

ISSUE

The issue is whether appellant has met her burden of proof to establish cervical or hand conditions causally related to her accepted October 29, 2012 employment incident.

FACTUAL HISTORY

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

On November 28, 2012 appellant, then a 58-year-old veteran service representative, filed an occupational disease claim (Form CA-2) alleging that she sustained a cervical injury on October 29, 2012 as a result of reaching up to grab a form from an upper shelf while in the performance of duty.⁴ She stated that she heard her neck crack and then later that day she turned her head and felt her neck lock.

An OWCP authorization for examination and/or treatment (Form CA-16), was issued by the employing establishment on November 28, 2012. Pursuant to this form appellant was authorized to visit Chicago Health and Physical Therapy in Chicago, Illinois.

In support of her claim appellant submitted an attending physician's report from Dr. Richard Dietzen, a chiropractor, who diagnosed cervical brachial syndrome and carpal tunnel syndrome and opined that her conditions were commonly associated with office or computer keyboard work. In a November 27, 2012 report, he indicated that appellant continued to have left-side neck and shoulder pain and noted objective joint restriction and tenderness throughout the cervical spine, most notable on the left.

In a February 13, 2013 development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant responded by submitting additional reports of Dr. Dietzen dated from January 8 through March 21, 2013. In these reports he noted that appellant continued to suffer from neck pain.

By decision dated April 1, 2013, OWCP denied appellant's claim because she failed to establish a medical condition causally related to the accepted work factors.

On April 25, 2013 counsel requested an oral hearing before an OWCP hearing representative.

Appellant submitted reports dated April 2 and May 11, 2013 from Dr. Thomas Albert, an internist, who in a report of August 7, 2013 diagnosed cervical radiculopathy, cervical myofascitis, and cervical spondylosis. He noted that appellant was reaching at work and felt a crack in her

³ Docket No. 16-0191 (issued April 21, 2016).

⁴ Counsel, *infra*, subsequently requested that the claim be adjudicated as a traumatic injury claim.

neck. Dr. Albert found multiple trigger points and tenderness throughout the cervical spine and opined that appellant's conditions were causally related to the employment incident. Appellant also submitted additional reports from April 13 to June 20, 2013 from Dr. Dietzen who noted continued neck and low back pain, which was nearing maximum medical improvement.

In reports dated May 31 through October 8, 2013, Dr. Sajjad Murtaza, a Board-certified physiatrist, diagnosed cervical radiculopathy, bilateral carpal tunnel syndrome, and facet arthropathy, right greater than left. He noted appellant's history of workplace incident on October 29, 2012. On June 14, 2013 Dr. Murtaza released her to return to light-duty employment effective June 17, 2013 with restrictions of no overhead activity and no lifting over 10 pounds.

A telephonic hearing was held on September 4, 2013. By decision dated November 21, 2013, an OWCP hearing representative affirmed, as modified, finding fact of injury; however, the claim remained denied as appellant had not met her burden of proof to establish causal relationship between the October 29, 2012 employment incident and her diagnosed medical conditions.

Counsel requested reconsideration on April 7, 2014. Diagnostic testing reports, a March 10, 2014 report from Dr. Albert, and a November 19, 2013 report from an unidentified healthcare provider were submitted. By decision dated September 17, 2015, OWCP denied modification of its prior decision. On November 11, 2015 appellant, through counsel, filed a timely appeal to the Board.

By decision dated April 21, 2016, the Board affirmed OWCP's decision, dated September 17, 2015, which denied appellant's traumatic injury claim because the medical evidence of record failed to establish causal relationship between the accepted October 29, 2012 employment incident and her diagnosed conditions.

On April 17, 2017 counsel requested reconsideration. In support of the reconsideration request, he submitted an April 9, 2017 report from Dr. Neil Allen, a Board-certified internist and neurologist, who opined that appellant's case should be updated to include the diagnosis of aggravation of other spondylosis with radiculopathy, cervical region. Dr. Allen noted that appellant denied having symptoms related to the aforementioned condition prior to the work-related incident on October 29, 2012. He stated that "[a]s an individual ages the intervertebral discs of the spine lose hydration resulting in loss of intervertebral disc height." Dr. Allen further indicated that the neuroforamen are also narrowed with cervical extension and, in an individual with underlying spondylitic change and corresponding narrowing of the neural foramen of the cervical spine, as was the case with appellant, an incident of maximum cervical extension, as was performed when she reached up to retrieve a form while on duty, resulted in over stretching of the spinal ligaments and compression of the exiting spinal nerves. He opined that the incident ignited a local inflammatory reaction affecting both local pain and irritation of muscular tissue and symptomatology along the injured nerve root which ultimately resulted in the aggravation of appellant's cervical spondylosis and corresponding radicular complaints. Dr. Allen further indicated that, according to the American Academy of Orthopaedic Surgeons, one of the most common risk factors for degeneration of the cervical spine pertinent to appellant included job with repetitive neck motion and overhead work. He stated that it was well documented that repetitive head motion, specifically looking upward (cervical extension) resulted in excessive loading and breakdown of the facet joints of the spine and corresponding foraminal narrowing. Dr. Allen

concluded that the repetitive cervical rotation and extension required by appellant to perform her required duties combined with the acute incident on October 29, 2012 was the aggravating event directly resulting in a symptomatic cervical spondylosis.

By decision dated March 23, 2018, OWCP denied modification of its prior decision finding that Dr. Allen's April 9, 2017 report was insufficient for appellant to meet her burden of proof to establish her claim. It determined that Dr. Allen's opinion was based upon a brief history obtained from the Board's prior decision and that it was contradictory in that it noted no past medical history of a cervical spine condition prior to the employment incident, but he later opined that the case should include an aggravation of other spondylosis with radiculopathy. OWCP further determined that he failed to provide a rationalized medical opinion explaining the mechanism of how the cervical conditions were caused or aggravated by repetitive neck movements or reaching at work on October 29, 2012, especially as he failed to provide her job duties, her work hours, and the exertion required to perform her duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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, 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 on a traumatic injury or an occupational disease.⁷

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) a 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 diagnosed condition is causally related to the employment factors identified.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.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 employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment

⁵ *Supra* note 2.

⁶ *See T.H.*, 59 ECAB 388 (2008).

⁷ *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

⁹ *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

¹⁰ *E.V.*, Docket No. 18-0106 (issued April 5, 2018).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical or hand conditions causally related to her accepted October 29, 2012 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to reconsider the evidence appellant submitted prior to the issuance of OWCP's September 17, 2015 decision because the Board considered that evidence in its April 21, 2016 decision and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

In support of her claim on reconsideration before OWCP, appellant submitted an April 9, 2017 report of Dr. Allen who opined that her case should be expanded to include the diagnosis of aggravation of other spondylosis with radiculopathy, cervical region. He explained that, in the case of appellant, an incident of maximum cervical extension, as was performed when she reached up to retrieve a form while on duty, resulted in overstretching of the spinal ligaments and compression of the exiting spinal nerves. Dr. Allen opined that this incident ignited a local inflammatory reaction affecting both local pain and irritation of muscular tissue and symptomatology along the injured nerve root, which ultimately resulted in the aggravation of appellant's cervical spondylosis and corresponding radicular complaints. He concluded that the repetitive cervical rotation and extension required by appellant to perform her required duties combined with the acute incident on October 29, 2012 was the aggravating event directly resulting in a symptomatic cervical spondylosis.

The Board finds that Dr. Allen failed to provide a rationalized opinion explaining how the specific alleged incident of reaching up to grab a form from an upper shelf on October 29, 2012 aggravated appellant's "other spondylosis with radiculopathy, cervical region" condition. Dr. Allen's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³ Dr. Allen noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed condition.¹⁴ As OWCP noted in its March 23, 2018 decision, Dr. Allen failed to identify the specific mechanism of injury that caused or aggravated appellant's condition, *i.e.*, how often she performed a specific task, how many hours she performed each task on a daily basis, the

¹¹ *A.M.*, *supra* note 9; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹³ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁴ *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

exertion required to perform the task, and how these activities resulted in the claimed condition. He did not sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the October 29, 2012 incident at work caused or contributed to the diagnosed condition. For these reasons, the Board finds that the report from Dr. Allen is insufficient to establish that appellant sustained an employment-related injury.

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 cervical or hand conditions causally related to the accepted October 29, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2019
Washington, DC

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

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

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