

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH DICKS and GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDING SERVICES, Washington, DC

*Docket No. 97-2834; Submitted on the Record;
Issued September 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has any disability after August 24, 1984 causally related to her February 29, 1984 employment injury.

The case has been on appeal previously.¹ In a September 15, 1988 decision, the Board noted that appellant claimed she had injured her right shoulder on February 29, 1984 while raising her right arm to clean a blackboard. The Board found there existed a conflict in the medical evidence between Dr. William A. Hanff, a Board-certified orthopedic surgeon, who stated that appellant had right shoulder sprain, which subsequently affected the cervical spine and the left shoulder and the Office of Workers' Compensation Programs hearing representative and Dr. Robert E. Collins, a Board-certified orthopedic surgeon, who concluded that the problems affecting appellant's cervical region and both shoulders were not causally related to the employment injury. The Board remanded the case for referral of appellant to an appropriate impartial medical specialist.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Anthony S. Unger, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. In a September 5, 1989 report Dr. Unger indicated that x-rays from 1986 showed acromioclavicular arthritis in both shoulders and mild diffuse degenerative arthritis in the cervical spine with disc degeneration at C4-5 and C5-6. He stated that appellant had mild adhesive capsulitis of the right shoulder. Dr. Unger concluded that appellant had preexisting cervical spine degenerative arthritis as well as acromioclavicular degenerative arthritis. He indicated that the February 29, 1984 employment injury aggravated the preexisting conditions. Dr. Unger noted that appellant subsequently developed bilateral rotator cuff tendinitis and bursitis

¹ Docket No. 87-1965 (issued September 15, 1988).

with impingement and a chronic cervical strain for which she underwent surgery with relief.² He concluded that appellant could return to light duty as a housekeeper with no lifting over 25 pounds, no working overhead for more than 30 minutes at a time and no pushing or pulling any object weighing more than 40 pounds.

The Office accepted appellant's claim for mild adhesive capsulitis and aggravation of degenerative disease of the right shoulder. On April 16, 1990 appellant filed a claim for disability for the period February 29, 1984 to the "present." In a July 25, 1990 letter, the Office found that the medical evidence substantiated only intermittent periods of disability ending August 24, 1984.

In a September 7, 1990 report, Dr. Unger indicated that appellant sustained an injury only to her right shoulder. Thereafter, he noted bilateral shoulder pain. Dr. Unger commented that the duration of time between the original injury and appellant's complaints of right and left shoulder pain was uncertain to him. He stated that, from a temporal standpoint, it seemed illogical that appellant's left shoulder problem was causally related to the right shoulder injury. Dr. Unger indicated that posturing or other forms of compensation for the right shoulder did not ordinarily lead to left shoulder conditions.

On October 3, 1996 appellant filed a claim for compensation for her February 29, 1984 employment injury. She indicated that she had been on permanent light duty since 1987. On April 30, 1997 appellant filed a claim for a recurrence of disability arising from the February 29, 1984 employment injury. She stated that she was placed on light-duty status but was told that no light duty was available. In an August 15, 1997 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the employment injury.

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

Appellant has claimed that she had disability after August 24, 1984, due to her February 29, 1984 employment injury. She received compensation through August 24, 1984, even though she was on leave from work at least through January 9, 1985. Dr. Unger indicated that appellant was capable of performing light duty at the time of his examination. He did not discuss appellant's ability to work the duties of her position between August 24, 1984 and the time of his examination. Appellant contended that she was placed on light duty but was told no light duty was available. The record contains a December 13, 1984 letter from the employing establishment stating that, because of the physical demands of appellant's position, it had no alternative position to offer appellant and had no light duty available. In an October 25, 1990 report, Dr. Rida N. Azer, a Board-certified orthopedic surgeon, stated that appellant had been unable to perform the duties as a result of the residuals of her February 29, 1984 employment injury. In an August 21, 1991 report, Dr. Azer indicated that appellant had permanent job restrictions of avoiding pushing, pulling and lifting of heavy objects and overhead use of hands. He related these restrictions to residuals of the February 29, 1984 employment injury. This

² On November 13, 1986 appellant underwent arthroscopic surgery on both shoulders with debridement and lysis of adhesions.

evidence, while insufficient to establish that appellant is entitled to compensation after August 24, 1984, suggests that appellant was capable only of light duty due to the employment injury and that such light duty was unavailable from the employing establishment. The evidence, therefore, is sufficient to require further development of the record, particularly as it is uncontradicted by any other evidence of record.³

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate specialist for an examination. He should be requested to provide a diagnosis of appellant's conditions and identify those conditions causally related to the February 29, 1984 employment injury. He should discuss, based on the medical evidence of record, whether appellant was partially or totally disabled after August 24, 1984 due to the February 29, 1984 and the duration of any such employment-related disability. After further development as it may find necessary, the Office issue a *de novo* decision on whether appellant was entitled to compensation due to her employment injury, taking into account the employing establishment's statement that it had no light duty available for appellant.⁴

The decision of the Office of Workers' Compensation Programs, dated August 15, 1997, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
September 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ The Board notes that the Office has not issued a final decision on appellant's claim for a schedule award for the right arm.