

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

_____)
ERMA S. LAMB, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Jackson, MS, Employer)
_____)

Docket No. 03-351
Issued: March 5, 2004

Appearances:

Nathaniel Armistad, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 15, 2002 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 16, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 2, 2001 appellant, then a 58-year-old modified distribution clerk, filed an occupational disease claim alleging that she developed chronic tendinitis of the right shoulder in the performance of duty. Appellant indicated that she first became aware of the injury and its relation to her work on April 7, 2000. The employing establishment controverted the claim and alleged that appellant stopped work on April 27, 2001 for a nonjob-related condition, which was

disallowed in a July 25, 2001 decision, for a separate claim adjudicated by the Office under claim number 060705726.¹

In a separate undated statement, appellant indicated her chronic tendinitis arose after she returned to work in a modified-duty assignment following rotator cuff surgery to her right shoulder. She alleged that she began to experience a burning sensation in her shoulder area and severe pain in her right arm, hand and wrist with numbness and tingling, aggravated by repetitive motion. Appellant alleged that she believed her job of casing, which included separating mail in manual letterhead cases, was repetitive.² She identified her right shoulder, hand and wrist, left shoulder, arm, hand and neck as the parts of her body which were affected. Appellant also identified a prior injury and a right shoulder rotator cuff repair in February 1999, claim number 060705726.

By letter dated August 9, 2001, Ted Woodall, a human resources manager, from the employing establishment challenged the claim and stated appellant was on leave from April 10 to 23, 2000 and had not worked since April 27, 2001. Mr. Woodall stated that appellant was a gambler and her extracurricular activities included using the slot machines at an area casino. Additionally, he indicated that her modified position did not require appellant to perform any repetitive duties.

In an attending physician's report dated April 17, 2000, Dr. Rosie Walker-McNair³ diagnosed shoulder inflammation, torn rotator cuff and cervical disc disease aggravated by repetitive movement. She indicated by checking "yes" that appellant's condition was caused by an employment activity and placed appellant on total disability from April 17 to May 28, 2000. Dr. Walker-McNair noted that "It seems that the repetitive movements at any level, cause pain and nonfunction of the right shoulder and right arm." In a May 16, 2000 report, Dr. Walker-McNair noted appellant's continued complaints of right shoulder pain, which she attributed to bursitis secondary to overuse and advised that appellant had reached maximum medical improvement.

A June 7, 2000 electromyography and nerve conduction study of the right upper extremity was interpreted by Dr. Mike Graeber, a Board-certified neurologist, as normal.

In an August 4, 2000 report, Dr. Eric D. Washington, a Board-certified orthopedic surgeon, noted that appellant presented with complaints of various symptoms in her right upper extremity. The physician indicated appellant was status post rotator cuff repair and diagnosed chronic tendinitis of the right wrist and shoulder. Dr. Washington advised that appellant should not sort mail for more than three hours a day, with sorting for an hour and a half, followed by other activities for two hours, followed by another hour and a half of sorting and then other activities for two hours.

¹ The employing establishment submitted exhibits from claim number 060705726 that included a proposed modified job description, which appellant initially accepted and subsequently declined, along with a time analysis form.

² She also included a separate description of her duties.

³ Dr. Walker-McNair's credentials could not be ascertained.

A March 5, 2001 magnetic resonance imaging (MRI) scan of the right shoulder was interpreted by Dr. Richard B. Ellison, Jr., a Board-certified radiologist, who concluded that the increased signal involving the supraspinatus tendon was representative of a postoperative change but it could not be distinguished from tendinitis or a partial tear and that there was no evidence of full thickness or retraction.

In reports dated February 27, March 8 and 27, 2001, Dr. Walker-McNair, noted that appellant had an exacerbation of her chronic right shoulder tendinitis, was post rotator cuff repair and had tendinitis of the right wrist. The physician reported that appellant stated that she was having pain despite being on limited duty and that she was sorting longer than the limited-duty description. In her March 8, 2001 report, Dr. Walker-McNair indicated that “consideration should be given to discontinuing work due to recurrent problems associated with repetitive movement.” In her March 27, 2001 report, she recommended discontinuing all activities that required repetitive movements and noted that, if this could not be accomplished, then appellant should discontinue working.

In a March 29, 2001 report, Dr. Edward T. James, a Board-certified orthopedic surgeon, noted appellant’s history of injury, which included a right shoulder rotator cuff repair in 1999. Dr. James noted that his impression that appellant had a painful left shoulder and ruled out rotator cuff pathology and that she had degenerative disc disease of the cervical spine. In his May 1, 2001 report, Dr. James noted that appellant continued to have impingement and a painful limitation of the left shoulder and recommended an MRI scan to further assess the rotator cuff of the left shoulder. On May 10, 2001 Dr. James noted that the MRI scan showed no rotator cuff pathology, although he did note a small amount of fluid in the subacromial bursa, which “may” represent bursitis. The physician also noted that appellant was having burning pain, which might be originating in the cervical spine.

In treatment notes dating from May 21 to 30, 2001, Dr. Walker-McNair⁴ kept appellant off work indefinitely from May 21, 2001.⁵

In a May 31, 2001 report, Dr. James indicated appellant’s left shoulder symptoms appeared better, although she was still having problems with her cervical spine. The physician indicated that the upper extremities were intact and that views of the cervical spine showed a well-preserved disc space with some loss of lordotic curve. In a June 5, 2001 report, Dr. James assessed chronic rotator cuff tendinitis of the right shoulder and possible right shoulder internal derangement. He also noted that appellant’s work restrictions seemed reasonable.

In a July 18, 2001 report, Dr. Walker-McNair indicated that appellant suffered from chronic tendinitis of the right shoulder as a result of a partial rotator cuff repair. The physician explained that appellant experienced recurrent exacerbations due to repetitive movements at her job and noted that this would be an ongoing problem and it was unclear if the job-duty description was being followed by the employer. Further, Dr. Walker-McNair advised that

⁴ The signatures are difficult to read with the exception of the disability certificate dated May 21, 2001 from Dr. Walker-McNair, however, it appears, they are from Dr. Walker-McNair.

⁵ The notes on pages 194 and 195 are also undated.

appellant's left shoulder problems arose as a result of overcompensating for the right side and that appellant was experiencing symptoms and signs of carpal tunnel syndrome. In a subsequent report, Dr. Walker-McNair diagnosed: postoperative/chronic tendinitis of the right shoulder, status post repair of the right rotator cuff tear; acute bursitis of the left shoulder; "[b]orderline trans carpal changes on EMG; [electromyogram]" and cervical disc disease. She noted that appellant was placed on limited duty but even the limited repetitive movement aggravated her injury. The physician also noted that appellant had begun to overcompensate by using her left side more than her right, causing the bursitis. Dr. Walker-McNair opined that if appellant continued to work, the left shoulder would worsen and the degenerative arthritis in her neck would only add to the problem. She advised that if appellant's employment did not eliminate repetitive movements, that appellant should stop working. In a July 26, 2001 report, Dr. Walker-McNair extended appellant's disability to August 26, 2001, to allow time for an exacerbation to resolve. She noted that appellant denied any recent activity that could have aggravated her underlying injury.

In an unsigned duty status report, appellant was given restrictions of lifting less than five pounds, standing, walking, bending, stooping, twisting for four hours per day and simple grasping for two hours per day. The physician indicated that simple grasping should not include any repetitive movement on a continuous basis.

In a letter dated October 1, 2001, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that appellant submit additional supportive factual and medical evidence. A copy of the letter was also provided to the employing establishment.⁶

In a November 16, 2001 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed conditions in the performance of duty.

LEGAL PRECEDENT

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) 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 by the claimant.⁷

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which

⁶ The Office also requested information concerning the period March 18 to April 2 and April 3 to 7, 2000, April 10 to 23, 2000 and April 17 to May 28, 2000. Further, the Office requested an explanation regarding appellant's alleged slot machine activities and her physician's July 18, 2001 report indicating that appellant's exacerbations were occurring due to repetitive movements at her job.

⁷ *Solomon Polen*, 51 ECAB 341 (2000); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

includes a physician's rationalized medical 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 upon 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 claimant.⁸

ANALYSIS

In this case, appellant has not submitted sufficient medical evidence to indicate that the chronic tendinitis in her right shoulder, hand, wrist, left shoulder, arm and hand were causally related to her employment. The employing establish denied that appellant's position required her to perform any repetitive activities and also indicated that appellant had been on leave from April 10 to 23, 2000 and had not worked since April 27, 2001.

While appellant submitted numerous reports from Dr. Walker-McNair, they were not sufficient to establish appellant's burden as Dr. Walker-McNair did not appear to have a complete and accurate employment history. Appellant reported that her job required repetitive casing duties and the physician indicated that appellant's condition was aggravated by repetitive movement of her employment. However, the employing establishment denied that appellant's position required repetitive movement and indicated that appellant was also on leave from April 10 to 23, 2000. Appellant did not provide any evidence to suggest otherwise. Dr. Walker-McNair did not appear to be aware of these facts. Medical evidence predicated on inaccurate factual or medical history is of diminished probative value⁹ and medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.¹⁰

Appellant provided several reports from Dr. James. He, however, did not provide an opinion on causal relationship and medical evidence, which does not offer such an opinion is of limited probative value.¹¹ Furthermore, Dr. James offered no explanation with regard to distinguishing appellant's degenerative problems from her employment activities. In his May 10, 2001 report, while he indicated that appellant might have bursitis, the Board has held that speculative opinions are of limited probative value.¹² The record also contains an unsigned duty status report, which merely provided restrictions to appellant's physical activity. As stated above, medical evidence, which does not offer any opinion regarding the cause of an employee's

⁸ *Id.*

⁹ *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

¹⁰ *Albert C. Brown*, 52 ECAB 152 (2000).

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Jennifer L. Sharp*, 48 ECAB 209 (1996).

condition is of limited probative value on the issue of causal relationship.¹³ Furthermore, the Board has consistently held that to constitute competent medical opinion evidence, the evidence must be signed by a qualified physician.¹⁴

Although the Office advised appellant in a letter dated October 1, 2001, that it was her responsibility to establish that her condition was due to employment activities as alleged, appellant submitted no corroborating evidence within the allotted time to establish her claim for benefits under the Federal Employees' Compensation Act. The Board, therefore, finds that, as appellant did not submit medical evidence to establish that her chronic tendinitis was causally related to factors of employment, she has failed to meet her burden of proof.¹⁵

CONCLUSION

Under the circumstances described above, the Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

¹³ *Michael E. Smith*, *supra* note 11.

¹⁴ *Vicky C. Randall*, 51 ECAB 357 (2000).

¹⁵ The Board notes that appellant submitted additional evidence to support her claim. The Board's jurisdiction, however, is limited to reviewing the evidence that was before the Office at the time of its final decision. The Board, therefore, has no jurisdiction to review any evidence submitted to the record after the Office's November 16, 2001 decision. 5 U.S.C. § 501.2(c). The Board further notes that appellant had initially requested reconsideration with the Office. It is well established that the Board and the Office may not have concurrent jurisdiction over the same issue in the same case. *Cathy B. Millin*, 51 ECAB 331 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2001 is affirmed.

Issued: March 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member