

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PRISCILLA A. STEVENS and U.S. POSTAL SERVICE, POST OFFICE,
Mount Vernon, Maine

*Docket No. 95-3082; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

This is the second appeal in this case.¹ In its decision dated March 26, 1992, the Board found that the case was not in posture for decision. The Board found that the medical notes and reports of appellant's treating physicians, Dr. Susan Kring, a Board-certified family practitioner, and Dr. Margaret A. Webb, a family practitioner, diagnosed right upper extremity overuse syndrome and bicipital tendinitis based upon a history the employment incident as provided by appellant. The Board found that while the medical evidence of record provided by appellant's treating physicians, Drs. Kring and Webb, did not provide sufficient rationale explaining the causal relationship between appellant's condition and the employment incident, their reports were sufficient to require further development of the medical evidence. The facts of this case are more fully set forth in the prior decision of the Board and are incorporated herein by reference.

The Office, in a May 15, 1992 letter, advised Dr. Webb to submit additional medical evidence. The Office requested that Dr. Webb provide whether she had treated appellant since late 1989. The Office also requested that Dr. Webb submit a rationalized medical opinion explaining the persistence of appellant's symptoms after being removed from the cause of her condition, a current diagnosis and prognosis of appellant's condition, and a reasoned medical opinion regarding the causal relationship between appellant's condition and federal employment.

By letter dated June 18, 1992, the Office advised the Kennebec Valley Medical Center that it had been informed that Dr. Webb no longer worked there and that she did not leave a forwarding address. The Office requested that the medical center answer the specific accompanying questions that it had sent to Dr. Webb. In response, the Office received the June 25, 1992 medical report of Dr. Alexander M. McPhedran, a Board-certified family

¹ See Docket No. 91-1101 (issued March 26, 1992).

practitioner. Dr. McPhedran indicated that he had reviewed appellant's medical records and stated that since he had never treated appellant, he could not respond to the question whether he had treated appellant since 1989. Dr. McPhedran further stated that he was unable to provide whether appellant was still experiencing the same symptoms, and whether appellant was hospitalized in 1992 for a cardiac condition receiving treatment from Dr. H. Winston Kipp, a Board-certified orthopedic surgeon, for right shoulder pain and treatment from the medical center's physical therapy department during that time. Dr. McPhedran also stated that he did not have a diagnosis or prognosis and that he was unable to complete a work restriction evaluation form.

By letter dated August 28, 1992, the Office advised appellant that it was unable to contact Dr. Webb and requested that appellant submit the names and addresses of any physicians and approximate dates that she received treatment for her right shoulder and arm pain. By letter dated September 16, 1992, the Office advised appellant's counsel about its unsuccessful attempts to contact Dr. Webb and its attempt to have another physician who worked with Dr. Webb answer questions regarding appellant's claim. The Office noted that it had requested that appellant submit the name and addresses of any physicians who treated her right shoulder and arm pain, but that appellant had not responded. The Office requested that appellant's counsel submit medical evidence regarding the treatment that appellant received from Dr. Webb. The Office stated that upon receipt of such evidence, it would schedule a second opinion examination with an appropriate specialist.

By decision dated October 22, 1992, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged.

In a November 17, 1992 letter, appellant advised the Office that all of her physicians, with the exception of Dr. Steven Johnson, a Board-certified internist, were located in Augusta, Maine.

In a November 3, 1994 letter, appellant, through her counsel, requested reconsideration of the Office's decision. Appellant's request was accompanied by her affidavit, and correspondence between her counsel and the Office. Appellant also submitted Dr. Johnson's February 2, 1990 medical report revealing that on examination, appellant's entire right arm ached and was weak. Dr. Johnson stated that he was not sure of appellant's diagnosis and that he was not certain that appellant's condition was related to her fall at work. Dr. Johnson recommended that appellant not work until her condition was diagnosed and concluded "that work could possibly aggravate [appellant's] condition."

By letter dated November 28, 1994, appellant submitted June 1992 hospital admission and discharge summary reports from Dr. John A. Sutherland, a Board-certified internist, regarding the treatment of her chest and right shoulder pain. Dr. Sutherland noted a history of appellant's work incident, family and medical treatment. Upon discharge, Dr. Sutherland opined that appellant had unstable angina and right shoulder pain. Appellant also submitted a June 3, 1992 chest x-ray report from Dr. J.R. Metz, a Board-certified radiologist, revealing that her heart, lungs and mediastinum were unremarkable, and that cardiac monitor leads were seen over the chest wall. Additionally, appellant submitted Dr. Metz' June 4, 1992 x-ray report regarding her right shoulder which indicated mild degenerative lipping at the glenoid.

By decision dated June 23, 1995, the Office denied appellant's request for reconsideration based on a merit review of the claim.

The Board finds that this case is not in posture for decision and be remanded for further development of the medical evidence.

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter. In a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."²

In this case, the Board remanded the case to the Office for further development of the medical evidence based on the medical opinions of Dr. Webb, a family practitioner and appellant's treating physician, and Dr. Kring, a Board-certified family practitioner and appellant's treating physician. On remand, the Office was unsuccessful in its attempt to obtain additional medical evidence from Dr. Webb. The Office was also unsuccessful in obtaining medical evidence from Dr. McPhedran, a Board-certified family practitioner, who worked at the Kennebec Valley Medical Center where Dr. Webb formerly worked. Dr. McPhedran submitted a June 25, 1992 medical report indicating that he was unable to answer the Office's specific questions concerning appellant's condition because he had never examined appellant. The February 2, 1990 medical report of Dr. Johnson, a Board-certified internist, revealed that he was uncertain about appellant's diagnosis and whether appellant's right arm condition was related to the April 8, 1989 employment incident. Dr. Johnson concluded that appellant's work "could possibly" aggravate appellant's condition. Dr. Johnson's report is insufficient to discharge appellant's burden of proof by the weight of reliable, substantial and probative evidence that her right arm and shoulder conditions were causally related to the April 8, 1989 employment incident because it is speculative and equivocal. Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim. In view of the foregoing, the Board finds that "the Office had an obligation to go further than it did in developing the medical evidence."³

On remand, the Office should prepare a statement of accepted facts, and refer appellant, together with the statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's right shoulder and arm conditions were causally related to factors of her

² *Walter A. Fundinger*, 37 ECAB 200 (1985); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956); *Michael Gallo*, 29 ECAB 159, 161 (1978).

³ *Walter A. Fundinger*, *supra* note 2; *Michael Gallo*, *supra* note 2 at 161.

federal employment. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.⁴

The June 23, 1995 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
February 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁴ By decision dated November 1, 1990, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In a December 7, 1990 letter, which was postmarked December 6, 1990, appellant requested an oral hearing before an Office representative. By decision dated February 15, 1991, the Office denied appellant's request as untimely. The Board finds that the Office properly denied appellant's request because it was not filed within 30 days of the Office's November 1, 1990 decision. Therefore, appellant was not entitled to an oral hearing before an Office representative.