

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERINE M. BUMGARNER and U.S. POSTAL SERVICE,  
POST OFFICE, Springfield, MO

*Docket No. 98-836; Submitted on the Record;  
Issued November 17, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability beginning November 20, 1995 that was causally related to her accepted January 1992 employment injury of left shoulder muscle strain.

In January 29, 1992 appellant, then a 40-year-old rural mail carrier, filed an occupational disease claim, alleging that beginning January 22, 1992 she sustained numbness to her left shoulder which was related to factors of her employment. In a supplemental statement, appellant indicated that the pain in her shoulder was caused by pushing heavy mail up a ramp and repetitive use of her arm while casing mail and delivering mail for an overburdened route. The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder muscle strain. On November 27, 1995 appellant filed a claim for recurrence of disability beginning November 20, 1995. Appellant indicated that her injury was caused by her prior injury and delivering and sorting mail which required bending, lifting, reaching, pulling and pushing. In a decision dated January 16, 1996, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the January 1992 injury and the claimed recurrence of disability. In merit decisions dated April 4 and July 29, 1996 and January 7, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

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

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>1</sup> This burden includes the necessity of furnishing evidence from a qualified

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<sup>1</sup> *John E. Blount*, 30 ECAB 1374 (1979).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>2</sup>

In the present case, appellant submitted several medical reports which she believed support her claim for recurrence of disability. However, only one medical report, dated September 24, 1996, by Dr. David G. Paff specifically addressed the causal relationship between appellant's federal employment, her previous accepted employment injury and her claimed recurrence of disability. Dr. Paff, appellant's treating physician, who is Board-certified in preventive medicine, provided a thorough history of appellant's injury and diagnosed myofascial pain syndrome of the left shoulder. He indicated that appellant had sustained a repetitive trauma type injury in January 1992 which was exacerbated in August 1995, "with the same etiology of repetitive use of her left upper extremity" and noted that "all of the symptoms that she described at the present time, including pain in her shoulder and the numbness in her fingers, is the direct result of the repetitive use of her left upper extremity." While Dr. Paff did not fully discuss which identified factors were repetitive in nature or adequately explain how these factors "exacerbated" the accepted injury, his opinion does provide documented evidence of a specific diagnosis and bridging symptoms which support an inference that the diagnosed condition is causally related to appellant's January 1992 employment injury.<sup>3</sup>

While the report by Dr. Paff is not sufficient to establish that appellant's myofascial pain syndrome is causally related to her accepted employment injury of left shoulder strain, the Board finds that this report, given the absence of evidence to the contrary, is sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.<sup>4</sup> It is well established that proceedings under the Federal Employees' Compensation Act, are not adversarial in nature,<sup>5</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>6</sup> The Office has the obligation to see that justice is done.<sup>7</sup>

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand, the Office should further develop the evidence by providing Dr. Paff with a statement of

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<sup>2</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>4</sup> 20 C.F. R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

<sup>6</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

<sup>7</sup> *William J. Cantrell*, 34 ECAB 1233 (1983).

accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's myofascial pain syndrome is causally related to her accepted employment injury or factors of her federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated January 7, 1997 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.  
November 17, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member