

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRACE M. SHIN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, Ohio

*Docket No. 96-2468; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish a recurrence of disability due to her employment-related conditions.

On March 11, 1991 appellant, then a 44-year-old letter carrier, filed a claim for occupational disease (Form CA-2) alleging that she first became aware in January 1991 that her right elbow tendinitis was caused or aggravated by factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim on August 27, 1991.

Appellant then filed a claim for recurrence of disability (Form CA-2a) alleging that she was unable to work on August 21, 1993 based on a March 1, 1991 employment-related injury.

In a letter decision dated December 8, 1993, the Office notified appellant that her claims had been "doubled together" under a master claim number of A9-353280, for the accepted injuries of tendinitis right arm and cervical strain occurring on January 1 and March 1, 1991. The Office also stated that it had accepted her August 1, 1993 recurrence of disability "as part of the original claims...." The Office further notified appellant that her claim was open for medical care and that it had authorized a somatosensory test to be performed by her treating physician.

In a February 2, 1994 certificate for light duty, the employing establishment's physician indicated that appellant, based on her diagnosed conditions of chronic neck and shoulder pain, was restricted indefinitely from lifting more than 10 pounds and from any lifting above the shoulders.

In medical reports dated February 4, 1994, Dr. Kyu H. Kim, appellant's treating physician and a general practitioner, modified the employing establishment's work restrictions, stating that appellant had right arm tendinitis, left shoulder pain and left hand numbness, and was restricted to lifting not more than 10 pounds, to pushing/pulling no more than 5 to 10 pounds, and was restricted from using a ladder.

In a medical report dated February 24, 1994, Dr. Edward Gregory Fisher, a Board-certified orthopedic surgeon, to whom the employing establishment referred appellant, stated that upon examination appellant had full range of motion of her neck, good radial pulses bilaterally including shoulder raising of 180 degrees, no evidence of carpal tunnel syndrome in either wrist, negative Tinel's sign and Phalen's test over the left wrist although he noted tenderness and pain over the right elbow upon palpation. He also noted that appellant was symptomatic with pain in the right wrist and elbow. Dr. Fisher stated that, based on her history and medical report, appellant should be seen by a neurosurgeon who specialized in thoracic outlet syndrome to determine if such condition existed in her left side. He noted that due to her left-side symptomatology and right elbow lateral epicondylitis she should not return to her position as letter carrier.

In a medical report dated March 21, 1995, Dr. Kim stated that his diagnoses of right arm tendinitis and left shoulder and arm pain were based on appellant's subjective complaints, noting that "no actual specific findings other than [appellant's] subjective symptoms were found." He noted that appellant was able to work as noted in the March 17, 1995 work evaluation report.¹

On August 18, 1995 appellant filed a claim for recurrence of disability (Form CA-2a) alleging that since her original January 1991 injury she remained symptomatic with pain in her left shoulder. The employing establishment noted in its section of the claim form that appellant had applied for 56 hours of sick leave from August 18 through August 27, 1995. The employing establishment also stated that appellant had been working within her restrictions since her original injury in January 1991, noting that her assigned work was essentially answering telephones.²

In support of her claim appellant submitted a medical report dated August 17, 1995 from Dr. Kim who stated that appellant sustained pain in the left elbow, arm, shoulder and neck and was totally disabled from work from August 18, 1995 through "possibly August 28, 1995." He noted that he would evaluate appellant on August 25, 1995 to determine when she could return to work.

By letter dated September 6, 1995, the Office advised appellant that she needed to submit additional information regarding her claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between her January 1991 employment injury and her present condition. The Office stated that Dr. Kim's August 17, 1995 medical report was not sufficient to establish a causal relationship between her August 18, 1995 claim and the employment-related injuries. The Office noted that appellant's accepted injuries arose as a result of her letter carrier responsibilities, but that since she had not worked in that capacity for over three years, she would need to establish through medical evidence why she required continuous medical care for those injuries. The Office

¹ Dr. Kim's March 17, 1995 medical report restricted appellant to lifting not more than five pounds, with additional restrictions against climbing, twisting, pulling/pushing, reaching above the shoulder. Appellant was released to return to work effective March 20, 1995.

² In a March 11, 1991 medical report, Dr. Kim restricted appellant from lifting no more than five pounds and noted that she "should refrain from pulling on the [right] elbow for at least two months."

indicated that the record would remain open until October 6, 1995 at which time it would prepare a decision based on the information in the record.

Appellant failed to submit additional evidence as required by the Office and, on November 14, 1995, the Office issued a decision denying appellant's claim for recurrence of disability. The Office found that the medical evidence of record failed to support that appellant's disability on/or after August 18, 1995 was causally related to her accepted employment injuries.

In a letter received on February 14, 1996, appellant filed a request for reconsideration of the Office's November 14, 1995 decision denying benefits. In support of her request, appellant submitted a September 15, 1995 medical report from Dr. Alan R. Kightlinger and a December 12, 1995 medical report from Dr. Kim. Dr. Kightlinger stated that he had examined appellant on September 13, 1995, noted her injury and treatment history, and determined that she had cervical myositis, rotator cuff tendinitis and arthritis, left shoulder; and lateral epicondylitis and minimal degenerative change, right elbow. Dr. Kim stated that all of appellant's office visits were related to her original injury.

On December 14, 1995 in a decision, the Office denied appellant's request for reconsideration.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or about August 18, 1995 causally related to her January 1 and March 1, 1991 employment injuries.

When an employee who is disabled from the job she held when injured returns to a light-duty position on account of employment-related residuals, the employee has the burden to establish by the weight of the substantial, reliable and probative evidence a recurrence of total disability and show that 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 requirement.³

In this case, appellant filed a claim for recurrence of disability on August 18, 1995. In support of her claim appellant had previously submitted multiple medical reports from February through August 1995, and additional reports subsequent to the filing of the claim. However, none of those reports include a rationalized medical opinion establishing a causal relationship between appellant's claimed condition and her employment-related injuries. For example, in his February 4, 1994 medical report, Dr. Kim diagnosed right arm tendinitis and left shoulder pain but did not submit a rationalized medical opinion establishing a causal relationship between appellant's conditions and her original injuries.⁴ Indeed, in his March 21, 1995 report, Dr. Kim stated that he was unable to establish an objective finding to support appellant's subjective symptoms. In his February 24, 1994 report, Dr. Fisher did not indicate that appellant's continuing symptomatology on the left side and her continued lateral epicondylitis on the right

³ *Gus N. Rhodes*, 46 ECAB 518 (1995); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ Appellant's employment-related injuries did not include any left-sided condition such as left shoulder pain as reported by Dr. Kim.

elbow were related to factors of her federal employment. Dr. Kightlinger's medical report, although noting multiple diagnoses, failed to establish a causal relationship by means of a rationalized medical opinion between appellant's claim of a recurrence of disability in August 1995 and her employment-related injuries. Likewise, Dr. Kim's December 12, 1995 medical report merely stated that all of appellant's medical examinations and office visits were related to her original injury. Neither report attempted to establish a causal relationship between the disability condition and appellant's employment-related injuries. In a recurrence of disability claim, appellant must provide a rationalized medical opinion to establish a causal relationship between the claimed disability and the employment-related injury.⁵ Appellant failed to provide such evidence and therefore the Office properly denied her claim. In the absence of probative, rational medical evidence establishing a causal relationship between appellant's employment-related injuries and her claim of recurrence of disability on August 18, 1995 the Board finds that the Office properly denied her claim.

The decisions of the Office of Workers' Compensation Programs dated May 3, 1996 and November 14, 1995 are affirmed.

Dated, Washington, D.C.
December 9, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Supra* note 2.