United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 22-0039**
	)	**Issued: July 11, 2022**
DEPARTMENT OF VETERANS AFFAIRS, TROY BOWLING CAMPUS, VETERANS MEDICAL CENTER, Lexington, KY, Employer	)	

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 11, 2021 appellant filed a timely appeal from a May 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On March 16, 2020 appellant, then a 54-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her right shoulder, right arm, and

[1] 5 U.S.C. § 8101 *et seq.*

neck due to the duties required by the light-duty job she returned to on March 5, 2018 including reaching with her right arm to use a telephone, keyboarding, and entering data on a computer. She asserted that her right shoulder, right arm, and neck progressively became weak, tender, swollen, and painful. Appellant indicated that she first became aware of her claimed condition and its relation to her federal employment on May 24, 2018. She stopped work on July 16, 2018, the date she retired from the employing establishment. OWCP assigned the claim OWCP File No. xxxxxx052.

In an April 3, 2020 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to submit the requested evidence.

In an undated statement received by OWCP on April 15, 2020 appellant indicated that, under a prior claim, assigned OWCP File No. xxxxxx765, OWCP had accepted that on August 25, 2016 she sustained bicipital tendinitis and adhesive capsulitis of her left shoulder. She advised that she returned to a light-duty position on March 5, 2018 where she was required to file papers, make photocopies, assemble orientation packets, answer telephone calls, and use a keyboard to enter data for multiple computer programs. Appellant advised that these tasks required her to extend her arms, repetitively use her fingers and hands, and tilt and rotate her neck for a majority of her workday. She indicated that she performed her keyboard duties for three or four hours per day. Commencing April 18, 2018 appellant was transferred to another department where she primarily answered the telephone and used a keyboard to enter data. She advised that on June 25, 2018 she was transferred to another work location where she performed similar duties.

Appellant also submitted a copy of her modified job assignment dated March 5, 2018, an election of physician form dated April 13, 2020, a release of information form dated April 13, 2020, and other administrative documents regarding the filing of a compensation claim.

In an April 30, 2020 letter, appellant's immediate supervisor advised that the employing establishment was challenging appellant's claim. She indicated that OWCP had already denied her claim for a consequential right upper extremity injury which she had filed in connection with an August 25, 2016 employment injury, which affected her left upper extremity. The supervisor asserted that appellant failed to submit medical evidence establishing causal relationship. In a May 4, 2020 letter, a former nurse manager of appellant acknowledged that appellant's light-duty position required her to use a telephone and keyboard. She indicated that appellant had the ability to take frequent breaks from such work.

By decision dated May 5, 2020, OWCP accepted that appellant's work required filing documents, making copies, assembling orientation packets, and using a telephone and computer keyboard, as alleged. However, it denied her claim, finding that she "did not submit any medical evidence containing a medical diagnosis in connection with the injury and/or event(s)." OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 23, 2021 appellant requested reconsideration of the May 5, 2020 decision.

Appellant submitted several factual documents, including a March 18, 2020 statement in which a coworker indicated that appellant complained of work-related pain in her neck, right shoulder, and right arm after her March 2018 return to work, as well as a July 31, 2018 statement in which a coworker advised that she witnessed appellant grimacing in pain while working after her March 2018 return to work.

Appellant submitted an August 15, 2018 report from Mychelle Banks who diagnosed adhesive capsulitis of the left shoulder, right shoulder pain, and inflammation of right rotator cuff tendon.[2]

In an August 21, 2018 report, Dr. Trevor Wilkes, a Board-certified orthopedic surgeon, indicated "the following is a narrative report regarding the relationship between the adhesive capsulitis of the left shoulder and the development of inflammation of the rotator cuff tendon of the right shoulder." He noted that appellant had objective right shoulder findings of tenderness of the rotator cuff tendon, positive subacromial provocative findings, and pain-inhibited weakness. Dr. Wilkes diagnosed inflammation of the right rotator cuff tendon and indicated that the mechanism of injury was overuse in compensation for a "dysfunctional left shoulder." He noted, "[a] description of work duties that would be difficult to perform include repeated reaching, extension of the shoulder and overhead lifting." Dr. Wilkes described his recommended treatment, including use of anti-inflammatory medicals and exercise.

In a March 28, 2019 report, Dr. Steve T. Vogelsang, a Board-certified family medicine physician, advised that appellant reported that she experienced mild numbness in her right fourth and fifth finger since July 2018. He reported physical examination findings, including 5/5 strength in the upper extremities and pain upon passive external rotation of both shoulders. Dr. Vogelsang diagnosed bilateral inflammation of rotator cuff tendons and adhesive capsulitis of the left shoulder. In a May 21, 2019 report, he reported physical examination findings, noting that appellant's shoulders were nontender and had decreased range of motion. Dr. Vogelsang diagnosed right rotator cuff syndrome. The case record also contains an incomplete copy of his September 12, 2019 report, which contains the diagnoses of inflammation of right rotator cuff tendon, cervical spondylosis, and myofascial pain.

The findings of a May 29, 2019 magnetic resonance imaging (MRI) scan of appellant's right shoulder contained an impression of tendinopathy and suspected partial tearing of the supraspinatus and infraspinatus tendons, tendinopathy of the subscapularis, and moderate acromioclavicular (AC) joint arthritis changes with mild subacromial/subdeltoid bursitis. X-ray testing of her right shoulder on June 3, 2019 revealed mild degenerative changes of the right shoulder.

In a November 7, 2019 report, Dr. Mark A. Seldes, a Board-certified family medicine physician, discussed appellant's factual and medical history, including the circumstances of her return to light-duty work in early 2018. He reported findings of his physical examination, noting that she had tenderness to palpitation over the anterior, lateral, and posterior aspects of both shoulder joints, as well as over both bicipital grooves and tendons. Appellant had positive Neer

[2] The report does not indicate whether Ms. Banks was a medical physician or some other type of health care provider.

and Hawkins tests for right shoulder impingement. Dr. Seldes diagnosed partial rotator cuff tear and AC joint arthritis of the right shoulder. He indicated that appellant had reported that on March 5, 2018 she returned to light-duty work at the employing establishment, which involved filing paper, making copies, and assembling orientation packets for nurse educators. Appellant's duties in this position and another position she transferred to in April 2018 included answering telephone calls from staff and using a keyboard to enter data into multiple computer systems. She worked on the computer systems for at least three to four hours per day. Dr. Seldes noted that appellant reported having to extend and rotate her arms, flex her neck, and use her fingers and hands for four or five hours per day. Appellant reported that her right arm progressively became weaker as she was right-hand dominant and most of the time had to type with her right hand and arm. Her neck was also tilted when holding the telephone as it did not have a headset. Dr. Seldes indicated that appellant moved to another work location in June 2018 to train as a telephone triage nurse in the telephone care program. This position required appellant to make telephone calls with a headset while keyboarding data. She progressively had worsening pain and limited range of motion in her right shoulder. Dr. Seldes indicated that appellant's driving to and from work also aggravated her right shoulder condition.

Dr. Seldes reported that appellant continued to develop further pain, swelling, and stiffness in her right arm, which progressed to the point where she was unable to work. He noted that she last worked for the employing establishment on July 16, 2018. Dr. Seldes advised that it was his opinion, within a reasonable degree of medical certainty, that appellant developed a right shoulder rotator cuff tear and right shoulder AC joint arthritis due to her work-related injuries. He indicated that her clinical examination as well as her diagnostic studies were "consistent with the work-related duties that [appellant] has had to do." Dr. Seldes opined that appellant's condition was complicated by the fact that her left shoulder, for which she had a separate compensation claim, already had limited range of motion and had been operated on. He maintained that these circumstances forced her to use her right shoulder and worsened her condition. Dr. Seldes recommended physical therapy and requested that OWCP "open this case for [appellant's] right shoulder partial rotator cuff tear and right shoulder [AC] joint arthritis."

In another November 7, 2019 report, Dr. Seldes noted that appellant complained of left shoulder pain, but also reported that she had started to develop pain in her right shoulder over the past prior 15 months. He diagnosed adhesive capsulitis and bicipital tendinitis of the left shoulder and impingement syndrome and rotator cuff tear of the right shoulder. Dr. Seldes noted, "We briefly discussed [appellant's] right shoulder injury that has been bothering her for 15 months, and it is a work-related injury. I have discussed having [her] complete a [Form] CA-2 and having an examination to open the case on her right shoulder."

In a January 30, 2020 report, Dr. Seldes again discussed appellant's return to limited-duty work at the employing establishment on March 5, 2018 after receiving extensive care for her left shoulder under a separate compensation claims case. He noted that her duties, filing papers, making copies, assembling orientation packets, and using a telephone and keyboard, caused significant stress to her right shoulder and eventually led to micro tears in her rotator cuff tendons.

In reports dated June 9, July 27, and September 3, 2020, Dr. Seldes provided extended discussions of his belief that appellant sustained a work-related injury after her return to limited-duty work on March 5, 2018. These discussions were similar to those contained in his

November 7, 2019 and January 30, 2020 reports. In his July 27 and September 3, 2020 reports, Dr. Seldes again discussed appellant's arm movements at work and noted, "[t]hese movements over 4+ hours per 8-hour day eventually cause the tendons in [appellant's] right shoulder to degrade causing the partial tears. These partial tears [led] to pain and inflammation in [her] right shoulder. This also led to tendinopathy of the subscapularis tendon as well as mild subacromial and subdeltoid bursitis."

By decision dated May 24, 2021, OWCP affirmed its May 5, 2020 decision as modified to reflect that appellant had established the medical component of fact of injury, but failed to submit sufficient medical evidence to establish causal relationship between the accepted employment factors and the diagnosed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed with the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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.[8] Additionally, the physician's opinion must be

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[3] *Supra* note 1.

[4] *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *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).

[7] *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

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).[9]

ANALYSIS

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

Appellant submitted a November 7, 2019 report from Dr. Seldes who provided a detailed and accurate discussion of the accepted employment factors, which included filing documents, making copies, assembling orientation packets, and using a telephone and computer keyboard in the work she performed commencing in March 2018. Dr. Seldes advised that it was his opinion within a reasonable degree of medical certainty that she developed a right shoulder rotator cuff tear and right shoulder AC joint arthritis due to this work. He indicated that appellant's clinical examination as well as her diagnostic studies were "consistent with the work-related duties that [appellant] has had to do." Dr. Seldes opined that her condition was complicated by the fact that her left shoulder, for which she had a separate compensation claim, already had limited range of motion and due to an operation. He maintained that these circumstances forced appellant to use her right shoulder and worsened her condition. In a January 30, 2020 report, Dr. Seldes again discussed her return to limited-duty work at the employing establishment in March 2018 after receiving extensive care for her left shoulder under a separate compensation claims case. He noted that appellant's duties, including filing papers, making copies, assembling orientation packets, and using a telephone and keyboard, caused significant stress to her right shoulder and eventually led to micro tears in her rotator cuff tendons.

In reports dated June 9, July 27, and September 3, 2020, Dr. Seldes again provided extended discussions of his belief that appellant sustained a work-related injury after her return to limited-duty work on March 5, 2018. These discussions were similar to those contained in his prior reports. In his July 27 and September 3, 2020 reports, Dr. Seldes again discussed appellant's arm movements at work and noted, "[t]hese movements over 4+ hours per 8-hour day eventually cause the tendons in [appellant's] right shoulder to degrade causing the partial tears. These partial tears [led] to pain and inflammation in [her] right shoulder. This also led to tendinopathy of the subscapularis tendon as well as mild subacromial and subdeltoid bursitis."

The Board notes that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.[10] The Board finds that while Dr. Seldes' reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relation between her claimed conditions and the accepted factors of her federal employment. Further development of appellant's claim is therefore required.[11]

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[9] *Id.*; *Victor J. Woodhams*, *supra* note 6.

[10] *See B.B.*, Docket No. 18-1321 (issued April 5, 2019).

[11] *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The Board finds that Dr. Seldes' reports are sufficient to require further development of the medical evidence in this claim. Dr. Seldes provided a comprehensive understanding of the medical record and case history, and provided a pathophysiological explanation as to how the mechanism of the accepted employment factors were sufficient to cause the diagnosed conditions. Dr. Seldes' opinion is not contradicted by any substantial medical or factor evidence of record.

On remand, OWCP shall prepare a statement of accepted facts and refer appellant to a specialist in the appropriate field of medicine for a second opinion examination and an evaluation regarding whether she sustained a new occupational injury in 2018, as alleged. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Seldes. Following any necessary further development, OWCP 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 May 24, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: July 11, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board