

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS R. SCHWARTZ and U.S. POSTAL SERVICE,
POST OFFICE, Langhorne, PA

*Docket No. 01-2102; Submitted on the Record;
Issued May 23, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issues are: (1) whether appellant's right shoulder condition is causally related to her accepted right medial epicondylitis as a consequential injury; and (2) whether she has established that she sustained a right shoulder condition in the performance of duty.

On April 22, 1999 appellant, then a 42-year-old distribution clerk, filed an occupational disease claim alleging that her epicondylitis of the right elbow was due to her sorting mail and lifting heavy parcels. The Office of Workers' Compensation Programs accepted the claim for right medial epicondylitis and paid appropriate compensation. Appellant returned to light-duty work on April 20, 1999, stopped work on May 10, 1999 and again returned to light-duty work June 28, 1999.

In a treatment note dated August 26, 1999, Dr. Robert E. Mannherz, an attending Board-certified orthopedic surgeon, diagnosed right shoulder rotator cuff tendinitis secondary to overuse from her right elbow condition.

On September 1 and 27, 1999 appellant filed a recurrence claim alleging that on July 23, 1999 her right shoulder condition was due to her accepted March 1, 1999 injury. She alleged that her right shoulder was due to the tendinitis and the constant movement and repetitive action using her right arm.

By decision dated October 6, 1999, the Office denied appellant's recurrence claim.

Both appellant and her counsel requested an oral hearing and submitted additional medical evidence.

In an October 11, 1999 report, Dr. Mannherz diagnosed rotator cuff tendinitis due to her employment. In support of this conclusion, he noted that she had been performing sorting in order to limit the use of her right elbow. Dr. Mannherz then concluded "she developed rotator cuff tendinitis in compensating for her right elbow condition."

By decision dated February 14, 2000, the hearing representative vacated the Office decision and remanded for further development of the case. The hearing representative instructed the Office to refer appellant for a second opinion to determine not only whether appellant had sustained a recurrence of disability due to her accepted employment injury but also whether she sustained a consequential injury to her right shoulder due to her accepted employment injury.

Appellant, through her attorney, submitted additional medical evidence. In a report dated January 24, 2000, Dr. Mannherz concluded:

“[Appellant] as a result of work-related activities, these being repetitive use of the right arm in the course of working as a postal worker, that she initially developed a condition of medial epicondylitis of the right elbow. In the course of treatment for this condition and in the process of favoring the right elbow, she developed an additional condition of rotator cuff tendinitis of the right shoulder.... These all being overused type conditions, typically noted individuals who perform repetitive activities of the upper extremity. Her present inability to work in my opinion bears a direct causal relationship to these conditions....”

The Office referred appellant to Dr. Richard J. Mandel, a second opinion Board-certified orthopedic surgeon. By his report dated March 10, 2000, he diagnosed ongoing right medial epicondylitis and right shoulder impingement syndrome. Dr. Mandel concluded that appellant’s right shoulder problem was unrelated to her employment duties.

In a supplemental report dated April 29, 2000, Dr. Mandel concluded that appellant’s right shoulder impingement syndrome was not work related. In support of this conclusion, he indicated that appellant had a Type II acromion and that individuals with this “have a high incident of impingement syndrome. Independent of any physical activities that they perform.”

By decision dated May 4, 2000, the Office denied appellant’s claim. In support of the denial, the Office found Dr. Mandel’s opinion to represent the weight of the evidence that appellant’s right shoulder condition was unrelated to her employment or her March 1, 1999 employment injury.

By letter dated May 8, 2000, appellant’s counsel requested an oral hearing, which was held on October 23, 2000. Additional medical evidence was submitted as follows.

In a May 17, 2000 treatment note, Dr. Mannherz reviewed Dr. Mandel’s report and concluded that appellant’s medial epicondylitis had resolved. The physician stated that contrary to Dr. Mandel’s opinion that “[t]he lack of any [magnetic resonance imaging] (MRI) findings does not exclude the diagnosis” regarding her medial epicondylitis and that appellant’s “clinical findings during the course of treatment have been consistent with this diagnosis.” He further concluded that her condition had been aggravated by her “repetitive use duties.” Regarding her shoulder complaints, he opined that “the evidence of a Type II acromion does not cause rotator cuff tendinitis unless there is an instigating factor” which he attributed to her “repetitive over use activities with the upper extremity consistent with her work duties.” He stated Dr. Mandel’s conclusion that the condition was preexisting contrary to the medical literature. In concluding,

he opined that appellant remained “symptomatic in relationship to work activities causing these conditions to include medial and lateral epicondylitis of her right elbow and rotator cuff tear tendinitis and impingement of her right shoulder.”

Dr. Mannherz, in a May 25, 2000 report, noted that he had been treating appellant for “work-related conditions involving her right shoulder and right elbow” which occurred due to her employment duties. He indicated that appellant underwent surgery and rehabilitation, but that due to continued symptoms “she has been unable to work during the course of her treatment in that she is unable to use the right arm for any activities.”

In a report dated July 10, 2000, Dr. Mannherz reiterated his disagreement with Dr. Mandel and concluded that appellant’s Type II acromion was aggravated by her overhead work activities, which caused her rotator cuff tendinitis.

By decision dated January 16, 2001 and finalized on January 22, 2001, the hearing representative affirmed the Office’s decision of May 4, 2000.

The Board finds that the case is not in posture for a decision due to a conflict in the medical evidence on the issue of whether appellant’s right shoulder condition is a consequential injury of her accepted right medial epicondylitis or a new injury sustained in the performance of her regular employment duties.

Section 8123(a) of the Federal Employees’ Compensation Act provides that “[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”¹

In the instant case, the Board finds a conflict in the medical evidence between appellant’s treating physician, Dr. Mannherz and Dr. Mandel, the second opinion physician. These physicians are in disagreement as to whether appellant’s right shoulder rotator cuff tendinitis is a consequential injury of her accepted right medial epicondylitis or a new injury due to her employment duties. Dr. Mandel concluded that appellant had a preexisting condition of right shoulder impingement syndrome unrelated to her employment duties. He stated that she had a Type II acromion and that individuals with this “have a high incident of impingement syndrome. Independent of any physical activities they perform.” However, Dr. Mannherz noted that appellant’s right shoulder cuff tendinitis was due to both her tendinitis and the constant movement and repetitive action using her right arm. He opined that her job for the employing establishment “contributed to if not exacerbated the impingement syndrome.” Because there is a conflict between appellant’s treating physicians and the second opinion physician regarding the cause of appellant’s continuing disability, a conflict in medical opinions existed.

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The

¹ 5 U.S.C. § 8123(a); *see also* *Charles S. Hamilton*, 52 ECAB ____ (Docket No. 99-1792, issued October 13, 2000); *Leonard M. Burger*, 51 ECAB ____ (Docket No. 98-1532, issued March 15, 2000); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

impartial medical specialist should be requested to make a full description of findings from examination and tests and provide his diagnosis of appellant's condition. He should indicate whether appellant's right shoulder rotator cuff tendinitis is related to her employment or is a consequence of the accepted employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision on whether appellant has a condition of the right shoulder which is causally or consequentially related to factors of her employment.

The decision of the Office of Workers' Compensation Programs dated January 16, 2001 and finalized on January 22, 2001 is set aside and the case remanded for further development consistent with the above opinion.²

Dated, Washington, DC
May 23, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

² The Board notes that subsequent to the hearing representative's decision, appellant submitted new evidence. However, the Board may not consider new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).