

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY R. PRICHARD and DEPARTMENT OF VETERANS AFFAIRS,
JOHN J. PERSHING MEDICAL CENTER, Poplar Bluff, Mo.

*Docket No. 96-1058; Submitted on the Record;
Issued August 18, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that her current right shoulder and cervical spine conditions and resultant disability are causally related to her accepted employment injuries.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that her current right shoulder and cervical spine conditions and resultant disability are causally related to her accepted employment injuries.

In this case, appellant has filed three claims. On July 19, 1990 she fell in the performance of duty and alleged injury to her left wrist, right shoulder and back. The Office of Workers' Compensation Programs initially accepted her claim for lower back strain and accepted the additional condition of tear of the triangular fibrocartilage left wrist on December 6, 1994. Appellant filed a second claim on August 21, 1990 alleging that she injured her low back in the performance of duty. The Office accepted this claim for lumbar strain. On November 21, 1990 appellant fell in the performance of duty injuring her back. The Office accepted her claim for lower back strain. By decision dated December 5, 1994, the Office denied appellant's claim for additional injuries to her right shoulder and cervical spine as a result of the July 19, 1990 employment injury. Appellant requested a review of the written record on December 10, 1994 and by decision dated July 25, 1995, the hearing representative set aside the Office's December 5, 1994 decision and remanded the case for further development of the medical evidence. By decision dated January 26, 1996, the Office found that appellant had sustained a right shoulder strain which resolved six months following the July 19, 1990 employment injury and that appellant's preexisting cervical degenerative disease was temporarily aggravated by her work injuries and that such aggravation ceased no later than six months following the July 19, 1990 employment injury.

An employee seeking benefits under the Federal Employee's Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

Appellant's attending physician, Dr. Matthew J. Riffle, a Board-certified internist, submitted reports supporting that appellant sustained a rotator cuff tear and herniated cervical disc due to her July 19, 1990 employment injury.

The Office referred appellant for a second opinion evaluation with Dr. Donald M. McPhaul, a physician Board-certified in physical medicine and rehabilitation. In his report dated August 31, 1995, Dr. McPhaul reviewed appellant's history of injury, as well as medical reports and performed a physical examination. He diagnosed cervical spondylosis and chronic tendinitis or rotator cuff tear. Dr. McPhaul opined that the 1990 work injury caused a soft tissue, traction or twisting type shoulder injury. He also opined that appellant's employment injuries aggravated her preexisting degenerative process of the cervical spine. In response to an Office request for clarification, on October 30, 1995 Dr. McPhaul stated that appellant's shoulder injury resolved within one year. He further stated that there were no objective findings supporting that appellant sustained a permanent aggravation of her cervical degenerative joint disease.

Section 8123(a) of the Act,³ provides, "If there is 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." In this case, the Office properly found that there was a conflict of medical opinion evidence between the Office referral physician, Dr. McPhaul, who opined that appellant did not sustain a permanent aggravation of her cervical condition and that she did not sustain a rotator cuff tear causally related to her accepted employment injury; and appellant's attending physician, Dr. Riffle, who opined that appellant had sustained a rotator cuff tear and herniated cervical disc as a result of this injury. The Office referred appellant, a statement of accepted facts and list of specific questions to Dr. Allen Adams, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated December 12, 1995, Dr. Adams noted appellant's history of injury and medical history and performed a physical examination. He found evidence of symptom magnification and inappropriate attitude with exaggerated response to minimal pressure in the neck, lower back and shoulder. Dr. Adams found that there was no causal relationship on an objective standpoint between appellant's current symptoms and her July 1990 employment injury. He stated that there was no acceleration or aggravation of appellant's preexisting cervical arthrosis. Dr. Adams stated, "I believe that the subjective aggravation was a temporary type of

¹ 5 U.S.C. §§ 8101-1893.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

³ 5 U.S.C. §§ 8101-8193, 8123(a).

aggravation and would have resolved and most likely did resolve within a maximum degree of medical improvement six months after the injury in the beginning of 1991.” He found that appellant had a slight degree of stiffness in her shoulder consistent with objective testing and not consistent with any shoulder pathology which may have resulted from the injury of July 19, 1990. Dr. Adams based this finding on appellant’s previous normal shoulder test results. He concluded that appellant had no objective findings causally related to her accepted employment injury.

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

In this case, Dr. Adams’ report is entitled to the weight of the medical evidence as he provided an accurate history of injury, reviewed the medical tests and performed a physical examination prior to reaching the conclusion that appellant’s current conditions were not causally related to her accepted employment injury. Dr. Adams opined that the aggravation of appellant’s preexisting cervical condition would have been temporarily based on his review of appellant’s objective medical tests. Dr. Adams also found that prior studies indicated that appellant did not sustain a permanent shoulder injury due to her July 19, 1990 employment injury.

The Board finds that the Office properly relied on Dr. Adams’ report in concluding that appellant sustained a temporary aggravation of her cervical condition and no permanent shoulder injury.⁵

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁵ The Board notes that following the Office’s January 26, 1996 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.3(d)(2).

The decision of the Office of Workers' Compensation Programs dated January 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 18, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member