

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE L. BANKS and U.S. POSTAL SERVICE,
WATERLOO P & D CENTER, Waterloo, Iowa

*Docket No. 97-1458; Submitted on the Record;
Issued January 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she developed a medical condition as a result of her federal employment duties.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

On September 11, 1995 appellant submitted a claim for injury to her hands and arms alleging that on that date she suffered pain in her arms and hands while "throwing books on the pouch rack" as part of her employment duties. On September 14, 1995 appellant submitted a claim for occupational disease for the same arm and hand conditions. In decisions dated November 2 and 21, 1995, the Office of Workers' Compensation Programs denied appellant's claims on the grounds that the factual and medical evidence submitted by appellant was insufficient to establish that she had developed a medical condition causally related to her employment duties. On November 27, 1995 appellant requested an oral hearing before an Office hearing representative. On May 30, 1996 the Office notified appellant that it had combined her traumatic injury and occupational disease claims, as they were for the same injuries. Appellant testified at the hearing, held on July 23, 1996, and submitted additional medical evidence not previously in the record.

In a decision dated October 9, 1996, the Office hearing representative reviewed appellant's medical history, noting that appellant had previously been diagnosed with shoulder and arm problems. On May 2, 1986 prior to her employment with the employing establishment, which began in June 1994, appellant was treated for a left shoulder problem and in May 1988, she was diagnosed with right carpal tunnel syndrome. Appellant underwent nerve testing on May 13, 1988 and based on the results of the testing, was scheduled for right carpal tunnel release surgery on October 9, 1992. She subsequently canceled the surgery, however, as she felt her condition had improved. The hearing representative reviewed the previous and newly submitted evidence of record and found that while the earlier Office decisions denying

appellant's claim were correct at the time they were issued, subsequent medical evidence from appellant's treating physicians, Drs. Arnold E. Delbridge, a Board-certified orthopedic surgeon, and James Jeffries, a family practitioner, offered additional support for appellant's claim that her condition was employment related. In his report dated August 5, 1996, Dr. Delbridge noted the history of appellant's condition and his clinical findings on examination and stated that as a result of her duties with the employing establishment appellant had sustained cumulative trauma disorder of both upper extremities, tendinitis and shoulder girdle strain of the right shoulder, impingement syndrome of the right shoulder, aggravation of preexisting right carpal tunnel syndrome and epicondylitis. In a report dated August 7, 1996, Dr. Jeffries noted that appellant had developed shoulder, arm and hand pain after doing some heavy lifting while at the employing establishment and that based on his initial findings, the history of appellant's condition and the subsequent findings of muscle tendinitis of her shoulders and arms, he felt that appellant's current complaints "probably were the result of her employment and an aggravation of a preexisting condition." The hearing representative specifically found that Dr. Delbridge's report, taken together with that of Dr. Jeffries, was sufficient to require further medical development by the Office and remanded the case for the purpose of obtaining a well-rationalized report on the issue of whether appellant sustained any compensable medical condition causally related to her employment duties.

On January 13, 1997 Dr. John E. Sinning, Jr., an Office second opinion physician and a Board-certified orthopedic surgeon, examined appellant and reviewed the medical evidence of record. In his report dated January 16, 1997, Dr. Sinning diagnosed tingling of the fingers with no evidence of major pathology and complaint of right shoulder pain with no evidence of major pathology. In response to specific questions posed by the Office, he stated that there was no medical evidence to support a diagnosis of bilateral carpal tunnel syndrome or any major pathology involving appellant's right shoulder.

By decision dated February 10, 1997, the Office denied appellant's claim on the grounds that the evidence of file failed to establish that the claimed conditions of possible right carpal tunnel syndrome, or any right shoulder condition were causally related to factors of her federal employment.

In the present case, appellant has alleged that she suffers from several arm and shoulder complaints which were either caused or aggravated by factors of her federal employment. As part of appellant's burden of proof, she must submit rationalized medical evidence based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her federal employment.¹ To support her claim, appellant submitted a medical report from Dr. Delbridge, a Board-certified orthopedic surgeon, who diagnosed several right arm and shoulder conditions and opined that these conditions are related, either through causation or aggravation, to her federal employment. Dr. Sinning, the second opinion physician and a Board-certified orthopedic surgeon, found that there was no medical evidence to support a diagnosis of bilateral carpal tunnel syndrome or any major pathology involving appellant's right shoulder. Section 8123(a) of the Federal Employees' Compensation Act provides that where there is disagreement between the physician making the examination for the United States and

¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Steven R. Piper*, 39 ECAB 312 (1987).

the physician of the employee, the Office shall appoint a third physician who shall make an examination.² Due to the conflict between Drs. Delbridge and Sinning's opinions as to whether appellant has a right arm or hand condition causally related to her federal employment, the case must be remanded for referral of the case record and a statement of accepted facts to an impartial medical specialist to resolve this conflict.³ The Office should then develop the evidence as it deems necessary and issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated February 10, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
January 20, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

² 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).

³ *Kathryn Haggerty*, *supra* note 1; *Carol A. Dixon*, 43 ECAB 1065, 1071 (1992).