United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 07-2345**
	)	**Issued: March 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 5, 2007 merit decision denying her claim for employment-related occupational injuries other than those accepted for her left shoulder. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a medical condition, other than the accepted conditions of left shoulder adhesive capsulitis and tendinitis, due to her federal employment.

FACTUAL HISTORY

On July 6, 2006 appellant, then a 62-year-old mail carrier, filed a claim alleging that she sustained a left shoulder injury due to repetitive duties of her job.[1] She indicated that working

[1] This claim bears the file number 03-2049956.

with central-markup and return-to-sender mail required repetitive placement of mail into trays.[2] Appellant first became aware of her claimed condition on April 2, 2006 and first realized on May 2, 2006 that is was employment related.[3] She stopped work on June 14, 2006.

On June 13, 2006 Dr. Mark P. Brigham, an attending Board-certified orthopedic surgeon, stated that appellant reported having left shoulder pain for three or four months which she felt might have been caused by sorting mail. He diagnosed left shoulder tendinitis. On July 5, 2006 Dr. Julie Anne Hlavac, an attending Board-certified family practitioner, indicated that appellant had severe left rotator cuff tendinitis. The findings of a June 7, 2006 magnetic resonance imaging (MRI) scan showed left rotator cuff tendinitis.

In a September 25, 2006 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related left shoulder condition.

On October 4, 2006 Dr. Hlavac stated that, when she first saw appellant on May 2, 2006 she reported having left shoulder symptoms for a month. She stated that examination showed limited range of left shoulder motion and that the June 7, 2006 MRI scan supported her diagnosis of left shoulder adhesive capsulitis and rotator cuff tendinitis. Dr. Hlavac stated, "Rotator cuff tendinitis is caused by repetitive motion which has been a large part of appellant's job at the employing establishment. For this reason, I believe her injury was caused by her job. Adhesive capsulitis occurred as a result of immobility from the severe pain."

In a June 1, 2007 report, Dr. Richard I. Zamarin, an attending Board-certified orthopedic surgeon, provided a detailed description of appellant's employment injuries, (including her July 16 and October 3, 1988 injuries) and appellant's job duties over the years, particularly her work since 2003 with central-markup, computer-forwarding-services and return-to-sender mail.[4] He indicated that appellant complained of neck pain and stiffness, headaches, right arm pain, numbness in the fourth and fifth digits of each hand, left shoulder pain, low back pain radiating

[2] Appellant submitted statements in which she provided more details regarding her work duties. She indicated that she collected computer-forwarding-services mail from the throw table and transported it to her workstation, arranged the mail in alphabetical order, searched for customer information which required flipping through many pages of printouts and then placed the mail into trays. Appellant stated that processing return-to-sender mail required retrieving mail, tearing apart accordion or pleated sheets of paper, placing labels on mail and placing mail into trays. She indicated that she performed such repetitive duties throughout her workday.

[3] The record contains a statement of accepted facts which includes a detailed description of appellant's employment injuries and work duties. The Office accepted that on July 16, 1988 appellant sustained a herniated nucleus pulposus at L5 and lumbosacral strain/sprain with sciatica due to lifting mail from a hamper and that on October 3, 1988 she sustained a cervical strain with a radicular component due to lifting stacks of magazines and placing them on a table. The claims for these injuries bear the file number 03-0134745. Beginning in late 2003, appellant performed work duties which included handling central-markup, computer-forwarding-services, and return-to-sender mail. These duties collectively required numerous repetitive motions, including answering telephones, reaching to lift mail (letters, flats, magazines and small parcels), sorting mail, placing mail in trays or cases, pushing mail carts, flipping through a large printouts, tearing labels off their backings and placing labels on mail. She often had to reach to floor level to lift mail or place it down.

[4] Dr. Zamarin's description of appellant's employment injuries and work duties appears to have been based on the detailed statement of accepted facts contained in the record.

into her right leg and foot, right foot numbness and left knee pain. Dr. Zamarin indicated that on examination she exhibited neck, left shoulder and lower back tenderness on palpation. He discussed appellant's diagnostic testing results which showed long-standing degenerative neck and back conditions and stated that "based on a reasonable degree of medical certainty, as a result of the work-related injuries and jobs over the years at the [employing establishment]" appellant had sustained aggravation of degenerative disc disease of the cervical spine and chronic pain syndrome of the cervical spine, aggravation of degenerative disc disease of the lumbar spine and right-sided disc herniation at L4-5 and chronic pain syndrome of the lumbar spine, bilateral cubital tunnel syndrome, right thoracic outlet syndrome and left shoulder rotator cuff tendinitis and adhesive tendinitis. Regarding the causes of the above-listed conditions, Dr. Zamarin stated:

> "I believe this because of the specific injuries that [appellant] had, as well as the nature of her work. In July of 1988, she was lifting mail to load a jeep and pulled her lower back. That has persisted. [Appellant] then went on to develop neck problems. In October of 1988, she was moving magazines while at work. [Appellant] continued to do different modified jobs at work, stamping mail, sorting mail, answering [tele]phones, all of which I believe contributed to her bilateral cubital syndrome and right thoracic outlet syndrome. I also believe[,] based upon a reasonable degree of medical certainty, that this [is] why she went on to develop a herniated disc in the lower back at L4-5. These diagnoses are all associated with lifting, twisting and bending type of injuries, as well as repetitive injuries that can occur in a workplace.

On July 17, 2007 appellant requested reconsideration of the Office's September 25, 2006 decision.

In a September 5, 2007 decision, the Office set aside the September 25, 2006 decision and accepted that appellant sustained employment-related left shoulder adhesive capsulitis and tendinitis.[5] The Office determined that appellant had not established that she sustained aggravation of degenerative disc disease of the cervical spine, chronic pain syndrome of the cervical spine, aggravation of degenerative disc disease of the lumbar spine and right-sided disc herniation at L4-5, chronic pain syndrome of the lumbar spine, bilateral cubital tunnel syndrome and right thoracic outlet syndrome due to the same factors that she claimed caused her left shoulder condition.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act[6] has the burden of establishing the essential elements of her claim.[7] The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for

[5] The Office based its acceptance of these conditions on the opinions of Dr. Zamarin and Dr. Hlavac.

[6] 5 U.S.C. §§ 8101-8193.

[7] *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[8] However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9]

ANALYSIS

In a September 5, 2007 decision, the Office accepted that appellant sustained left shoulder adhesive capsulitis and tendinitis due to her repetitive work duties prior to mid 2006. The Office denied that she sustained aggravation of degenerative disc disease of the cervical spine, chronic pain syndrome of the cervical spine, aggravation of degenerative disc disease of the lumbar spine and right-sided disc herniation at L4-5, chronic pain syndrome of the lumbar spine, bilateral cubital tunnel syndrome and right thoracic outlet syndrome due to the same factors that she claimed caused her left shoulder condition.

The Board notes that, while the June 1, 2007 report of Dr. Zamarin, an attending Board-certified orthopedic surgeon, is not completely rationalized, it contains an opinion that appellant sustained employment-related occupational injuries to her neck, back and arms (other than her already accepted left shoulder injuries)[10] and is not contradicted by any substantial medical or factual evidence of record.[11] Dr. Zamarin based his opinion on a complete and accurate factual and medical history as his description of appellant's employment injuries and work duties appears to have been based on a detailed statement of accepted facts contained in the record. He also provided a detailed account of the findings on examination and diagnostic testing. Therefore, while Dr. Zamarin's report is not sufficient to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between her work duties and the above described conditions (other than her already accepted left shoulder injuries) affecting her neck, back and arms and are sufficient to require the Office to further develop the medical evidence and the case record.[12]

For these reasons, the case will be remanded to the Office for further development regarding whether appellant sustained a medical condition, other than the accepted conditions of left shoulder adhesive capsulitis and tendinitis, due to performing her job duties over time prior

[8] *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[9] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[10] The Board notes that the Office based its acceptance of appellant's left shoulder injuries on this report of Dr. Zamarin and an October 4, 2006 report of Dr. Hlavac, an attending family practitioner.

[11] Dr. Zamarin indicated that the repetitive lifting, bending and twisting caused or contributed to aggravation of appellant's degenerative disc disease of the cervical spine, chronic pain syndrome of the cervical spine, aggravation of degenerative disc disease of the lumbar spine and right-sided disc herniation at L4-5, chronic pain syndrome of the lumbar spine, bilateral cubital tunnel syndrome and right thoracic outlet syndrome.

[12] *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

to mid 2006. After such development as it deems necessary, the Office will issue an appropriate decision regarding this matter.

CONCLUSION

The Board finds that the case is not in posture regarding whether appellant met her burden of proof to establish that she sustained a medical condition, other than the accepted conditions of left shoulder adhesive capsulitis and tendinitis, due to performing her job duties over time prior to mid 2006. The case will be remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 5, 2007 decision is set aside. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: March 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
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