U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS D. DUGAN and U.S. POSTAL SERVICE,
POST OFFICE, New Haven, Conn.

Docket No. 96-527; Submitted on the Record;
Issued April 8, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after April 29, 1994 due to her August 13, 1987 employment injury.

On August 14, 1987 appellant, then a 48-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her right shoulder on August 13, 1987 when she was lifting and weighing bulk packages.[1] The Office of Workers' Compensation Programs accepted the claim for a cervical strain on March 29, 1988.[2] Appellant returned to full duty on August 8, 1988.

On June 1, 1994 appellant filed a claim for recurrence of disability.

By decision dated August 9, 1994, the Office rejected appellant's recurrence claim indicating that the evidence submitted did not establish a causal relationship between the claimed condition and the accepted employment injury. The Office noted that appellant's physician was treating her for cervical syndrome, radicular and that these conditions had not been accepted. The Office stated that appellant's claim had been accepted for cervical strain.

By letter dated September 1, 1994, appellant appealed the denial of recurrence claim and submitted a report from Dr. Naiman, in support of her request.

In a report dated August 22, 1994, Dr. Naiman stated:

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[1] The record contains duplicate numbers on the evidence. The portion of the record numbered 1 through 4 will be designated "A" while the record numbered 1 through 685 will be designated "R."

[2] In a letter dated December 22, 1987, Dr. Peter T. Naiman, a treating Board-certified orthopedic surgeon, noted that diagnostically cervical strain is the same as cervical syndrome.

> "[Appellant] continues to respond slowly to a conservative program of management, experiencing pain in the cervical spine with left arm radiation and paresthesias. Neurological exam[ination] shows decreased sensation to pin prick in the left C7 distribution. The patient continues to respond slowly on a conservative program of management. Her present symptomatology with the cervical radicular syndrome is causally related to her accident of [August 13, 1987] and aggravated by repetitive use at work at the [employing establishment]."

By decision dated December 2, 1994, the Office denied appellant's request for reconsideration of her claim for a recurrence of disability.

In a letter dated June 2, 1995, appellant, through her counsel, requested reconsideration of the Office's decision denying her recurrence claim. In support of her request, appellant submitted reports from Drs. Naiman and Richard Diana, an orthopedic surgeon.

In a report dated January 24, 1995, Dr. Naiman stated "I prescribed physical therapy for her cervical spine pain. She will be unable to work at this time. She has been out of work since May 2, 1994."

In a report dated March 23, 1995, Dr. Diana noted that appellant had not fully recovered from her initial injury and that she "reexacerbated the pain from her neck" while "doing a lot of overhead mail finding." In his examination of appellant, Dr. Diana noted:

> "[Appellant] has a notable decreased range of motion in the cervical spine. She has 30 [percent] reduction in flexion and extension, 50 [percent] reduction in left lateral side bend with 20 [percent] reduction in right lateral side bend."

Dr. Diana interpreted an x-ray reading as showing "degeneration at several locations of the cervical spine." Dr. Diana diagnosed "status post August 13, 1987 cervical spine injury with radiculopathy" and opined that appellant had "never fully recovered" from her initial employment injury. Dr. Diana then opined that appellant's "current condition is causally related to her August 13, 1987" employment injury.

By decision dated August 30, 1995, the Office denied modification of its August 9, 1994 decision on the grounds that the evidence was insufficient to warrant modification.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim.[4] The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for 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

[3] 5 U.S.C. §§ 8101-8193.

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

rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[5] 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.[6] The Office has an obligation to see that justice is done.[7]

In this case, appellant submitted reports from Drs. Diana and Naiman which stated that appellant's cervical radicular syndrome was related to her August 13, 1987 employment injury. Both Drs. Diana and Naiman also opined that appellant's disability was aggravated by her work at the employing establishment. Although the reports of Drs. Diana and Naiman are insufficient to completely discharge appellant's burden of establishing by the weight of the reliable, substantial and probative medical evidence that the 1994 alleged recurrence was causally related to her August 13, 1987 accepted employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.[8]

Therefore, upon remand the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and rationalized medical opinion on whether appellant's 1994 claimed recurrence is causally related or aggravated by factors of her employment. After such further development as it may deem necessary, the Office shall issue a *de novo* decision.

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

[6] *Udella Billups*, 40 ECAB 260, 269 (1989); *Dorothy Sidwell*, 36 ECAB 699 (1985).

[7] *John J. Carlone*, 41 ECAB 354, 360 (1989).

[8] *Cheryl A. Monnell*, 40 ECAB 545, 551 (1989); *see also Horace Langhorne*, 29 ECAB 820, 821 (1978) (when the attending physician provided no rationale for his conclusion that appellant's hearing loss was causally related to his occupational noise exposure and the Office medical adviser provided no rationale for his conclusion that appellant's hearing loss was not so related, the medical evidence was insufficient to establish appellant's claim but was sufficient in support thereof to require further development of the record by the Office). The Board notes that in this case the record contains no medical opinion evidence contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

The decisions of the Office of Workers' Compensation Programs dated August 30, 1995 and December 2, 1994 are set aside and the case remanded for further development consistent with this opinion of the Board.

Dated, Washington, D.C.
April 8, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member