



**ISSUE**

The issue is whether appellant has met her burden of proof to establish a cervical condition causally related to the accepted factor of her federal employment.

**FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances of the case as set forth in the prior Board decisions are incorporated herein by reference.<sup>3</sup> The relevant facts are as follows.

On April 1, 2015 appellant, then a 60-year-old addiction specialist, filed an occupational disease claim (Form CA-2) alleging that on December 17, 2014 she first realized that her carpal tunnel syndrome, neck, shoulder, and elbow pain were due to factors of her federal employment, specifically the removal of voice recognition software on her computer, which had occurred on March 30, 2014. She explained that the software had been removed because it was no longer compatible with her computer system. Following removal of the software, appellant gradually developed pain in her shoulders, neck, elbow, wrists, and hands.<sup>4</sup>

By decision dated June 29, 2015, OWCP accepted that appellant's job required increased typing after removal of voice recognition software. It denied her claim, however, finding that she had not established that the diagnosed conditions were caused or aggravated by the accepted employment factor.

On July 25, 2015 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 16, 2016.

By decision dated May 31, 2016, OWCP's hearing representative affirmed the June 29, 2015 decision.

On July 19, 2016 appellant, through counsel, appealed to the Board. By decision dated August 1, 2017,<sup>5</sup> the Board affirmed OWCP's May 31, 2016 decision, finding that the medical evidence of record was insufficient to establish that appellant's alleged conditions were caused or aggravated by increased typing due to the removal of voice recognition software on her computer on March 30, 2014.

On July 19, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

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<sup>3</sup> Docket No. 19-0389 (issued July 16, 2019); Docket No. 16-1517 (issued August 1, 2017).

<sup>4</sup> The record reflects that appellant has an accepted January 21, 2003 claim for carpal tunnel syndrome, which is open for medical treatment in OWCP File No. xxxxxx778. Appellant's claims have not been administratively combined.

<sup>5</sup> *Supra* note 3.

In a report dated July 17, 2018 report, Dr. Neil Allen, a Board-certified internist and neurologist, noted reviewing appellant's medical records, work factors claimed to have caused or aggravated the diagnosed conditions, and the Board's prior decision. He diagnosed cervical strain/sprain and aggravation of cervical degenerative disc disease. Dr. Allen explained that reaching outward for a mouse, keyboard, telephone, etc. and/or sitting for prolonged periods of time resulted in postural muscle fatigue, a compromised cervical spine, and unsupported position, which in turn led to anterior head carriage and loss of normal cervical lordosis and increased stress on facet joints, cervical discs, and muscle strain. He noted the condition of upper cross syndrome was known to be caused by employment requiring prolonged periods of sedentary work and appellant's upper cross syndrome contributed to cervical degenerative disc disease symptomatology. Dr. Allen further explained that patients like appellant, who were already suffering from degenerative disc disease, developed further narrowing of the already compromised joint space, which could result in neuroforminal compromise and nerve root compression and/or irritation. He indicated that appellant's records reflected neck and bilateral upper complaints worsened by typing, and he concluded that it was both reasonable and expected that appellant's spine conditions were based upon the mechanisms described by appellant.

By decision dated October 18, 2018, OWCP denied modification. It found that Dr. Allen failed to provide adequate rationale explaining how the accepted employment factor caused or aggravated the diagnosed cervical conditions.

On December 12, 2018 appellant, through counsel, appealed to the Board. By decision dated July 16, 2019,<sup>6</sup> the Board affirmed OWCP's October 18, 2018 decision, finding that the medical evidence of record did not contain a rationalized opinion establishing that increased typing due to the removal of voice recognition software on her computer on March 30, 2014 caused appellant's cervical sprain/strain or aggravation of cervical disc disease.

On October 17, 2019 appellant, through counsel, requested reconsideration. In support thereof, appellant submitted a September 11, 2019 report wherein Dr. Allen reviewed the Board's July 16, 2019 decision and again opined that appellant's diagnosed cervical strain/sprain and aggravation of her cervical degenerative disc disease were attributable to her federal employment. In further support of his opinion, Dr. Allen noted that the reaching and sitting required by her job placed her torso in flexion causing a reduction in the natural cervical spine curvature. He explained that when there is straightened stress on the cervical spine it is centered on the facet joint as the stress is spread across the entire cervical vertebra. Additionally, the cervical disc annulus fibrous is stretched across the nucleus pulposus and there is a backwards push against the annulus. Where there is exposure to this type of stress for eight hours per day and five days per week, the body is unable to heal properly and keep up with the degradation rate, which result in aggravation of any underlying degenerative conditions.

By decision dated November 7, 2019, OWCP denied modification. It found Dr. Allen failed to provide adequate rationale explaining how the accepted employment factor caused or aggravated the diagnosed cervical conditions.

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<sup>6</sup> *Id.*

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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,<sup>7</sup> 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>8</sup> 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.<sup>9</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 employment factors identified by the claimant.<sup>10</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.<sup>11</sup>

## ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary to consider the evidence that was previously considered in its April 23, 2018 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>12</sup>

In support of appellant's October 17, 2019 reconsideration request, OWCP received a September 11, 2019 supplemental report from Dr. Allen. Dr. Allen again opined that appellant's

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<sup>7</sup> *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe Cameron*, 41 ECAB 1153 (1989).

<sup>8</sup> *V.P.*, Docket No. 20-0145 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>10</sup> See *B.H.*, Docket No. 18-1693 (issued Jul 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> See *L.E.*, Docket No. 18-1138 (issued February 1, 2019); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

claim should be accepted for cervical sprain/strain and aggravation of cervical degenerative disc disease. He opined that the combination of reaching and sitting required by her job placed her torso in flexion causing a reduction in the natural cervical spine curvature. Dr. Allen explained that when there is straightened stress on the cervical spine it is centered on the facet joint as the stress is spread across the entire cervical vertebra. Additionally, the cervical disc annulus fibrosus is stretched across the nucleus pulposus causing a backwards push against the annulus. Where there is exposure to this type of stress for eight hours per day and five days per week, the body is unable to heal properly and keep up with the degradation rate, resulting in aggravation of any underlying degenerative conditions.

The Board finds that the September 11, 2019 supplemental report of Dr. Allen is sufficient to require further development of the medical evidence to see that justice is done.<sup>13</sup> Dr. Allen is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive review of the medical record and case history. It is further found that he provided a pathophysiological explanation as to how the mechanism of the accepted employment incident was sufficient to cause appellant's cervical sprain/strain and aggravation of cervical disc disorder with radiculopathy 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.<sup>14</sup> Following review of Dr. Allen's September 11, 2019 report, the Board finds that his medical opinion is logical and is, therefore, sufficient to require further development of appellant's claim.

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 responsibility in the development of the evidence.<sup>15</sup> OWCP has an obligation to see that justice is done.<sup>16</sup>

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 appellant's diagnosed conditions are causally related to the accepted employment factor. If the physician opines that the diagnosed condition is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision

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<sup>13</sup> *S.J.*, Docket No. 19-1029 (issued October 22, 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).

<sup>14</sup> *S.J.*, *id.*; *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).

<sup>15</sup> See also *S.J.*, *id.*; *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>16</sup> See *S.J.*, *id.*; *B.C.*, Docket No. 15-1853 (issued January 19, 2016).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2019 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: July 21, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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