

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN G. RAINBOW and DEPARTMENT OF DEFENSE,
TINKER AIR FORCE BASE, OK

*Docket No. 98-367; Submitted on the Record;
Issued December 16, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's February 8, 1996 surgical procedure was not appropriate nor causally related to her accepted December 10, 1993 employment injury.

On July 16, 1993 appellant, then a 40-year-old computer operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 13, 1993 she injured her elbow when tapes she was putting into racks fell and she tried to catch them with both hands.¹ On August 17, 1993 the Office accepted the claim for left elbow strain and paid appropriate compensation.

On February 25, 1994 appellant filed an occupational disease claim (Form CA-2) alleging that on December 10, 1993 she realized that her pulled muscle and pinched nerve in her elbow were due to the July 13, 1993 employment injury when she injured her left elbow.² On May 25, 1994 the Office accepted the claim for lateral epicondylitis, right cubital tunnel release and paid appropriate compensation.

On November 15, 1994 appellant filed an occupational disease claim alleging that on December 10, 1993 she realized that the pain in her right shoulder was due to her employment duties.³ The Office accepted the claim for torn right shoulder rotator cuff and right shoulder arthroscopy on August 23, 1995.

¹ This was assigned claim number A16-0227525.

² This was assigned claim number A16-0241010. On May 24, 1994 the Office combined case numbers A16-0241010 and A16-0227525 with A16-0241010 being the master file.

³ This was assigned claim number A16-0252681.

In a letter dated November 20, 1995, Dr. Houshang Seradge, an attending Board-certified hand and orthopedic surgeon, recommended surgical intervention for the neck as appellant had been unresponsive to conservative treatment.

In a report dated December 8, 1995, Dr. Daniel R. Stough, a second opinion Board-certified neurologist, based upon a physical examination, history of the injury, review of medical record and objective tests, diagnosed mild internal disc derangement at C3-4 and C4-5 and recommended that appellant “forego surgery at this time although it could be required in the future. It is my opinion that she should have a second orthopedic opinion regarding the chronic right shoulder and elbow pain she is experiencing.”

In a progress note dated December 18, 1995, Dr. Seradge reviewed Dr. Stough’s report and noted that it was recommended that appellant have a C5-6 and C6-7 fusion and discectomy and that appellant wanted to go ahead with the surgery.

In a January 8, 1996 report, Dr. Seradge noted that appellant’s condition had gradually worsened since she reinjured herself on December 29, 1995 while “reaching over to do something with both hands extended, her neck started hurting her and she had acute pain to her neck and both arms.” Dr. Seradge indicated that appellant wanted to have the surgical procedure if her condition did not improve with conservative treatment.

In a letter dated January 22, 1996, Dr. Seradge noted that he initially “did not consider her neck condition an occupationally-related condition until she could provide me with proof of the relation” and that the computerized tomography (CT) scans from November 4, 1988 and April 2, 1992 showed no neck injuries. Dr. Seradge opined that appellant’s neck condition was related to her employment because:

“Based on the negative previous neck problem, which was documented by CT scan examination on those two days, and based on her complaints that the type of work that she was doing required her to look up and reach up, and due to the fact that she is 5’1” tall and her job required a taller person, her condition should be considered causally related to her occupation.”

Dr. Seradge indicated that appellant might require surgery for her neck condition and requested clarification from the Office as to whether this would be considered an approved medical condition that is occupationally related.

On January 26, 1996 appellant filed a claim for a recurrence of disability due to her December 10, 1993 employment injury.

On February 8, 1996 appellant underwent a bone graft and cervical fusion.

In a report dated October 23, 1996, the Office medical adviser reviewed the medical records, noted there were some conflicts in the limited medical evidence, but offered no opinion as to whether the surgery should be approved or rejected as not being employment related. The Office medical adviser noted that Dr. Seradge’s January 8, 1996 report did not state whether

appellant's disability is employment related beyond noting that she reinjured herself on December 29, 1995 while reaching for something with both arms.

By decision dated August 12, 1997, the Office denied that the February 8, 1996 surgery was appropriate and causally related to appellant's accepted December 10, 1993 employment injury.

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

Section 8103(a) of the Federal Employees' Compensation Act states in part: "the United States shall furnish to an employee who was injured while in the performance of duty the services, appliances, and supplies prescribed by a qualified physician which the Secretary of Labor considers likely to cure, give relief, reduce the period or degree of disability, or aid in lessening the amount of monthly compensation."⁴ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.⁵

In the instant case, the Office medical adviser, upon whom the Office relied in denying that the surgery was appropriate and causally related to the December 10, 1993 employment injury, did not express an opinion as to whether the surgery was necessary or related to employment factors. The Office medical adviser merely summarized the medical evidence of record while noting that there was not much evidence to review. As the Office medical adviser did not provide an express opinion as to whether the requested surgery, which was performed on February 8, 1996, was causally related to appellant's employment, the Office's determination that the surgery was not causally related to appellant's accepted employment injury and denial of medical benefits or authorization of the requested surgery is not supported by medical opinion evidence. Furthermore, Dr. Seradge has provided some rationale supporting that the surgery was causally related to factors of appellant's employment in his January 22, 1996 report. The Board therefore finds that the case must be remanded to the Office for additional development of the medical evidence on the issue of whether appellant's surgery was causally related to her accepted employment injury or factors of her employment or may be attributed to a new injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁴ 5 U.S.C. § 8103.

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated August 12, 1997 is set aside and the case remanded to the Office for further action consistent with this decision.

Dated, Washington, D.C.
December 16, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member