

**United States Department of Labor
Employees' Compensation Appeals Board**

L.J., Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
DIVISION OF FEDERAL EMPLOYEES'
COMPENSATION, Kansas City, MO, Employer**

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**Docket No. 20-1379
Issued: February 9, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2020 appellant filed a timely appeal from a June 5, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 7, 2019 appellant, then a 55-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her wrists due to factors of her federal employment, including repetitive typing and keyboarding. She indicated that she first became aware of her condition on May 1, 2018 and first realized that it was caused or aggravated by her federal employment on July 11, 2018. Appellant did not stop work.

In a June 12, 2019 development letter, OWCP informed appellant that it had received no evidence in support of her occupational disease claim. It asked her to complete a questionnaire to provide further details regarding the circumstances of her claimed injury and requested a narrative medical report from her treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical conditions. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's statements. It provided 30 days for both parties to respond.

In a July 11, 2018 medical report, Dr. Jacob Brubacher, a Board-certified orthopedic surgeon, evaluated appellant for bilateral pain in her dorsal wrists. Appellant informed him that she typed all day for her job and that her pain was always worse with working. She utilized soft splints on her wrists in the beginning of her day, but would eventually encounter recurrent pain. Dr. Brubacher noted her past diagnoses of arthritis and osteoarthritis and also indicated that she underwent right shoulder arthroscopic surgery previously. He noted that an x-ray scan of her bilateral wrists returned normal and opined that appellant likely had tendinitis of her extensor tendons associated with the repetitive nature of her job.

In a September 26, 2018 medical report, Dr. Brubacher diagnosed bilateral wrist pain and opined that it was likely due to tenosynovitis and tendinitis. He observed that appellant performed a lot of repetitive typing at work for up to three hours at a time and that this caused her discomfort in the dorsum of her hands.

In an April 10, 2019 medical report, Dr. Brubacher observed that appellant continued to experience fatigue while working at her desk that seemed to be in the setting of a significant amount of typing. He opined that she seemed to have extensor tenosynovitis. Dr. Brubacher again noted that appellant's symptoms were mainly related to her typing and workload at work.

By decision dated September 4, 2019 OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the employment events occurred as described. It concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a September 4, 2019 response to OWCP's development questionnaire, appellant explained that she worked for 8 to 10 hours a day for five days a week and that she engaged in no activities outside of work that involved repetitive use of her hands and wrists. She asserted that her condition developed from everyday work activities of typing and using her computer mouse. Appellant's symptoms of aches in her hands, wrists, and fingers were more prominent when she was typing, writing, and using her mouse and less

prominent when she was not performing these activities. She indicated that, after a February 2019 ergonomic assessment, she was provided a wrist pad, but it failed to control the pain. Appellant also made note of a previous claim she filed for an October 1, 2013 injury under OWCP File No. xxxxxx250, which was accepted for a ganglion cyst and enthesopathy of wrist and carpus right wrist, disorder of bursae and tendons, rotator cuff syndrome, localized osteoarthritis right shoulder, other syndromes affecting cervical region and brachial/neuritis/radiculitis.²

On November 14, 2019 appellant requested reconsideration of OWCP's September 4, 2019 decision and submitted additional evidence.

In an October 16, 2019 medical report, appellant informed Dr. Brubacher that she continued to experience significant fatigue and soreness in her hands with prolonged periods of work. He further noted that her symptoms had been relatively consistent for years and opined that they seemed to be aggravated by prolonged periods of working.

By decision dated January 9, 2020, OWCP denied modification of its September 4, 2019 decision.

In a January 29, 2020 statement, appellant requested reconsideration of OWCP's January 9, 2020 decision. She argued that her statements were sufficient to establish fact of injury and that the medical evidence of record was sufficient to establish the medical component of fact of injury.

In a June 7, 2019 statement, appellant explained that, in 2010, under OWCP File No. xxxxxx250, she was diagnosed with right wrist enthesopathy and a ganglion cyst. She continued by asserting that over time and due to the repetitive work factors she has been diagnosed with bilateral wrist tendinitis. Appellant also detailed the medical treatment she received and indicated that she also received braces, anti-inflammatory medication as well as ergonomic modifications to her work station.

By decision dated February 6, 2020, OWCP denied modification of its January 9, 2020 decision.

On May 22, 2020 appellant requested reconsideration of OWCP's February 6, 2020 decision. She attached a May 21, 2020 statement in which she asserted that Dr. Brubacher's opinion that her pain was "due to tenosynovitis/tendinitis 'likely' due [to] repetitive work factors of typing and using computer mouse to complete work tasks" was sufficient to establish the

² Appellant previously filed an occupational disease claim on March 7, 2005 for multiple injuries to her right upper extremity under OWCP File No. xxxxxx250. On June 14, 2005 OWCP accepted her claim for cervical and parascapular syndrome. On December 5, 2008 it expanded acceptance of appellant's claim to include disorder of bursae and tendons shoulder, right. On January 14, 2010 OWCP again expanded acceptance of her claim to include tendinitis, right wrist. OWCP has not administratively combined File No. xxxxxx250 with the current claim.

medical component of fact of injury in accordance with Federal (FECA) Procedural Manual Chapter 2.810.³

By decision dated June 5, 2020, OWCP modified its February 6, 2020 decision, finding that the new evidence submitted by appellant was sufficient to establish the implicated factors of her federal employment and a medical diagnosis. The claim remained denied, however, because she failed to submit a rationalized opinion from her treating physician explaining how her diagnosed conditions were causally related to the accepted factors of her federal employment.

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,⁴ 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.⁵ 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.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(5)(c)(5) (September 2010).

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *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).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

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

OWCP previously accepted on June 14, 2005, December 5, 2008, and January 14, 2020 that appellant sustained cervical and parascapular syndrome, disorder of bursae and tendons shoulder, right and tendinitis, respectively under OWCP File No. xxxxxx250. On June 7, 2019 appellant filed the current claim for bilateral tenosynovitis and tendinitis caused by her repetitive duties as a claims examiner. In support of her claim, she submitted an October 16, 2019 medical report from Dr. Brubacher wherein he noted that her symptoms had been relatively consistent for years and opined that they seemed to be aggravated by spending long periods of time working.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹² For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.¹³ OWCP had previously accepted that appellant had sustained wrist conditions under OWCP File No. xxxxxx250; however, this case has not been administratively combined with the present file.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File No. xxxxxx250 and the present case file.¹⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁵

CONCLUSION

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

¹⁰ *Id.*; *Victor J. Woodhams, supra* note 7.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹² *Id.* at *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

¹³ *Id.*; *D.T.*, Docket No. 19-1375 (issued March 24, 2020); *D.L.*, Docket No. 17-1588 (issued January 28, 2019).

¹⁴ *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

¹⁵ *See T.M.*, Docket No. 18-0887 (issued February 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2020 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: February 9, 2021
Washington, DC

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

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

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