

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NANCY A. LEHMAN and U.S. POSTAL SERVICE,  
NEW CASTLE POST OFFICE, New Castle, PA

*Docket No. 98-1577; Submitted on the Record;  
Issued August 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that her dental condition was caused by the accepted February 23, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record as untimely under 5 U.S.C. § 8124(b).

On February 23, 1996 appellant, then a 35-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left shoulder. Appellant stated that when she placed a tray of mail on a "DBCS" she felt something pop in her shoulder. Appellant stopped work on February 27, 1996.<sup>1</sup>

The Office accepted appellant's claim for left shoulder sprain and cervical strain.

On November 26, 1996 appellant filed a Form CA-1 that was received by the Office on January 14, 1997 alleging that her temporomandibular joint and fractured teeth were caused by the February 23, 1996 employment injury.

By decision dated August 15, 1997, the Office found the medical evidence of record insufficient to establish that appellant's dental condition was caused by her February 23, 1996 employment injury. In a September 5, 1997 letter, appellant requested that her claim "be again considered." By letter dated March 10, 1998, the Office advised appellant to exercise her appeal rights. In an April 12, 1998 letter, appellant requested a review of the written record.

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<sup>1</sup> The record reveals that appellant returned to work for four hours per day on August 13, 1996, that appellant worked four hours on that date and two and one-half hours on August 14, 1996 but stopped work based of her physician's recommendation. Appellant returned to work on October 14, 1996 for four hours per day for one month.

In a May 28, 1998 decision, the Office denied appellant's request for a review of the written record because this request was not received within 30 days of its August 15, 1997 decision. The Office further denied appellant's request because the issue involved could be addressed by requesting reconsideration from the district office and submitting evidence to support her claim.

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision regarding the issue of whether appellant has met her burden of proof to establish that her dental condition was caused by the accepted February 23, 1996 employment injury.

The Board has held that a second nonemployment-related injury is compensable if it is the direct and natural result of an earlier injury. That is, if the second injury is sustained as a consequence of a residual resulting from a previous industrial injury, the second injury is deemed to arise out of and in the course of employment because of the chain of causation.<sup>2</sup>

In this case, appellant has alleged that her dental condition is the consequence of her accepted February 23, 1996 left shoulder sprain and cervical strain. The sole medical evidence of record regarding the cause of appellant's dental condition is the June 6, 1996 medical report of Dr. William S. Martello, a dentist. In this report, Dr. Martello indicated that he had treated appellant for 10 years and that appellant had been experiencing some dental problems which did not exist prior to her February 23, 1996 employment injury. He stated:

“[B]eing that [appellant] injured her shoulder and did not hit her mouth, the dental problems did not start immediately. However, the degree of shoulder pain she has been experiencing has caused [appellant] to severely grit and clench her teeth. This situation has led to enamel fracturing of several teeth, a ‘feeling that teeth have shifted,’ and TMJ (temporomandibular joint) discomfort.”

Dr. Martello concluded by noting appellant's medical treatment for her dental condition.

Dr. Martello's medical report is not sufficiently rationalized to establish that appellant's nonemployment-related dental condition was causally related to the February 23, 1996 employment injury. Nonetheless, the Board finds that his medical report, taken as a whole, raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>3</sup>

Accordingly, the case will be remanded for further development and a *de novo* decision.<sup>4</sup> On remand, the Office should refer appellant, together with a statement of accepted facts and the medical evidence of record to an appropriate specialist or specialists for an examination, diagnosis and a rationalized opinion as to whether any of appellant's dental condition is causally

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<sup>2</sup> *Anthony S. Wax*, 7 ECAB 330 (1954).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354, 359-60 (1989); *Horace Langhorne*, 29 ECAB 820-21 (1978).

<sup>4</sup> *John J. Carlone*, *supra* note 3 at 360; *Horace Langhorne*, *supra* note 3 at 822.

related to her accepted February 23, 1996 employment injury. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.<sup>5</sup>

The May 28, 1998 and August 15, 1997 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.  
August 7, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> In view of the Board's disposition on the issue of whether appellant has met her burden of proof to establish that her dental condition was caused by the accepted February 23, 1996 employment injury, the issue regarding the timeliness of appellant's request for a review of the written record under 5 U.S.C. § 8124(b) is moot.