

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA A. WALTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 99-100; Submitted on the Record;
Issued April 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant's accepted right shoulder strain resolved by October 20, 1997.

On July 19, 1996 appellant filed a claim for an injury to her right shoulder due to tearing computer paper in the performance of her duties as a phlebotomist. She listed February 28, 1995 as the date of injury, but the Office of Workers' Compensation Programs determined that this claim was for occupational exposure over a period of time rather than for a traumatic injury and on September 27, 1996 accepted appellant's claim for a right shoulder strain. Appellant did not lose time from work and the Office authorized conservative medical care. On August 22, 1997 she filed another claim for a right shoulder injury due to repetitious movements at a fast pace. By decision dated October 20, 1997, the Office found that this claim was also for an occupational exposure rather than a traumatic injury and denied the claim on the basis that the evidence failed to establish that the claimed condition was causally related to factors of appellant's employment. By this decision, the Office terminated any authorization for medical treatment at its expense. Appellant requested a hearing, which was held before an Office hearing representative on June 22, 1998. By decision dated August 28, 1998, an Office hearing representative found that appellant had "failed to provide any medical opinion evidence which establishes a causal relationship between the claimed condition and factors of her employment."

At the outset, the Board notes that the Office erroneously allocated the burden of proof to appellant to again prove, in conjunction with her August 22, 1997 claim, that her right shoulder condition was causally related to factors of her employment. Although she filed several claim forms,¹ these claims were for the same condition, a right shoulder injury and were attributed to the same employment factor, the tearing of computer papers. The Office's acceptance of this condition related to this work factor places the burden of proof on the Office to terminate

¹ Appellant also filed an occupational injury claim on March 2, 1998 for a right shoulder, arm and hand condition due to tearing apart computer papers and a claim for a recurrence of disability on September 18, 1997.

compensation benefits, in this case medical benefits. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further treatment.²

The Board finds that the Office met its burden of proof to terminate appellant's compensation on October 20, 1997.

In a report dated September 16, 1997, Dr. Dennis B. Brooks, a Board-certified orthopedic surgeon, set forth appellant's history and findings on examination and x-rays. He stated:

"If, indeed, [appellant] sustained a 'shoulder strain' in 1995, she has recovered from this injury. When only the allowed condition of right 'shoulder strain' is considered, then I believe [she] can perform her job as a phlebotomist without restrictions.

"Assuming that [appellant] does have some symptoms and does have some limitation of right shoulder motion, then I believe that these symptoms and this limitation are as a result of the degenerative arthritis of the right acromioclavicular joint and resultant rotator cuff irritation. I do not believe that either the degenerative arthritis of the right acromioclavicular joint or the resultant rotator cuff irritation is causally related to the 'shoulder strain' that she apparently sustained in 1995."

In a report dated July 14, 1997, Dr. Daniel Tinman, a specialist in occupational medicine at the employing establishment, stated that his examination on that date showed "no evidence of significant shoulder pathology." He also stated that it was not "medically reasonable to presume that tearing these perforations for no more than 30 minutes per day can cause a shoulder injury."

The only medical reports that indicate appellant had a right shoulder strain after October 20, 1997 are a January 16, 1998 and a January 29, 1998 report from Dr. Anthony George, who is Board-certified in preventive medicine. Neither report indicates this condition is causally related to appellant's employment and in the January 16, 1998 report he did not answer the question on the form asking whether the present disability was due to the injury in the claim. In a report dated October 4, 1997, Dr. Norton Winer, a Board-certified neurologist, noted that appellant "attributes the shoulder problems to repetitive tearing of computer data sheets." He, however, did not attribute appellant's right shoulder condition to this or any other cause, but noted that she had "some documented right shoulder bursitis." Dr. Winer did not diagnose a right shoulder strain. The reports of Drs. Brooks and Tinman are sufficient to establish that appellant's accepted right shoulder strain resolved by October 20, 1997.

² *Furman G. Peake*, 41 ECAB 361 (1990).

The decisions of the Office of Workers' Compensation Programs dated August 28, 1998 and October 20, 1997 are modified to reflect that the Office had the burden of proof to terminate appellant's compensation for a right shoulder strain and that the Office met this burden. These decisions are affirmed as modified.

Dated, Washington, D.C.
April 25, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member