United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 15-0947**
	)	**Issued: August 5, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MECIAL CENTER, Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2015 appellant filed a timely appeal from a March 5, 2015 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 established that she sustained an aggravation of bilateral carpal tunnel syndrome, a cervical spine sprain, displacement of a cervical intervertebral disc, and a trigger finger in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 25, 2013 appellant, then a 57-year-old emergency room administrative assistant, filed an occupational disease claim (Form CA-2) alleging that on or before August 26, 2013, she sustained an aggravation of previously accepted carpal tunnel syndrome, a cervical spine sprain, displacement of a cervical intervertebral disc, and a trigger finger in the performance of duty. OWCP accepted these conditions under four prior claims: File No. xxxxxx747, date of injury September 25, 2000, accepted for a sprain of the left radial collateral ligament affecting the elbow and forearm, left hand joint derangement, right radial styloid tenosynovitis, and right wrist and carpus enesopathy, resulting in a schedule award for a two percent impairment of the left upper extremity; File No. xxxxxx271, date of injury January 15, 2002, accepted for de Quervain's tenosynovitis of the right upper extremity; File No. xxxxxx908,[2] date of injury April 5, 2009, accepted for bilateral carpal tunnel syndrome, cervical strain, and a temporary aggravation of C5-6 and C6-7 disc herniations; File No. xxxxxx474, accepted January 26, 2011 for trigger finger deformity of the right long finger.[3] Appellant attributed these aggravations to being repeatedly forced to work outside of her medical restrictions, and repetitive upper extremity motions at work. She stopped work on August 26, 2013 and did not return. Appellant filed claims for total disability compensation.

In an October 23, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her occupational disease claim, including a detailed description of the work factors alleged to have caused the claimed conditions and a statement from her physician explaining how and why those factors would cause those conditions. It afforded her 30 days to submit such evidence.

Appellant's supervisor provided a November 21, 2013 statement corroborating appellant's description of her job duties.[4] She noted that appellant's position required computer data entry, answering the telephone, limited writing, and placing armbands on patients. Appellant checked in three to five patients an hour, and handled telephone calls between patients. The supervisor acknowledged that on approximately August 9, 2013, appellant advised her that she was unable to take prescribed breaks due to short staffing. She then stated to appellant "we don't have enough staff," but that she was still required to take prescribed breaks. The supervisor confirmed that appellant's telephone headset was not at her workstation.

[2] In an October 17, 2013 file memorandum, OWCP noted that appellant did not request modification of a standing wage-earning capacity determination under File No. xxxxxx908, but instead filed a claim under File No. xxxxxx794 for an occupational condition due to new occupational exposures.

[3] In an October 30, 2013 file memorandum, OWCP noted that all of the conditions appellant listed on her claim form had been accepted in her prior claims. As appellant attributed these conditions to new work exposures, appellant filed a new claim for occupational disease on September 25, 2013. The previous claims are not presently before the Board.

[4] The record contains a 1995 position description, modified on several occasions through April 1, 2002, for the administrative assistant job. The position required walking, occasional lifting, preparing reports, and extensive interpersonal contacts.

The supervisor also provided May 13 and August 12, 2009 memoranda explaining that due to the accepted carpal tunnel syndrome and cervical strain, appellant was provided with an ergonomic chair, and an adjustable computer monitor. Appellant would also be given a telephone headset, footrest, adjustable keyboard tray, and a rearrangement of her desk to avoid reaching. On approximately August 9, 2013, she advised her supervisor that "her neck was hurting, because she was not taking her breaks like she was supposed to, due to personnel shortage. The supervisor informed [appellant], it did not matter if we were short, and she was required to take breaks." Also, appellant's headset was not in her work area although she was "required to use it when answering and talking on the telephone." She was instructed to "take a 15-minute break every hour from [her] workstation," with no keyboarding or simple grasping. This change reduced appellant's "fine manipulation and simple grasping" by a total two hours a day, in addition to other 15-minute breaks. Appellant acknowledged these duty modifications on August 14, 2009.

By decision dated January 2, 2014, OWCP denied appellant's claim, finding that appellant failed to establish causal relationship as she submitted no medical evidence. It found, however, that "the injury and/or event(s) occurred as described."

In a January 8, 2014 letter, appellant requested reconsideration. She alleged that the employing establishment did not modify her workstation, and forced her to perform continuous keyboarding and repetitive upper extremity tasks in violation of her work restrictions. Appellant asserted that she was forced to exceed her work limitations due to a staffing shortage. She contended that keyboarding, using a scanner, placing arm bands on patients, reaching, and "working at night" caused continuous finger, hand, arm, shoulder, and neck pain, aggravating the conditions accepted under her four prior claims. Appellant submitted additional evidence.[5]

A coworker submitted a November 4, 2011 statement noting that appellant was "willing to adjust her schedule when needed to accommodate coworkers and ensure coverage for the unit." Another coworker asserted that appellant had no consistent assistance since the only other administrative assistant retired in 2009. The coworker alleged that, since appellant began working with her four days a week in 2008, appellant "appeared to be in pain" and expressed that she was in pain. Appellant did "not get the opportunity to take scheduled breaks because there [was] no one to relieve her." The coworker also contended that appellant was not provided with an appropriate ergonomic chair and keyboard.

In a December 23, 2013 report, Dr. William L. Rutledge, an attending Board-certified orthopedic surgeon, noted that appellant presented on August 26, 2013 with bilateral carpal tunnel syndrome, "[t]rigger finger, right long finger, and an acute exacerbation of cervicalgia. He noted her duties as an administrative support assistant in the employing establishment's emergency department, checking in patients, "excessive keyboarding and use of the telephone," with repetitive reaching aggravating chronic cervicalgia. Dr. Rutledge opined that the diagnosed exacerbations of a herniated cervical disc, as well as cervical paraspinal muscle spasms and shoulder spasms, were caused by excessive repetitive upper extremity motion and "working

[5] Appellant also submitted an October 11, 2013 report regarding a hospital admission to treat a diabetic complication. Dr. Supreet Sethi, an attending nephrologist, diagnosed diabetes mellitus, major depressive disorder, hypertension, and chronic back pain.

outside of restrictions for many months." He noted treating appellant's carpal tunnel syndrome and cervical disc conditions for several years. Dr. Rutledge had permanently restricted simple grasping to no more than two hours a day intermittently, with reaching above the shoulder for no more than one-hour a day intermittently. He alleged that the employing establishment violated these restrictions by requiring appellant to keyboard several hours a day, reach above shoulder level, hold a telephone, and extensively use her hands and arms. Working outside of the restrictions has caused an acute exacerbation of chronic neck problems as well as [appellant's] upper extremity pain and symptoms." Dr. Rutledge held appellant off work through December 23, 2013. He administered trigger point injections and prescribed physical therapy.

In March 27 and May 27, 2014 reports, Dr. Rutledge noted that appellant remained disabled for work due to her recuperation from a cervical fusion. Appellant continued to claim wage-loss compensation through June 1, 2014

In a June 11, 2014 e-mail, the employing establishment noted that appellant's job duties had not changed since she accepted a light-duty job offer on December 5, 2011. It acknowledged that according to October 15 and November 21, 2013 supervisory statements, appellant "did work outside of her restrictions."

By decision dated June 11, 2014, OWCP found that appellant had not established causal relationship. It also found that she did not establish as factual that she worked outside of her medical restrictions, keyboarded several hours a day, reached above shoulder level, or held a telephone. OWCP also noted that appellant failed to take breaks as instructed or use a telephone headset provided to her. It further found that Dr. Rutledge's medical reports were insufficient to establish a causal relationship between the accepted work factors and the claimed conditions.

In a June 30, 2014 letter, appellant requested reconsideration.[6] She submitted additional medical evidence.

Dr. Rutledge provided two June 25, 2014 reports, opining that appellant's bilateral carpal tunnel syndrome was caused by continuous, extensive keyboarding and repetitive upper extremity motion at work on or before August 26, 2013. These duties were noted to have also aggravated appellant's long right finger triggering even after she underwent surgery for this condition. Dr. Rutledge also noted that she was made to work outside of her medical restrictions of fine manipulation and simple grasping for more than two hours a day. He submitted form reports through August 28, 2014 finding appellant totally disabled for work due to postsurgical status.

By decision dated October 28, 2014, OWCP affirmed its June 11, 2014 decision, finding that causal relationship was not established. It found that Dr. Rutledge based his opinion on an inaccurate history, as he attributed appellant's conditions to performing work outside her medical restrictions whereas this was not supported by the factual record.

[6] Appellant filed continuing claims for compensation through October 19, 2014.

In a January 9, 2015 letter, appellant requested reconsideration. She provided an October 25, 2014 statement asserting that Dr. Rutledge's opinion was sufficient to establish causal relationship. Appellant submitted additional medical evidence.[7]

Dr. Bernard Crowell, an attending Board-certified orthopedic surgeon, noted on December 26, 2013 that appellant had a long history of radicular neck pain with radiculopathy into the left upper extremity. A December 23, 2013 magnetic resonance imaging (MRI) scan showed a C5-6 disc herniation with central and neuroforaminal stenosis, and multilevel lumbar arthropathy and neuroforaminal stenosis. Dr. Crowell recommended a C5-6 fusion.

In a February 13, 2014 report, Dr. Rutledge found appellant totally disabled for work since late August 2013 due to an aggravation of cervical disc disease with severe cervical spondylosis. Appellant underwent cervical fusion on January 13, 2014 by Dr. Bernard Crowell, who was then evaluating her for left shoulder pain. She also had continuing bilateral carpal tunnel syndrome and a right long trigger finger.

By decision dated March 5, 2015, OWCP affirmed its prior decisions, finding that appellant failed to meet her burden of proof in establishing causal relationship. It found that Dr. Rutledge continued to base his opinion on appellant's inaccurate account of being made to work outside her medical restrictions. Dr. Rutledge's reports were therefore insufficient to establish that accepted work factors caused or aggravated the claimed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[8] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[9]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[10] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate

[7] Appellant also submitted duplicate copies of evidence previously of record. She claimed compensation for total disability through February 22, 2015

[8] *Joe D. Cameron*, 41 ECAB 153 (1989).

[9] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] 20 C.F.R. § 10.5(q).

cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete, factual and medical background of the claimant, must be one of reasonable medial 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.[11]

ANALYSIS

Appellant asserted that exposure to work factors on or before August 26, 2013 caused or aggravated previously accepted cervical spine and upper extremity conditions. She contended that in August 2013, a staffing shortage forced her to work beyond her medical limitations, causing the claimed aggravations. OWCP denied the claim on March 5, 2015, finding that although certain clerical work factors were established as factual, appellant had not substantiated that she had worked outside her prescribed restrictions. It therefore found that the opinion of Dr. Rutledge, an attending Board-certified orthopedic surgeon, was based on an inaccurate history. The Board, however, finds that the factual evidence supports appellant's contentions.

Appellant's supervisor provided May 13 and August 12, 2009 memoranda and a November 21, 2013 statement corroborating that on approximately August 9, 2013, appellant advised that she was unable to take prescribed breaks due to short staffing. She confirmed that the emergency department did not have sufficient staff, and that an ergonomic telephone headset was not available at appellant's workstation. Also, a coworker asserted that, since she began working with appellant four days a week in 2008, appellant could not take scheduled breaks as there was "no one to relieve her" due to a staffing shortage. Additionally, in a June 11, 2014 e-mail, the employing establishment acknowledged that appellant's supervisor's statements established that she "did work outside of her restrictions." The Board finds that these uncontroverted statements are of sufficient probative quality to warrant additional development by OWCP.

Appellant also provided medical evidence addressing her assertions that working outside of her medical restrictions aggravated her neck and arm conditions. Dr. Rutledge explained on December 23, 2013 and June 25, 2014 that constant, repetitive upper extremity motions aggravated the accepted cervical spine and upper extremity conditions. He noted that OWCP accepted repetitive motion as a causative factor.

On appeal, appellant contends that Dr. Rutledge's reports are of sufficient probative quality to establish that work factors on or before August 26, 2013 aggravated the claimed conditions. As stated above, the case will be remanded for additional development.

[11] *Solomon Polen*, 51 ECAB 341 (2000).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[12] Therefore, the case will be remanded to OWCP for additional development of the factual and medical record. OWCP shall request that the employing establishment provide additional information regarding the short staffing acknowledged by the supervisor and its impact on appellant's work duties. It shall then request that Dr. Rutledge, or an appropriate medical specialist, explain if the established work factors caused or aggravated the claimed conditions. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2015 is set aside, and the case remanded for additional development consistent with this decision.

Issued: August 5, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[12] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).