

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CECILE C. MARSHALL and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Providence, R.I.

*Docket No. 97-1078; Submitted on the Record;
Issued January 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for a recurrence of disability and medical benefits.

On August 8, 1990 appellant, then a 47-year-old mail processor, was on detail driving to her assigned employing establishment when her car was struck from behind by a truck, pushing her car into the car in front of her. In an undated form report, received by the Office on September 20, 1990, Dr. Juan P. Mallari, a family practitioner, reported that appellant had a fracture of the fifth right toe, concussion, contusion of the forehead, cervical strain and aggravation of rheumatoid arthritis. Appellant returned to limited duty on September 8, 1990. The Office accepted appellant's claim for the toe fracture, cervical strain and aggravation of rheumatoid arthritis.

On November 16, 1992 appellant underwent surgery for a dorsal wrist synovectomy of the right wrist. She had a similar operation on her left wrist on December 14, 1992. On December 9, 1992 appellant filed a claim for recurrence of disability, indicating that she stopped work on January 20, 1992 and returned to work on January 25, 1992. She reported that she had been hospitalized during the period due to exacerbation of her rheumatoid arthritis. In an April 29, 1993 decision, the Office rejected appellant's claim for recurrence of disability on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the claimed condition. In a May 20, 1993 decision, the Office rejected appellant's claim for medical benefits for surgery on her wrists on the grounds that the medical evidence failed to support that the operations were causally related to the August 8, 1990 employment injury. In an August 6, 1993 decision, the Office denied appellant's request for reconsideration on the grounds that evidence submitted in support of the request was immaterial and, therefore, insufficient to warrant review of the prior decision. In merit decisions dated October 24, 1996 and July 31, 1995, the Office denied appellant's requests for modification of its prior decisions.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

In an October 6, 1990 report, Dr. Mallari stated that when he saw appellant on August 10, 1990 she had slight residual tenderness of the frontal region of the head and moderate limitation of motion of the cervical spine with moderate spasticity of the paraspinal muscles on both sides. He diagnosed contusion of the forehead with mild cerebral concussion, acute cervical strain and contusion of the right foot. Dr. Mallari noted that x-rays of the right foot subsequently revealed a fracture at the proximal phalanx of the fifth toe. He reported that in an August 14, 1990, examination appellant complained of severe pain of both wrists. Dr. Mallari indicated appellant had moderate swelling of both wrists with severe limitation of flexion and extension of the wrists. He commented that by September 5, 1990 appellant's remaining symptoms involving her wrists and toe seemed to be related to aggravation of her rheumatoid arthritis.

In a September 10, 1990 report, Dr. Edward V. Lally, a Board-certified rheumatologist of professorial rank, indicated that he had been treating appellant since December 13, 1989 for rheumatoid arthritis. He stated that on August 12, 1990, four days after the employment injury, appellant complained of a significant increase in the activity of her rheumatoid arthritis. Dr. Lally reported that in his August 17, 1990 examination, appellant's arthritis was clearly flaring up. He stated that appellant's rheumatoid arthritis, which had been under control prior to the employment injury, was clearly exacerbated by the employment injury.

In a January 31, 1991 memorandum, an Office medical adviser noted that neither Dr. Lally nor Dr. Mallari reported any traumatic injury to appellant's wrists at that time of the employment injury. He stated that there was no documentation or objective evidence that the swelling of the wrists actually represented involvement with rheumatoid arthritis. He indicated that in absence of documented objective evidence for trauma to appellant's wrists it would be speculation to ascribe increased inflammation of the wrists to the injury in question.

In a May 14, 1991 report, Dr. Lally stated that his records indicated that appellant had a sustained period of polyarticular inflammation subsequent to the employment injury. He reported that appellant's erythrocyte sedimentation rate was 28 on July 20, 1990, but had increased to 58 on August 15, 1990, 7 days after the employment injury. Dr. Lally stated that since rheumatoid arthritis was a systemic, polyarticular disorder, it was not necessary that overt trauma be sustained to the joints involved. He indicated that generalized trauma can exacerbate rheumatoid arthritis even if it did not impact on specific joints. Dr. Lally concluded that appellant's employment injury had exacerbated the rheumatoid arthritis. In an April 15, 1992 report, Dr. Lally stated that appellant was still in a prolonged phase of disease exacerbation, which had begun following the employment injury.

In an October 15, 1992 report, Dr. Lally recommended surgery on appellant's wrists to relieve the pain from persistent arthritis in her wrists. In a December 16, 1992 report, he indicated that appellant was hospitalized from January 20 to 24, 1992 due to a prolonged exacerbation of her rheumatoid arthritis, which was not responsive to the usual measures. Dr. Lally stated that it was impossible for him to determine what caused this particular exacerbation. He commented that it was the natural history of severe rheumatoid arthritis to

undergo exacerbations without obvious explanation. Dr. Lally indicated that he could not attribute the specific exacerbation to the employment injury of 2½ years previously.

In a February 18, 1993 memorandum, Dr. George L. Cohen, an Office medical adviser and Board-certified internist specializing in rheumatology, reviewed the medical evidence, including extensive medical records submitted by appellant and stated that appellant had active rheumatoid arthritis prior to the employment injury, which was causing her significant problems and required strong medication. He indicated that appellant's disease apparently worsened after the employment injury but added that a review of the records made him less certain that the employment injury caused appellant's rheumatoid arthritis to flare up. Dr. Cohen noted that appellant was having flare-ups of the disease prior to the employment injury requiring medical treatment, including moderately large doses of steroids. He concluded that the employment injury should be considered responsible for a temporary aggravation of appellant's disease even though the flare-up of the disease could have been considered a coincidence in a patient with rheumatoid arthritis who had experienced exacerbations. Dr. Cohen concluded that the temporary flare-up ceased approximately on August 1, 1991 when appellant's physician indicated that appellant had improved, had decreased stiffness and decreased swelling and the physician was reducing the medical dosage of her medications. He stated that the hospitalization in January 1992 was warranted and related to rheumatoid arthritis but was not related to the employment injury. Dr. Cohen further stated that the operations on the wrists were a consequence of the active disease but were not related to the flare-up of appellant's rheumatoid arthritis, which followed the employment injury.

In an April 6, 1993 report, Dr. Lally stated that, in attempting to place appellant's case in a better perspective, it now appeared to him that her hospitalization in January 1992 was a direct result of the employment injury. He stated that appellant's current rheumatoid arthritis exacerbation was still the result of the employment injury. Dr. Lally commented that it was difficult to attribute a specific flare-up of active arthritis to a particular inciting cause. He indicated, however, that in appellant's case it appeared that her situation worsened intensely after the employment injury and had yet to come under reasonable control in spite of aggressive anti-rheumatic therapy. In an October 19, 1993 report, Dr. Lally stated that subsequent to the employment injury, appellant had persistent synovitis in multiple locations, particularly her wrists. He indicated that after the employment injury appellant had persistent, unremitting polyarthritis that did not respond adequately to standard outpatient medical treatment. She, therefore, had to be hospitalized in January 1992 for high-dose intravenous steroid therapy necessitated by her lack of response to the standard treatment. He indicated that appellant had some improvement from the hospitalization but she again became more incapacitated by her persistent rheumatoid arthritis, particularly as it affected her wrists. Dr. Lally concluded that both appellant's hospitalization and subsequent bilateral wrist operations were a direct result of the employment injury. In a July 17, 1996 report, Dr. Lally stated that prior to the employment injury appellant had mild arthritis that was under reasonable control with low-dose anti-rheumatic therapy. He indicated that subsequent to the employment injury she had a progressively accelerated course to her rheumatoid arthritis, particularly in the joints that were affected in the employment injury. Dr. Lally noted that appellant's course since the employment injury had been unremitting and she had not responded to high-dose anti-rheumatic therapy. He

related that appellant's wrist joints had deteriorated to the point where a fusion procedure was being considered.

There exists, therefore, a conflict in the medical evidence between Dr. Lally and the second Office medical adviser. He concluded that the employing establishment had exacerbated appellant's rheumatoid arthritis, transforming a mild case of rheumatoid arthritis into a case that could not be treated by conventional treatment, leading to hospitalization and damage to her wrists which required surgery. The second Office medical adviser concluded that any exacerbation caused by the employment injury had ceased approximately a year after the employment injury and the hospitalization and subsequent surgery were unrelated to the effects of the employment injury on her preexisting rheumatoid arthritis condition. The case must, therefore, be remanded.

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The impartial medical specialist should be requested to give a diagnosis of appellant's condition and provide his rationalized opinion on whether the August 8, 1990 employment injury caused a temporary or permanent aggravation of appellant's preexisting rheumatoid arthritis. If the specialist should find that the employment injury caused a temporary aggravation of the employment injury he should indicate when the employment-related aggravation ceased. He should also discuss whether appellant's hospitalization in January 1992 and the operations on her wrists were causally related to her employment injury. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated October 24, 1996, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 15, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski

Alternate Member