

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN M. WHEATON and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, Tex.

*Docket No. 96-653; Submitted on the Record;
Issued July 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a recurrence of disability on and after June 30, 1995 causally related to an accepted February 13, 1994 right shoulder injury.

The Office of Workers' Compensation Programs accepted that appellant, then a 37-year-old distribution clerk, sustained right shoulder impingement resulting from a February 13, 1994 injury, which appellant described in her February 13, 1994 claim form as "pain in right shoulder."¹ Appellant was off work February 15 to approximately June 10, 1994, when she returned to modified duty work.

On August 8, 1995, appellant filed a notice alleging a recurrence of disability beginning on approximately June 30, 1995. She described right shoulder and neck symptoms she alleged were present since the February 13, 1994 injury, aggravated by her modified duty position working the "loose-in-the-mail or "lims" conveyor belt. Appellant noted that her "neck pain was a condition that came after [her] original injury, [and] was treated for the pain in [her] neck during the same time [she] was being treated for [her] shoulder." Appellant stopped work on July 25, 1995, when an employing establishment medical officer determined that she could not perform her modified duty position. Appellant submitted medical evidence regarding the development and treatment of her claimed cervical condition.

In reports from February 21 to March 9, 1994, Dr. James Prihoda, an attending internist, observed a "tender muscle mass in the [left] posterolateral aspect of the neck" and occipital area,

¹ The Office initially denied appellant's claim by decision dated July 28, 1994, vacated by decision dated October 4, 1994.

with restriction of voluntary cervical motion. He diagnosed cervical pain, right shoulder pain, headaches, and possible C4-5 radiculopathy.²

In February 26 and 28, 1994 reports, Dr. Rodrigo Sotillo, an attending internist, noted appellant's shoulder and neck pain, found tenderness along the left side of the neck, left and right shoulders, and diagnosed a musculoskeletal strain, acromioclavicular arthritis, and prescribed medication. In a March 7, 1994 report, Dr. Sotillo newly diagnosed a right shoulder impingement with limited range of motion.³ Progress reports through June 1994 note continued chronic musculoskeletal right shoulder pain.

Dr. Larry T. Johnson, an attending family practitioner, noted continued work restrictions in October 24, 1994 reports diagnosing right shoulder impingement syndrome. In reports from November 8 to December 13, 1994, Dr. Johnson held appellant off work from December 8 to 13, 1994 due to right shoulder pain and impingement.

In a January 24, 1995 report, Dr. Peter B. Polatin, an attending orthopedic surgeon, noted "ongoing right shoulder and neck stiffness and pain." He submitted reports through February 13, 1995 diagnosing "chronic and residual musculoskeletal pain syndromes" of the right shoulder and neck. In a March 10, 1995 report, Dr. Polatin newly diagnosed chronic right shoulder bursitis and chronic right cervical syndrome.

Appellant participated in a functional restoration program from March 20 to April 5, 1995.⁴ In reports from April 5 to May 10, 1995, Dr. Polatin added diagnoses of chronic upper body deconditioning syndrome, and an "adjustment disorder with mixed emotional features/somatization/depression"⁵ due to the February 13, 1994 injury. He limited occasional lifting to 40 pounds and frequent lifting to 20 pounds, pushing and pulling no more than 4 hours per day, and overhead lifting to 2 hours per day. The record indicates that appellant returned to limited duty work on April 10, 1995. On May 23, 1995,⁶ appellant accepted an offered light-duty position working one side of the lims belt, within Dr. Polatin's restrictions.⁷

² April 15, 1994 EMG (electromyography) and NCV (nerve conduction velocity) studies of the right upper extremity were normal. In an August 5, 1994 report, Dr. Judith Oppenheim, an attending orthopedist, diagnosed rotator cuff tendinitis and possible arthritis of the right acromioclavicular joint. A November 2, 1994 right shoulder arthrogram was normal.

³ March 7, 1994 x-rays showed a normal right shoulder, and a reverse lordosis of the cervical spine.

⁴ In an April 17, 1995 report, Dr. Johnson noted that prior to the functional restoration program appellant's right shoulder impingement symptoms had "degenerated into a chronic pain type of setting" and was "severe enough to interfere with her normal function[ing]...."

⁵ There is no claim of record for an emotional condition, or indication that the Office accepted such a condition.

⁶ In a May 23, 1995 report, Dr. Prihoda observed a swollen and tender right cervical node, and diagnosed otitis media.

⁷ Dr. Polatin reviewed and approved the offered position on October 26, 1995.

In a July 10, 1995 report, Dr. Polatin observed objective “residual functional deficits associated with increased stress at work and discouragement,” with “increased neck symptoms.” He prescribed continued medications and work restrictions.

By decision dated July 17, 1995, the Office awarded appellant a schedule award for a 6 percent permanent impairment of the right upper extremity, equivalent to 18.72 weeks of compensation, to be paid from April 21 to August 30, 1995.

In July 31 and August 2, 1995 reports, Dr. Polatin noted that appellant was removed from duty as there was no work available within her medical restrictions. He observed tenderness to palpation in the “right paracervical area and over the midline in the lower neck.” Dr. Polatin opined that appellant’s “cervical condition [was] documented as a part of the original injury condition (date of injury, February 13, 1994), which includes the shoulder.” He diagnosed “chronic right shoulder bursitis” and “chronic right cervical syndrome,” and checked a box indicating the conditions were related to the February 13, 1994 injury. He recommended continued restrictions against lifting more than 20 pounds frequently or 40 pounds occasionally, pushing and pulling limited to 4 hours per day, no more than 2 hours reaching above the shoulder, no repetitive forward bending, and no sustained bending of the neck.

In an October 6, 1995 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim for recurrence of disability, in particular, rationalized medical opinion evidence from her attending physician explaining how and why the February 13, 1994 injury would cause her medical condition on and after June 30, 1995.

In an October 17, 1995 letter, appellant asserted that her duties of traying, sorting and rebundling loose mail on the lims belt aggravated her neck and shoulder pain, as this required her to hold her neck in a downward flexed position.

By decision dated November 6, 1995, the Office denied appellant’s claim for recurrence of disability on the grounds that the medical evidence submitted was insufficiently rationalized to support a causal relationship between her condition on and after June 30, 1995 and the February 13, 1994 injury.

Appellant disagreed with this decision and requested reconsideration in a November 30, 1995 letter, asserting that enclosed additional medical evidence supported a causal relationship between the February 13, 1994 injury and her cervical condition beginning in June 1995.

In October 16, 26 and November 14, 1995 reports, Dr. Polatin stated that both the shoulder and neck conditions were related to the February 13, 1994 injury. He explained that “this was a primary shoulder problem with some radiation to the neck which is a common pain pattern,” that appellant’s “cervical discomfort ... emanat[e]d from the shoulder problems,” and that her neck complaints “originate[d] in the shoulder with secondary involvement of the neck.” Dr. Polatin opined that appellant was able to return to working the lims belt with restrictions, with adjustments to her work station to avoid prolonged flexion of the neck

In a November 15, 1995 report, Dr. Johnson explained that “many of the muscles to the should[er] begin in or around the neck” and that the February 13, 1994 incident involved the

right shoulder and neck, with identical causation and aggravation. “[T]he collar muscles which bridge the two areas with insertions along the cervical spine, as well as the shoulder area ... created problems with the shoulder and this is primarily the area that I chose in the diagnosis because it affected how the shoulder functioned.” He noted that it was “common for one area to be a primary cause of pain and dysfunction to lead to a secondary area of dysfunction.” Dr. Johnson elaborated that the “cervical area that [appellant] complained of [as of November 13, 1995] [was] the same area that [appellant] complained of” on initial October 24, 1994 evaluation. “[T]hey are one [and] the same in terms of her initial injury.”⁸

In a November 28, 1995 report, Dr. Polatin stated that the February 13, 1994 injury was “to the neck and right shoulder ... and documented ... as one specific entity.” He opined that appellant had a “pain syndrome affecting her neck and right shoulder, with no distinct separation between these two injured areas.” He explained that in appellant’s case, the neck and shoulder areas involved were “contiguous, share the same muscles, and clearly can present in a compound pain syndrome ... Therefore, the issue of separating the two injuries does not make sense ... I am not quite sure why the focus is on a ‘well-rationalized medical opinion regarding causal relationship’ since this is a nonissue.... [T]he pain syndrome affected the neck and right shoulder, and to attempt to separate the two causes needless documentation.” Dr. Polatin renewed work restrictions, and noted that appellant’s neck pain did “not reflect any residual disability from her previous release” to return to work.

By decision dated December 5, 1995, the Office denied modification on the grounds that the evidence submitted was insufficient. The Office found that Dr. Polatin and Dr. Johnson provided insufficient medical rationale as to why appellant’s neck condition was related to the February 13, 1994 injury.

The Board finds that appellant has not established that she sustained a recurrence of disability on and after June 30, 1995 causally related to an accepted February 13, 1994 right shoulder injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁹

The Board notes that appellant submitted sufficient rationalized medical evidence to establish that the accepted February 13, 1994 right shoulder impingement caused referred right-sided neck pain. Appellant submitted medical reports contemporaneous to the accepted right shoulder injury which mention neck pain. Drs. Prihoda and Sotillo, attending internists,

⁸ Dr. Johnson made very similar statements in a November 13, 1995 report.

⁹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

submitted reports from February 21 to June 1994 diagnosing right shoulder impingement and neck pain. Reports from Dr. Johnson, an attending internist, and Dr. Polatin, an attending orthopedic surgeon, consistently diagnose right-sided neck pain related to the February 13, 1994 injury. Both physicians provided medical rationale explaining that the muscles involved in the accepted right shoulder impingement caused appellant's right-sided neck pain. In October 16, 26 and November 14, 1995 reports, Dr. Polatin stated that pain "radiati[ng] to the neck" from the shoulder was a "common pain pattern. In a November 28, 1995 report, Dr. Polatin stated that the right shoulder and neck problems were "one specific entity," sharing identical or contiguous muscles with no distinct separation. Dr. Johnson provided similar rationale in his November 15, 1995 report.

The Board notes, however, that pain itself is not a compensable diagnosis. Also, no physician of record indicated that appellant was disabled from her light duty job on and after June 30, 1995 due to neck pain. The critical issue in this case is whether appellant was totally disabled for work on and after June 30, 1995 due to residuals of the February 13, 1994 injury. Thus, the mere diagnosis of neck pain is not sufficient to establish appellant's claim for recurrence of disability.

Similarly, although the record establishes that appellant had continuing symptoms of right shoulder pain and impingement related to the accepted February 13, 1994 injury, the evidence does not establish that this condition totally disabled her for work on and after June 30, 1995.

Dr. Polatin submitted reports dated from January 24 to November 28, 1995 diagnosing a chronic musculoskeletal pain syndrome affecting the right shoulder, chronic right cervical syndrome and chronic right shoulder bursitis. He noted work restrictions and prescribed medication. However, he did not state that appellant was disabled from her light duty position on and after June 30, 1995 due to sequelae of the accepted injury. In a November 28, 1995 report, Dr. Polatin stated that the February 13, 1994 injury caused a compound pain syndrome affecting the right shoulder and the neck, but that appellant's neck pain did "not reflect any residual disability "after he released appellant to light duty in April 1995, and that appellant was able to perform her assigned light-duty position.

In his November 15, 1995 report, Dr. Johnson provided a detailed explanation of the muscle groups and insertion points involved in appellant's right shoulder condition with referred neck pain, but did not indicate that appellant was disabled from performing her light-duty position on and after June 30, 1995 due to this condition.

Consequently, appellant has failed to meet her burden of proof, as she submitted insufficient medical evidence indicating that she was totally disabled for work on and after June 30, 1995 due to residuals of the accepted February 13, 1994 injury.

The decisions of the Office of Workers' Compensation Programs dated December 5 and November 6, 1995 are hereby affirmed.

Dated, Washington, D.C.
July 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member