



pain and sustained a left supraspinatus tendon tear and left rotator cuff tendinopathy/arthropathy due to performing her work duties. She advised that she first became aware of her condition on March 17, 2016 and first realized its relation to factors of her federal employment on April 12, 2016. Appellant did not stop work at the time she filed her Form CA-2.

Appellant submitted documents concerning her request for reasonable accommodation for an injury to her left shoulder, including a portion of a “Form G-1437,” signed on April 14, 2016, in which she requested that she receive assistance in handling files weighing over five pounds or that she be relocated to an area that did not require handling files weighing over five pounds.

In a certificate to return to work dated April 13, 2016, Dr. Sarah L. Kennedy, an osteopath Board-certified in family medicine, advised that appellant could return to work on April 13, 2016 with a five-pound lifting restriction for the left arm.

In a development letter dated October 2, 2017, OWCP requested that appellant submit additional evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how her work activities caused, contributed to, or aggravated her claimed medical condition. It also enclosed a questionnaire for her completion which posed various questions regarding her work duties. OWCP afforded appellant 30 days to submit the requested evidence. On October 2, 2017 it also requested that the employing establishment provide additional information within 30 days, including comments from a knowledgeable supervisor on the accuracy of appellant’s statements and a copy of an official position description.

In an undated statement received on October 3, 2017, appellant reported experiencing severe pain in her left shoulder on March 17, 2016 while performing her rotational assignment as part of the National File Transfer System (NFTS). She claimed that she was responsible for transferring hundreds of files, wandng barcodes on files with a handheld scanner, as well as removing files from crates, tubs, and boxes, and placing them back into crates, tubs, and boxes. Since February 27, 2014, appellant worked subject to restrictions for a 2011 lumbar injury which included a two-hour per day restriction on performing her NFTS tasks. She believed that her shoulder injury was caused by performing too many assignments, completing other employees’ tasks, and not being permitted to work overtime to complete her assignments. Appellant asserted that she repetitively wanded barcodes on approximately 300 to 1,000 files once or twice a month, a task which caused severe left shoulder pain. She further indicated that manually lifting and processing approximately 1,000 files located on her workstation, which required her to bend and lean forward given the workstation’s low position, contributed to her left shoulder condition. Appellant advised that, in April 2016, she was diagnosed with tendinopathy of the left rotator cuff, left supraspinatus tendon tear, left elbow pain, and left shoulder pain.

On October 22, 2017 appellant provided additional information in handwritten notes on the provided questionnaire form. She advised that she performed her NFTS tasks one or two times per month with each time requiring her to perform such tasks over the course of five days. Appellant indicated that she did not have a prior similar left shoulder or left elbow condition.

Appellant also submitted an April 12, 2016 report from Dr. Kennedy who indicated that appellant presented with atraumatic left shoulder and posterior left elbow which she had experienced for the prior four weeks. She reported that her pain was worsened by performing a

lot of filing and being in front of the computer for hours at work. Dr. Kennedy noted that appellant denied a prior left shoulder injury, but reported that she had similar symptoms in her right shoulder in 2008 which resolved with physical therapy. She diagnosed left rotator cuff tendinopathy (likely exacerbated by poor ergonomics and posture while engaging in repetitive filing at work), left shoulder pain, and left elbow pain.

On July 12 and 15, 2016 Dr. Lindsey N. Dietrich, Board-certified in orthopedic surgery, treated appellant for chronic left shoulder pain which she reported had worsened after performing most of her work duties, including engaging in repetitive scanning and lifting. On July 15, 2016 she diagnosed a small full-thickness supraspinatus tear of the left shoulder per a recent magnetic resonance imaging (MRI) scan.<sup>2</sup> Dr. Dietrich recommended lifting restrictions for both upper extremities.

In a September 21, 2016 certificate to return to work, Dr. Kennedy advised that appellant could return to work with a lifting restriction of 30 pounds. On October 24, 2016 she returned her to work on October 27, 2016 with a five-pound lifting restriction for the left arm.

In a report dated November 30, 2016, Dr. Kennedy treated appellant in follow-up for her left shoulder problems. She advised that, when she initially treated appellant, she reported that her pain was worsened by performing a lot of filing and being in front of the computer for hours at work.<sup>3</sup> Dr. Kennedy diagnosed left rotator cuff tendinopathy, left degenerative supraspinatus tear, and chronic left shoulder pain. In reports dated January 19, March 2, April 13, June 1, and July 3, 2017, she further treated appellant for her left shoulder complaints. Dr. Kennedy provided the same description of appellant's initial reporting of her work duties as provided in the November 30, 2016 report. In these additional reports, she collectively diagnosed left rotator cuff tendinopathy, left rotator cuff arthropathy, left degenerative supraspinatus tear, and chronic left shoulder pain.

In an October 9, 2017 certificate to return to work, Dr. Kennedy advised that appellant could return to work on October 12, 2017. In an attending physician's report (Form CA-20) dated October 25, 2017, she noted a history of atraumatic shoulder pain which appellant reported began around March 2016 and worsened with movement. Dr. Kennedy provided the notation, "May be attributed to work." She indicated that appellant had possible degenerative left shoulder changes which were exacerbated by her poor work setup. Dr. Kennedy diagnosed left rotator cuff tendinopathy and small left full-thickness supraspinatus tear. She checked a box marked "Yes" to indicate that appellant's condition was caused or aggravated by the reported employment activity and added the notation, "Ergonomics may flare underlying condition."

On November 6, 2017 OWCP requested that the employing establishment submit comments from a knowledgeable supervisor on the accuracy of all statements provided by

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<sup>2</sup> The case record contains a report of the July 14, 2016 MRI scan confirming this finding.

<sup>3</sup> Dr. Kennedy indicated that she first saw appellant on May 24, 2016, although the case record contains treatment reports of Dr. Kennedy from as early as mid-April 2016. She further indicated that appellant denied a prior left shoulder injury, but reported that she had similar symptoms in her right shoulder in 2008 which resolved with physical therapy.

appellant, describe the work area that she asserted contributed to the development of her claimed condition, and provide a copy of the official position description.

In a November 28, 2017 statement, the employing establishment noted that an ergonomic assessment of appellant's workstation was performed on August 18, 2017 and that recommendations were made and implemented by the employing establishment with a 30-day trial period for appellant to use the new workstation. After one week, appellant asserted that the adjustments were not beneficial, but the employing establishment worked to accommodate her despite the fact that she made unrecommended adjustments to her workstation.<sup>4</sup> With regard to appellant's allegation that she was given too many assignments, the employing establishment discussed a 2017 weekly rotation schedule for NFTS tasks and noted that it showed that appellant was assigned to the schedule every three to five weeks with the exception of October 2017 when she was assigned to the schedule twice.<sup>5</sup> It challenged appellant's allegation that she wanded 1,000 cases once or twice a month under the NFTS program noting that she generally wanded approximately 100 cases a month, except in October 2017 when she was scheduled twice and wanded approximately 200 cases. The employing establishment noted that she used a point and click gun and not an actual wand when handling files. It further indicated that, whenever appellant did not complete her tasks within the two-hour reasonable accommodation period provided on May 11, 2016, other team members would complete the tasks for her.

Appellant subsequently submitted a November 16, 2017 note from a nurse practitioner who opined that appellant's muscle strain and headaches were due to the positioning of her monitor and keyboard at work.

By decision dated November 30, 2017, OWCP denied appellant's claim for an occupational injury by finding that the factual component of fact of injury had not been established. It determined that there were inconsistencies in appellant's recitation of the factual elements of her claim which cast doubt on the validity of her claim. OWCP noted that her case was denied because "the totality of evidence does not support your allegations of the work factors that caused or contributed to your injury." It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</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

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<sup>4</sup> OWCP received various documents regarding appellant's workstation, including an August 18, 2017 ergonomic consultation report which summarized the findings of an ergonomic assessment conducted on that date. The assessment recommended various changes to appellant's workstation, including raising the modular desk section to better accommodate her noncomputer-related work tasks.

<sup>5</sup> The case record contains a 2017 weekly rotation schedule for NFTS showing that, between May and November 2017, appellant was assigned to the schedule approximately every three to five weeks, except October 2017 when the start of two assigned task periods were approximately two weeks apart. Each task period lasted five workdays.

<sup>6</sup> *Supra* note 1.

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.<sup>7</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

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.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</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>11</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>12</sup>

### ANALYSIS

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

Appellant claimed that she developed left shoulder and elbow conditions due to performing repetitive work duties. She asserted that her duties, including performing her rotational assignment as part of the NFTS, included transferring hundreds of files, wand scanning barcodes on files with a handheld scanner, as well as removing files from crates, tubs, and boxes, and placing them back into crates, tubs, and boxes. Appellant asserted that she repetitively scanned barcodes on approximately 300 to 1,000 files once or twice a month, a task which caused severe left shoulder pain. She further indicated that she manually lifted and processed approximately 1,000 files located on her workstation per month.

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<sup>7</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>8</sup> *K.V. and M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</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>10</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>12</sup> *Id.*; *Victor J. Woodhams, supra* note 9.

The Board finds that the evidence of record is sufficient to establish that appellant's work duties each month, including performing her rotational assignment under the NFTS program, included transferring at a minimum 100 to 200 files, wandng these files with a point and click scanner, as well as removing the files from crates, tubs, and boxes, and placing them back into crates, tubs, and boxes. The Board notes that she was consistent in reporting the essential nature of her work duties and the employing establishment has not disputed her description of the type of duties she performed, but rather disputed the number of files on which she performed them. The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>13</sup> The employing establishment presented evidence showing that appellant did, in fact, perform the types of job tasks as alleged, albeit not to the same extent as alleged.<sup>14</sup> Under the circumstances of this case, the Board finds that appellant's general allegations regarding the nature of her work duties have not been refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on the type of duties she alleged she performed.<sup>15</sup>

Consequently, as noted, appellant has established that her work duties each month included, at a minimum, transferring approximately 100 to 200 files, wandng these files with a point and click scanner, as well as removing the files from crates, tubs, and boxes, and placing them back into crates, tubs, and boxes.

As OWCP found that appellant had not established any of the claimed work factors as alleged, it did not consider the medical evidence.<sup>16</sup> Therefore, the case will be remanded to OWCP for evaluation of the medical evidence to determine whether the accepted employment factors caused or contributed to her claimed medical conditions.<sup>17</sup> After such further development as it deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>13</sup> See *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>14</sup> The case record contains a 2017 weekly rotation schedule for NFTS showing that, between May and November 2017, appellant was assigned to the schedule approximately every three to five weeks, except October 2017 when the start of two assigned task periods were approximately two weeks apart.

<sup>15</sup> See generally *T.A.*, Docket No. 19-1525 (issued March 4, 2020); *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *L.S.*, Docket No. 13-1742 (issued August 7, 2014). The Board notes that appellant's statements to OWCP regarding the types of duties she performed are consistent with the statements she made to her health care providers regarding these duties.

<sup>16</sup> While OWCP reviewed the medical evidence in terms of appellant's reported history of injury, it did not evaluate the evidence for its probative value in terms of causal relationship.

<sup>17</sup> See *T.A.*, Docket No. 19-1525 (issued March 4, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2017 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: May 19, 2020  
Washington, DC

Christopher J. Godfrey, 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