

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PROVIDENZA GALLELLI and DEPARTMENT OF DEFENSE,
PERSONNEL SUPPORT CENTER, Philadelphia, Penn.

*Docket No. 96-2128; Submitted on the Record;
Issued October 9, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that her cervical condition was causally related to work factors.

On November 18, 1993 appellant, then a 45-year-old sewing machine operator (modified), filed a notice of occupational disease, claiming that her neck discomfort, pain in both hands, and numbness in her fingers was caused by her duties since she had returned to work in October 1992 following a work-related back injury.¹

In support of her claim, appellant submitted the reports of Dr. Mario J. Arena, a Board-certified orthopedic surgeon and her treating physician. In an April 30, 1992 report, he stated that appellant's x-rays showed mild degenerative disc disease in the cervical spine, as well as in the thoracic and lumbar spine, with resolved thoracic and lumbosacral strain. On June 4, 1992 Dr. Arena cleared appellant for light-duty work.

Subsequently, Dr. Arena referred appellant to Dr. Barry Schnall, Board-certified in physical medicine and rehabilitation, who related appellant's complaints of neck discomfort and progressive pain in both hands with numbness in the fingers. Diagnostic testing revealed significant bilateral chronic C-8 radiculopathy, suggestive of root irritability, and mild bilateral ulnar neuropathy across the elbows. Dr. Schnall noted that appellant worked with her hands a great deal, folding clothes and lifting bundles of clothing.

In an August 20, 1993 report, Dr. Arena stated that appellant had been off work for the past two weeks "due to crying every day, being unable to either stand or sit." He noted that she was being treated by Dr. Joseph P. Badolato, an osteopathic practitioner who stated in a

¹ Appellant's claim for a February 17, 1987 lumbar strain was accepted by the Office of Workers' Compensation Programs, which paid appropriate compensation until October 20, 1992 when appellant, formerly a sewing machine operator, returned to light-duty work as a garment checker.

September 10, 1993 note that appellant had been under his care since January 1992, that she suffered from neck and lower back pain as well as anxiety and depression, and that she could not return to work. Dr. Arena added that appellant's disability was "unrelated to her musculoskeletal status" and that she remained capable of performing her job from that perspective.

In a December 2, 1993 report, Dr. Schnall stated that appellant constantly used her neck and upper extremities at work "in positions that would lead to cumulative stress trauma, which "often causes progressive degenerative arthritis of the spine in the neck area, and can lead to root encroachment with cervical radiculopathy." Dr. Schnall concluded that appellant's radiculopathy² and neuropathy³ were consistent with cumulative stress trauma related directly to her work activities, based on the facts that she had no other history that would cause these problems and that her progressive osteoarthritis of the spine at such a young age was not consistent with the normal aging process.

Dr. Stephen E. Reznak, Board-certified in psychiatry and neurology, examined appellant on December 9, 1993, noting a history of a fall at work on February 17, 1987 which resulted in "severe headaches" since that time. Dr. Reznak concluded that his findings on examination were consistent with a post-traumatic cephalgia⁴ as well as cervical and lumbosacral strains.

On June 20, 1994 the Office requested that appellant submit a factual statement regarding her claimed condition. Appellant responded that when she returned to work in the fall of 1992 her light-duty job required her to use her neck and arms in a way that aggravated her preexisting arthritic condition in her back and caused pain in her neck, hands and arms. Appellant added that she had not worked since July 1993.

The Office requested more detailed factual information, along with a medical report. Appellant replied that her job required her to examine jackets and pants; she would pick up a garment from a bench and put it on a table to check for mistakes, then she would place the garment back on the bench. Appellant had to move her upper body constantly from one side to the other and believed that the movements reagravated her back injury and caused pain in her neck, arms and hands.

The employing establishment responded to the Office's request with a description of appellant's light-duty job, which included visually inspecting garments to find any defects, marking any with masking tape, and keeping a list of the defects found. The job permitted appellant to stand or sit at her discretion, the maximum weight involved was two pounds, and no bending, squatting, climbing, kneeling, or twisting was involved.

² Radiculopathy is a disease of the nerve roots. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

³ Neuropathy is a general term denoting functional disturbances and/or pathological changes in the peripheral nervous system. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

⁴ Cephalgia is simply a pain in the head, a headache. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

On August 29, 1994 the Office referred appellant, along with a statement of accepted facts, the medical records, and a list of questions, to Dr. Kathleen Maloney, Board-certified in psychiatry and neurology, for a second opinion evaluation. The Office also asked Dr. Schnall to clarify his December 2, 1993 report, which did not appear to be based on an accurate factual history. The Office related appellant's history of injury and return to work and requested that Dr. Schnall offer an opinion, with medical rationale, on whether appellant's cervical condition was caused by the requirements of her light-duty position or was due to a preexisting, underlying condition.

On March 1, 1995 the Office denied appellant's claim on the grounds that the evidence failed to establish that an injury was sustained as alleged. The Office found that the weight of the medical evidence rested with the opinion of Dr. Maloney, that the opinions of Drs. Schnall and Reznak were based on an inaccurate history, and that the treatment notes of Dr. Arena reflected that appellant was capable of performing her normal duties and was not disabled from a musculoskeletal condition.

Appellant timely requested an oral hearing, which was held on September 7, 1995. At the hearing appellant testified that she had to lift bundles of clothes weighing about 40 pounds, that she was pressured to check up to 300 garments a day, and that she was not allowed to take breaks as needed.

On November 2, 1995 the hearing representative denied the claim on the grounds that the evidence was insufficient to establish that appellant's cervical condition was causally related to work factors. The hearing representative noted that appellant's description of her duties at the oral hearing varied considerably from her factual statement submitted in July 1994. The hearing representative found that Dr. Schnall's opinion was based on an inaccurate medical history and that the weight of the evidence rested with the well-rationalized report of Dr. Maloney.

Appellant requested reconsideration and submitted a September 24, 1995 report from Dr. Schnall. On April 3, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that Dr. Schnall failed to explain how appellant's return to work in October 1992 affected her baseline problem.

The Board finds that this case is not in posture for decision because of a conflict in the medical evidence and thus must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act⁵ (the Act) 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 the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained 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.⁶ These are the essential

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁷

In an occupational disease claim such as this, claimant must submit (1) medical evidence establishing the 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 disease, and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

An occupational disease or illness is defined as “a condition produced in the work environment over a period longer than a single workday or work shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements.”⁹ While appellant’s condition need not be caused by a specific injury or incident, or an unusual amount of stress or exertion,¹⁰ appellant must submit medical evidence diagnosing a specific disease or condition and explaining how identified employment factors have inflicted injury.¹¹

Section 8123 of the Act¹² provides that if there is disagreement between the physician making the examination for the Office and the employee’s physician, the Office shall appoint a third physician who shall make an examination.¹³ The Board has held that the medical opinions must be of relatively equal weight for a conflict to arise, and in assessing the medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality.¹⁴

In this case, Dr. Schnall initially attributed appellant’s cervical radiculopathy to cumulative stress trauma due to her repetitive work activities. When questioned by the Office and provided with the actual job description, he stated that whether appellant lifted two or twenty pounds, her cervical condition was sustained at work because she was performing a repetitive activity that progressively caused cumulative stress trauma. Dr. Schnall added that appellant’s injuries were not due to a significant preexisting or underlying condition, though that was a factor.

⁷ *Claudia A. Dixon*, 47 ECAB ____ (Docket No. 94-883, issued November 3, 1995).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ 20 C.F.R. § 10.5(a)(16).

¹⁰ *George A. Johnson*, 43 ECAB 712, 716 (1992).

¹¹ *Judith A. Peot*, 46 ECAB 1036, 1041 (1995).

¹² 5 U.S.C. § 8123(a).

¹³ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

¹⁴ *Connie Johns*, 44 ECAB 560, 570 (1993).

In his latest report, Dr. Schnall noted that despite her baseline problem, appellant was able to return to work from October 1992 to July 1993 and her job was modified because of her prior injury. He stated that further injury related to appellant's work activities during that time prevented her from working after July 1993. He added that he was unclear as to whether appellant was required to perform the duties of a sedentary or a light-duty position.

By contrast, Dr. Maloney reported on October 3, 1994 that she found no neurological abnormalities upon physical examination of appellant, noting that her "diffuse complaints of widespread pain [are] out of proportion to any discogenic changes in the cervical spine." Dr. Maloney concluded that appellant suffered from "pain amplification syndrome" and should be referred to a pain management program. Dr. Maloney added that appellant's work as a garment checker was "entirely reasonable," given the degree of degenerative changes in her cervical spine, which would appear to be advanced considering her age. Dr. Maloney reviewed the electromyogram administered by Dr. Schnall, Dr. Arena's x-rays, and the March 21, 1993 magnetic resonance imaging scan, all of which showed degenerative disc disease in the cervical spine, but concluded that there was no evidence of neurologic orthopedic impairment resulting from a work-related injury.

Both Dr. Maloney and Dr. Schnall are Board-certified in their respective fields and their conclusions regarding the causes of appellant's current disability for work and neurological condition are conflicting. Therefore, the Board finds that these differing opinions constitute a conflict requiring remand.¹⁵

On remand, the Office should refer appellant, the case record, and the statement of accepted facts to an appropriate medical specialist for an impartial evaluation pursuant to section 8123(a).¹⁶ After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

¹⁵ See *George S. Johnson*, 43 ECAB 712, 716 (1992) (finding that a conflict in medical opinion was not resolved because the opinion of the referee physician was insufficiently rationalized; thus, further remand was required); *Robert P. Johnson*, 43 ECAB 260, 266 (1991) (same).

¹⁶ See 20 C.F.R. § 10.408; *Debra S. Judkins*, 41 ECAB 616, 620 (1990).

The April 3, 1996 and November 2, 1995 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for proceedings consistent with this opinion.

Dated, Washington, D.C.
October 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member