

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCESCO MANSELLI and U.S. POSTAL SERVICE,
POST OFFICE, Bronx, N.Y.

*Docket No. 97-817; Submitted on the Record;
Issued April 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that his right shoulder condition was caused by factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that his right shoulder condition was caused by factors of his federal employment.

On May 5, 1988 appellant, a letter carrier, filed a notice of traumatic injury (Form CA-1) alleging that while he was delivering the mail he tripped and fell, injuring his head, upper and lower back, right shoulder, right hand, right knee and right ankle. After a period of evidentiary development, the Office of Workers' Compensation Programs accepted appellant's claim for cervical strain, right hand contusion, skull contusion and lumbar sprain, and paid appropriate compensation benefits. Appellant returned to limited light duty on August 8, 1988 and on January 17, 1988 he was allowed to change his craft to a clerical one.

On June 28, 1994 appellant filed a claim for recurrence of disability stating that since his return to work the pain in his right shoulder has become increasingly worse. Appellant stopped work on May 11, 1994.

In response to the Office's request for additional factual and medical information, appellant submitted medical treatment notes and narrative reports from his treating physicians, Dr. Jeffrey T. Kessler, a Board-certified internist and Board-certified neurologist, Dr. Eugene S. Krauss, a Board-certified orthopedic surgeon, Dr. Michael Errico, a Board-certified orthopedic surgeon, Dr. Vincent J. Leone, an orthopedic surgeon, and Dr. Mark Synder, a chiropractor, regarding appellant's right shoulder condition covering the period May 26, 1994 through May 2, 1995. In a report dated July 21, 1994, Dr. Kessler noted that appellant returned for the first time in nearly six years, complaining of shoulder and low back pain, and referred appellant to Dr. Krauss for an orthopedic evaluation. In a report dated August 1, 1994, Dr. Krauss noted

appellant's complaints of continued shoulder pain since the May 1988 accident, and following his physical examination and testing, diagnosed impingement syndrome of the right shoulder, post-traumatic degenerative joint disease of the right acromioclavicular joint and a possible rotator cuff tear. Following magnetic resonance imaging, Dr. Krauss confirmed that appellant did have a tear of the right rotator cuff and recommended surgery. In an attending physician's report dated September 27, 1994, Dr. Krauss indicated by checkmark that appellant's condition was causally related to his employment.

On January 10, 1995 the Office referred appellant's file to an Office medical adviser for an opinion as to the nature and cause of appellant's condition. In his report dated January 12, 1995, the Office medical adviser noted that appellant's claim had never been accepted for a shoulder condition, stated that the medical record does not support a causal relationship between appellant's right shoulder condition and his 1988 employment injury, and recommended that the Office decline to authorize the requested surgery.

By letter dated May 26, 1995, the Office informed appellant that a conflict existed in the medical opinion evidence between Dr. Krauss, his treating physician, and the Office medical adviser. Therefore, the Office referred appellant, together with the medical record, a statement of accepted facts, and the questions to be resolved, to Dr. Julius Schneiderman, a Board-certified orthopedic surgeon, for an impartial medical examination. The Office received Dr. Schneiderman's medical report dated June 6, 1995 which provided that appellant had fully recovered from any and all injuries sustained in the 1988 employment accident and that appellant's right shoulder condition, in particular, was not causally related to factors of his federal employment.

By decision dated July 17, 1995, the Office found the evidence of record insufficient to establish that appellant's right shoulder condition and related disability are causally related to the 1988 employment injury. In an accompanying memorandum, the Office found that the weight of the medical opinion evidence rested with the June 6, 1995 medical report of Dr. Schneiderman, the impartial medical examiner resolving the conflict of medical opinion and thus, concluded that appellant's right shoulder condition was not caused by his work-related accident.

By letter dated July 15, 1996, appellant, through his counsel, requested reconsideration of the Office's decision. In support of his request, appellant submitted narrative reports dated June 27, 1995 and July 16, 1996 from Dr. Krauss, as well as several medical reports already contained in the record.

By decision dated September 24, 1996, the Office determined that the evidence submitted in support of the request for reconsideration was insufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim

¹ 5 U.S.C. §§ 8101-8193.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

There is no dispute that appellant is a federal employee and that he timely filed his claim for compensation benefits. However, the medical evidence is insufficient to establish that appellant's right shoulder condition is causally related to his accepted 1988 accident, because it does not contain a rationalized medical opinion explaining how appellant's shoulder condition was caused or aggravated by his employment duties. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

The Office, in the present case, found that the weight of the medical opinion evidence of record rested with the June 6, 1995 report of Dr. Schneiderman, the impartial medical specialist resolving the conflict of medical opinion on the issue whether appellant's right shoulder condition was caused by factors of his federal employment.

It is well established that where opposing medical reports of virtually equal weight and rationale exist and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist will be given special weight if sufficiently well rationalized and based upon a proper factual background.⁵ The Office properly referred appellant to Dr. Schneiderman, an impartial medical specialist, in light of the conflict between Dr. Krauss' opinion that appellant's right shoulder condition was a result of his 1988 work accident and the Office medical adviser's opinion that appellant's shoulder condition was not causally related to the employment incident.

The Board has stated that the weight of medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation.⁶

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Id.*

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Howard Y. Miyashiro*, 43 ECAB 1101 (1992); *Louis G. Psyras*, 39 ECAB 264 (1987); *Sarah E. Stanbrough*, 34 ECAB 786 (1983).

⁶ *Melvina Jackson*, 38 ECAB 43 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959).

The June 6, 1995 medical report of Dr. Schneiderman, a Board-certified orthopedic surgeon, to whom the Office referred appellant, constitutes the most reliable and probative evidence on the question of whether appellant's right shoulder condition was caused by his 1988 employment accident. Dr. Schneiderman reviewed all of the prior medical evidence of record and the statement of accepted facts, reported findings of an extensive examination of appellant, and most importantly, provided convincing rationale that appellant's right shoulder condition was not caused by factors of his federal employment. Specifically, Dr. Schneiderman stated that, although at the time of his examination, appellant complained of pain in his right shoulder for six to seven years which limited his passive and active motions, the medical record does not contain documentation of continuous pain since the 1988 accident. In addition, examination of the shoulder revealed that the right shoulder was slightly better developed than the left when viewed from above and showed no signs of atrophy. Dr. Schneiderman explained that with continued complaint of pain in the right shoulder, limited motion and limited use, there should be evidence of atrophy. Therefore, Dr. Schneiderman concluded that, although magnetic resonance imaging did show the presence of chronic changes in the supraspinatus tendons and evidence of an acute injury to the supraspinous tendon at its insertion at the humeral head, likely representing a tear at this site, this injury was a recent one, and not causally related to or precipitated by appellant's May 1988 employment accident.

While appellant did submit additional reports from Dr. Krauss in support of his request for reconsideration, these reports were insufficient to overcome the weight of Dr. Schneiderman's opinion. In his June 27, 1995 and July 16, 1996 reports, Dr. Krauss simply reiterated his earlier opinion that appellant's current right shoulder condition is causally related to his May 1988 employment accident, but did not provide any additional rationale for his opinion. As they are similar to his previous reports, the additional reports from Dr. Krauss, a physician on one side of the conflict resolved by Dr. Schneiderman, are insufficient to overcome the weight accorded Dr. Schneiderman's report or to create a new conflict with it.⁷ The Board, therefore, finds that Dr. Schneiderman's June 6, 1995 medical report constitutes the weight of the medical opinion evidence and is sufficient to establish that appellant's right shoulder condition was not caused by his May 1988 employment accident.

⁷ *Howard Y. Miyashiro, supra* note 5.

The September 24, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member