use of her dominate right arm for computer entry and mouse use. He indicated that she had developed cumulative trauma disorder stemming from prolonged sitting and repetitive right arm and hand movements. Dr. Spiegel advised that this resulted in continuous aggravation to the muscles, tendons, and nerves of the cervical spine, right shoulder, and arm due to severe compression of her spine.

In a separate report dated January 8, 2018, Dr. Spiegel provided a similar assessment of the cause of appellant's diagnosed conditions. He noted that her repetitive employment duties placed stress and loading on her cervical spine, causing muscle strain from overstretching her spinal ligaments and putting additional pressure on her displaced cervical discs due to static sitting and repeating the same movements over and over again. Dr. Spiegel advised that no nonwork events or factors would explain the worsening of her cervical condition. Rather, appellant's cervical condition was aggravated by sitting at work for extended periods while performing job duties that constricted and compressed her cervical vertebrae. In a January 19, 2018 report, Dr. Spiegel repeated the same findings.

On January 23, 2018 OWCP referred appellant's medical records to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). In a report dated January 30, 2018, the DMA noted his review of the reports of Dr. Spiegel and the MRI scans and opined that the change in the spinal condition was the natural progression of chronic degenerative condition. He referenced "causation guides" published by the American Medical Association and noted that the guidance indicated that there was no established link between sedentary work and

aggravation or acceleration of cervical disc disease, and further indicated that the degeneration of her spine was due to genetics and was not work related.

By decision dated February 5, 2018, OWCP modified its August 28, 2017 decision to find that the medical evidence of record established several diagnosed medical conditions, and thus appellant had established fact of injury. However, the claim remained denied as she had not established causal relationship between her work activities and diagnosed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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.¹⁰ 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).¹¹

⁵ *Supra* note 2.

⁶ *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).

⁷ *K.V., id.*, and *M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989)

⁸ *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).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *Victor J. Woodhams, supra* note 8.

ANALYSIS

The Board finds that this case is not in posture for decision.

In his reports dated November 21, 2017 and January 8 and 19 2018, Dr. Spiegel opined that appellant developed cumulative trauma disorder stemming from prolonged sitting and repetitive arm/hand movements resulting in aggravation to the muscles, tendons, and nerves of the cervical spine and right shoulder. He provided a proper factual and medical history of injury, noting that, during the course of her career with the employing establishment, she spent approximately 10,000 hours sitting in front of a computer screen with her cervical spine in a static position, performing repetitive duties including the use of a computer keyboard and mouse, pulling files, reaching, and lifting daily while remaining sedentary for the majority of her workday. Dr. Spiegel opined that static sitting and performing repetitive movements aggravated appellant's cervical spinal conditions by overstressing her spinal ligaments and putting additional pressure on the displaced discs. He indicated that the worsening of her condition occurred without external cause, other accidents, illnesses, or injuries, as no change in job duties, nonwork-related events, or factors explained the worsening condition. Rather, Dr. Spiegel opined that the current diagnoses arose out of and in the course of appellant's job duties and correlated to her daily prolonged computer use. In conclusion, he opined that, within a reasonable degree of medical certainty, based on examination, imaging studies, reports, and medical records, the cause of her diagnosed conditions was her job duties, which required her to sit for extended periods of time constricting and compressing the vertebrae in her cervical spine and aggravating her cervical conditions.

The Board finds that these reports from Dr. Spiegel are sufficient to require further development of the medical evidence. Dr. Spiegel is a Board-certified physician in neurology who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. His reports suggest a pathophysiological explanation as to how appellant's prolonged sitting and repetitive arm/hand movements at work resulted in her diagnosed cervical condition with radiculitis, and brachial plexus and nerve impingement conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹² Accordingly, Dr. Spiegel's medical opinion is well-rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹³

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

¹² *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹³ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether her diagnosed cervical condition with radiculitis, and brachial plexus and nerve impingement conditions are causally related to or aggravated by the accepted employment factors. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 11, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁵ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).