

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

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A.M., Appellant)	
)	
and)	Docket No. 18-0562
)	Issued: January 23, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
AUDIE L. MURPHY MEMORIAL VETERANS)	
HOSPITAL, San Antonio, TX, Employer)	
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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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2018 appellant filed a timely appeal from an October 27, 2017 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 27, 2017 decision, OWCP received additional evidence. 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 has met her burden of proof to establish that her breast cancer was causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On April 4, 2017 appellant, then a 43-year-old sleep disorder technician, filed an occupational disease claim (Form CA-2) alleging that she developed right breast cancer due to working rotating day/night shifts in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she had stopped work on January 12, 2016 and returned to work on January 18, 2016. It noted that appellant no longer worked the night shift (8:00 p.m. to 8:00 a.m.), and was strictly on a tour of duty with daytime hours.

In a report dated March 23, 2016, Dr. Amy S. Lang, a Board-certified internist, advised that appellant was under her care for breast cancer. She explained that appellant had worked as a sleep study technician for many years and had spent the last four to five years working both day and night shifts. Dr. Lang noted that “[t]here is evidence that rotating night shifts increases the risk of developing breast cancer” and referred to an attached study from the Journal of the National Cancer Institute. She recommended that appellant work regular shifts without rotating between days and nights.

In an April 13, 2017 report, Dr. Judith L. Thompson, a Board-certified general surgeon, noted that appellant was diagnosed with breast cancer. She indicated that appellant was working rotating day and night shifts and that this was “now known to have several negative health outcomes, notably related to breast cancer.” Dr. Thompson advised that she was in agreement with appellant’s medical oncologist that appellant work regular shifts without rotation.

On May 23, 2017 OWCP received a supplemental statement from appellant. Appellant explained that, when she was interviewed for her current position, she was informed that her schedule would be: three, 12-hour shifts at night; every other Thursday; and a day shift for 8 hours. She explained that, after working the rotating shifts for a considerable amount of time, she and her coworkers expressed their concerns about working these shifts. Appellant noted that she and her coworkers suggested alternate schedule ideas to alleviate the rotation back and forth; however, nothing was changed. She explained that she had always worked nights and enjoyed the night shift, but switching back and forth was difficult. Furthermore, since working at the employing establishment, appellant had a number of health problems that she believed were medically linked to shift work. She noted that the International Agency for Research on Cancer of the World Health Organization labeled the working shift a “probable” carcinogen.

By development letter dated May 25, 2017, OWCP informed appellant that additional factual and medical evidence was necessary to support her claim. It advised her of the type of medical and factual evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On June 9, 2017 OWCP received a statement from M.W., a supervisor, who reported that appellant and the other technicians were informed that they would work a rotating schedule. She

also indicated that she was apprised of appellant's condition in December 2015, and appellant was eventually switched to a day shift.

OWCP received an article on diseases and shift work from a nurse training program and an article on shift work related to light at night and the risk of breast cancer.

Additionally, OWCP received a January 29, 2016 operative report from Dr. Thompson, who performed appellant's mastectomy, and a January 5, 2017 operative report from Dr. Alan J. White, a surgical oncologist, who performed laparoscopic robotic assisted bilateral salpingo oophorectomy. It also continued to receive diagnostic studies and pathology reports.

In reports dated February 25, 2016 and February 14, 2017, Dr. Lang reiterated appellant's cancer diagnosis and that she had undergone a right breast mastectomy. She indicated that appellant was a sleep technician who, after 20 years of working nights, spent the last four years on both day and night shifts, which "she believes may have contributed to her breast cancer diagnosis." Dr. Lang advised that appellant was now working only day shifts. Furthermore, she noted that appellant's family history included that her deceased maternal grandmother had breast cancer, and her deceased maternal grandfather had bladder cancer. Dr. Lang also added that appellant had quit smoking six years ago, previously smoking half a pack a day for 10 years.

OWCP received a copy of appellant's response to its development questionnaire. In a statement, appellant recounted the onset of her breast cancer.

OWCP also received treatment notes from Dr. Regina Fearmonti, a Board-certified general and plastic surgeon, dating from August 19, 2016 to April 24, 2017, confirming that appellant had undergone breast reconstruction surgery.

In an April 13, 2017 report, Dr. Thompson related that she has treated appellant for breast cancer. She related that it was her understanding that appellant was working rotating day and night shifts and that this was now known to have several negative health outcomes, notably related to breast cancer. Dr. Thompson concluded that she was in agreement with appellant's oncologist that appellant work regular shifts, without rotation.

By decision dated October 27, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her condition was causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

time limitation of FECA,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of a 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.⁷

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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. 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).⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her breast cancer was causally related to the accepted factors of her federal employment.

The relevant evidence includes a report dated March 23, 2016 from Dr. Lang, who advised that appellant was under her care for breast cancer. Dr. Lang explained that appellant had worked as a sleep study technician for many years and spent the last four to five years working both day and night shifts. She noted that "[t]here is evidence that rotating night shifts increases the risk of developing breast cancer" and referred to an attached study from the Journal of the National Cancer Institute. The Board has held, however, that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *D.K.*, Docket No. 19-1034 (issued November 4, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *C.M.*, Docket No. 18-1516 (issued May 8, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *A.P.*, Docket No. 19-1158 (issued October 29, 2019); *see J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

employment factors alleged by the employee.⁹ Without explaining how, physiologically, these employment duties caused or contributed to the diagnosed condition, Dr. Lang's opinion on causal relationship is of limited probative value.¹⁰

Likewise, in progress notes dated February 25, 2016 and February 14, 2017, Dr. Lang advised that appellant was a sleep technician who, after 20 years of working nights, spent the last 4 years on both day and night shifts, which "she believes may have contributed to her breast cancer diagnosis." However, she merely repeated appellant's opinion regarding the cause of appellant's condition and did not provide her own opinion on causal relationship.¹¹ These progress notes are therefore insufficient to establish causal relationship.

In an April 13, 2017 report, Dr. Thompson noted that appellant was working rotating day and night shifts and that this was "now known to have several negative health outcomes, notably related to breast cancer." She agreed that appellant should work regular shifts without rotation. However, Dr. Thompson did not provide rationale explaining how appellant's specific work schedule of rotating shifts caused or aggravated the diagnosed condition.¹² Thus, this report is also insufficient to establish causal relationship.

OWCP also received reports documenting appellant's surgical procedures. However, these reports provide no opinion regarding the cause of her breast cancer. 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

Similarly, OWCP received diagnostic reports; however, the Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship.¹⁴

Appellant also submitted a series of articles regarding breast cancer. As explained above, the Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not

⁹ See *A.G.*, Docket No. 18-0281 (issued July 12, 2018); *R.O.*, Docket No. 08-1133 (issued October 8, 2008); *William C. Bush*, 40 ECAB 1064, 1075 (1989) (excerpts from publications lack probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case).

¹⁰ *M.M.*, Docket No. 19-0061 (issued November 21, 2019); see *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹¹ *C.N.*, Docket No. 14-1805 (issued December 8, 2014).

¹² *Supra* note 8.

¹³ *M.W.*, Docket No. 18-1624 (issued April 3, 2019); *S.B.*, Docket No. 18-1296 (issued January 24, 2019).

¹⁴ See *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁵

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship between her breast cancer and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.¹⁶

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 that her breast cancer was causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2020
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

¹⁵ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁶ *Supra* note 8.