

ISSUE

The issue is whether appellant has met her burden of proof to establish a left upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On January 23, 2019 appellant, then a 65-year-old part-time flexible clerk, filed an occupational disease claim (Form CA-2) alleging that she developed lateral epicondylitis of the left elbow, including repetitive-motion movements, due to factors of her federal employment. She indicated that she first became aware of her condition and realized that it was causally related to her federal employment on December 6, 2018. Appellant stopped work on December 15, 2018.

In a January 22, 2019 narrative statement, appellant noted that she did not have tendinitis of any sort prior to the claimed injury. She indicated that she first noticed extreme pain in the left elbow when unsuccessfully attempting to lift a tray of mail. Appellant explained that her physician diagnosed her with lateral epicondylitis of the left elbow and that physical therapy treatment had not improved her condition. She asserted that her work volume had increased and her office was understaffed which led to constant work. Appellant indicated that she worked between 5 to 10 hours per day, 6 days per week, for a total of approximately 45 hours per week. She alleged that her left elbow condition was caused by excessive work activities including scanning, sorting, organizing, handling, lifting, and manipulating mail and packages.

Appellant submitted prescription slips from a physician assistant dated December 20, 2018 through January 24, 2019.

In a January 24, 2019 report, a physician assistant noted that appellant was performing extensive lifting at work and was experiencing severe pain in the left elbow. She diagnosed left lateral epicondylitis.

In a development letter dated February 12, 2019, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical evidence needed, including a physician's opinion as to how employment activities caused, contributed to, or aggravated a diagnosed condition. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim from a knowledgeable supervisor. It afforded both parties 30 days to submit the necessary evidence.

Appellant submitted physical therapy treatment notes, dated February 4, 2019.

In a letter dated February 15, 2019, the employing establishment controverted appellant's claim alleging that she was engaged in strenuous physical activity outside of work, maintaining an active farm property with several horses. It also noted that she expressed physical discomfort and pain resulting from overexertion and physical activity away from work.

In a letter dated February 25, 2019, the employing establishment controverted appellant's claim based on fact of injury and causal relationship. It asserted that outside activities could have caused appellant's condition and that she had not submitted medical evidence from an authorized physician.

On February 28, 2019 the employing establishment responded to OWCP's development questionnaire. It noted that appellant commonly reported physical pain and discomfort related to her activities outside of work, including maintaining a farm with several horses. The employing establishment further indicated that appellant remained an active piano teacher and failed to timely report her work injury. It reported that appellant frequently lifted and sorted mail and parcels weighing up to 40 pounds. The employing establishment also noted that appellant boxed, scanned, and retrieved mail on a frequent basis. It indicated that, while appellant was entitled to a 75-minute lunch break, she usually only took a 15-minute lunch break because there were many tasks to perform.

In a March 27, 2019 report, Dr. Louis Digiovanni, a Board-certified orthopedic surgeon, noted that appellant had been experiencing left elbow pain and weakness in the left hand after lifting a tray of mail and dropping it at work. He examined appellant and diagnosed lateral epicondylitis of the left elbow. Dr. Digiovanni confirmed the doctor's name) indicated that appellant would continue with physical therapy treatment and that she believed that her repetitive work activities caused her condition. In an accompanying order form, he ordered additional physical therapy treatment.

Appellant submitted illegible progress reports from a physician assistant and Dr. Digiovanni.

By decision dated May 7, 2019, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's lateral epicondylitis of the left elbow and the accepted factors of her federal employment.

In a February 22, 2019 note, Dr. Digiovanni noted that appellant was unable to completely extend her left arm. He opined that appellant's work caused her current symptoms of lateral epicondylitis.

In a February 27, 2019 report, Dr. Digiovanni noted that appellant had continued left elbow pain. He examined her and diagnosed lateral epicondylitis of the left elbow.

In a March 27, 2019 note, Dr. Digiovanni excused appellant from work until April 24, 2019. In an April 23, 2019 note, he excused her from work until May 18, 2019. In a May 15, 2019 note, Dr. Digiovanni excused appellant from work until July 3, 2019.

In a report dated May 15, 2019, Dr. Digiovanni noted that appellant continued with physical therapy, but was still having problems with lifting and strength. He examined her and diagnosed lateral epicondylitis of the left elbow. Dr. Digiovanni opined that the overuse syndrome experienced during the high volume holiday work season was the competent cause of appellant's lateral epicondylitis of the left elbow.

On May 24, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 26, 2019 report, Dr. Digiovanni noted that appellant's range of motion had greatly improved, but she still had problems with swelling and strength. He examined her and diagnosed lateral epicondylitis of the left elbow. Dr. Digiovanni again opined that appellant's work activities

were the cause of her lateral epicondylitis. He noted that appellant was clearly not ready to return to work as the repetitive use of her left arm with packages would clearly cause worsening.

In a July 24, 2019 report, Dr. Digiovanni noted that appellant's pain had worsened since her last visit. He examined her and diagnosed lateral epicondylitis of the left elbow. Dr. Digiovanni opined that appellant's work activities were the cause of her lateral epicondylitis and indicated that she might need surgical repair of the left common extensor aponeurosis.

In an August 21, 2019 report, Dr. Digiovanni noted that appellant experienced swelling and pain when lifting and performing certain movements. He examined her and diagnosed lateral epicondylitis of the left elbow. Dr. Digiovanni indicated that even if she received surgery, it was unlikely that she would be able to return to work with highly repetitive activities.

A telephonic hearing was held on September 13, 2019. Appellant indicated that she had not worked since December 2018 and that she had not been released to return to any type of work.

In an October 23, 2019 report, Dr. Digiovanni noted that appellant had pain and swelling in the left elbow. He examined her and diagnosed lateral epicondylitis of the left elbow. In an accompanying work excuse note, Dr. Digiovanni opined that appellant's ability to return to work, where she would be required to do repetitive lifting and moving with her injured arm, was extremely poor to nonexistent on a permanent basis.

By decision dated December 9, 2019, an OWCP hearing representative affirmed the May 7, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 time limitation period of FECA,⁵ 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 each and 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

⁴ *Supra* note 2.

⁵ *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left upper extremity condition causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted January 24 and February 22, 2019 reports of Dr. Digiovanni, who noted that appellant was doing extensive lifting at work. Dr. Digiovanni diagnosed left lateral epicondylitis and indicated that appellant's work activities caused the condition and her current symptoms. The Board has held, however, that a medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.¹¹ While Dr. Digiovanni indicated that appellant's diagnosed conditions were work related, he failed to provide medical rationale explaining the basis of his conclusory opinion. As such, his opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹²

Appellant also submitted medical reports from Dr. Digiovanni, dated February 27 and March 27, 2019, who noted that appellant had been experiencing left elbow pain and weakness in the left hand after lifting a tray of mail and dropping it at work. Dr. Digiovanni diagnosed lateral epicondylitis of the left elbow, but did not offer an opinion as to whether appellant's employment caused or aggravated her diagnosed conditions. The Board has held that 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 As such, these reports are insufficient to meet appellant's burden of proof to establish her claim.

In reports dated May 15 through October 23, 2019, Dr. Digiovanni consistently diagnosed lateral epicondylitis of the left elbow and opined that the overuse syndrome experienced during the high volume holiday work season was the competent cause of appellant's condition. However, as noted, a medical opinion must provide an explanation of how the specific employment factors

⁸ See *B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *R.D.*, Docket No. 19-1076 (issued July 2, 2020).

¹² *Id.*

¹³ *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

physiologically caused or aggravated the diagnosed conditions.¹⁴ As Dr. Digiovanni failed to provide a physiological explanation, his opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.

The remaining medical evidence of record fails to address causal relationship. Appellant submitted prescription slips, dated December 20, 2018 through January 24, 2019; work excuse notes, dated March 27 through May 15, 2019; and illegible progress reports. This evidence does not offer a medical diagnosis or a rationalized medical opinion as to whether appellant's employment caused or aggravated her diagnosed condition. As such, it is insufficient to establish appellant's claim.¹⁵

Appellant submitted physical therapy notes, dated February 4, 2019. Certain healthcare providers such as physical therapists are not considered "physician[s]" as defined under FECA.¹⁶ Consequently, these notes will not suffice for purposes of establishing appellant's claim.¹⁷

As appellant has not submitted rationalized medical evidence explaining the causal relationship between her diagnosed lateral epicondylitis of the left elbow and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

On appeal counsel asserts that OWCP required biomechanical causation and an explanation of the obvious. As explained above, the evidence of record does not contain a medical report from a physician which provides sufficient medical rationale to establish causal relationship.

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 left upper extremity condition causally related to the accepted factors of her federal employment.

¹⁴ *R.D.*, *supra* note 11.

¹⁵ *Id.*

¹⁶ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physical therapists are not considered physicians under FECA).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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