

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CINDY Z. MARSHALL and U.S. POSTAL SERVICE,
POST OFFICE, Pocatello, Ida.

*Docket No. 98-3; Submitted on the Record;
Issued July 12, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed right shoulder repetitive use injury in the performance of duty, causally related to factors of her federal employment.¹

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

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In this case, Dr. Kenneth E. Newhouse, appellant's treating Board-certified orthopedic surgeon, stated:

"[Appellant] injured her arm through repetitive overuse phenomena at work, and has been diagnosed as having an acute impingement syndrome superimposed upon a chronic multi-directional instability. Her physical examination with range of motion, strength, impingement symptoms and radiographs confirm this."

* * *

"At this point [appellant's] prognosis is indeterminate. Her condition has definitely been caused and aggravated by her job, and we have attempted to

¹ Appellant, a 37-year-old postal clerk, sorted, lifted and threw packages, parcels and sacks weighing from several ounces to 70 pounds, and pushed and pulled carts, hampers and equipment 5 days a week, 6 hours a day.

ameliorate this as much as possible by changing the way she uses her arm at work.”

In an April 28, 1997 operative report, Dr. Newhouse noted that appellant’s right shoulder pain began with her work at the employing establishment “with throwing and holding her arm in certain positions to manipulate flats and machines at work.” He performed a right shoulder arthroscopy with debridement of the thickening on the undersurface of the rotator cuff and resection of the inflamed CA ligament and with an acromioplasty. Significant amounts of bursitis and synovitis were also noted, as was a partial thickness rotator cuff tear.

On May 27, 1997 however, the Office of Workers’ Compensation Programs medical adviser opined:

“The claimant gives no history of a specific work injury. She had an impingement syndrome associated with some degenerative change in the rotator cuff. This condition is due to her anatomic development. There is no evidence of either a work-related injury or a work-related disease. The surgery was not for a work-related condition. Her underlying nonwork-related condition was symptomatic with the activities associated with work.”

In response, Dr. Newhouse reiterated:

“[Appellant] ... is responsible for repetitive lifting and tossing of parcels. The simple act of repetitively lifting and tossing parcels, and also the act of holding her arms in an abducted and semi-flexed position for hours on end, stacking “flats” and other types of activities is a classic condition for the development of impingement syndrome. This is, therefore, the mechanical process involved causing impingement syndrome.”

On June 24, 1997 the Office rejected appellant’s claim finding that she had failed to establish causal relationship with factors of her employment. The Office found that Dr. Newhouse did not explain how appellant’s activities caused her impingement, or discuss how her “preexisting degenerative condition contributed to it.”² The Board, however, finds that Dr. Newhouse’s opinion is sufficient to create a conflict with the Office medical adviser on the issue of causation.

Consequently, the case must be remanded so that the Office may refer appellant, together with the complete case record, a statement of accepted facts and specific questions to be answered to an appropriate Board-certified specialist for an examination and a rationalized medical opinion to resolve the existing conflict in medical opinion evidence.

² It is not clear from the record exactly what “preexisting degenerative condition” the Office is referring to, as the only preexisting condition noted in the medical records was chronic multi-directional instability.

Therefore, the decision of the Office of Workers' Compensation Programs dated June 24, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
July 12, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member