

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of POLLY J. MOORE and U.S. POSTAL SERVICE,  
POST OFFICE, Lynden, WA

*Docket No. 98-2265; Submitted on the Record;  
Issued June 6, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied authorization of appellant's July 2, 1997 surgery pursuant to section 8103 of the Federal Employees' Compensation Act.

On June 3, 1997 appellant, then a 36-year-old rural carrier, filed an occupational disease claim, alleging that she sustained extensor tenosynovitis beginning May 5, 1997 that was causally related to factors of her federal employment. On November 25, 1997 the Office accepted appellant's claim for temporary aggravation of rheumatoid arthritis but denied her claim for spontaneous rupture of the extensor pollicis longus and surgery on July 2, 1997.

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

Section 8103(a) of the Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician" which the Office "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."<sup>1</sup> The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>2</sup>

In the present case, the Office accepted appellant's claim for temporary aggravation of her preexisting rheumatoid arthritis but denied that the spontaneous rupture of her extensor pollicis longus was causally related to factors of her federal employment and therefore denied surgery for transfer of the extensor indicis proprius and extensor pollicis longus. A review of the medical evidence reveals that appellant's treating physician, Dr. Gary D. Bergman, a Board-

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<sup>1</sup> 5 U.S.C. § 8103(a).

<sup>2</sup> *James F. Archie*, 42 ECAB 180 (1991); *William E. Gay*, 38 ECAB 599 (1987).

certified orthopedic surgeon, indicated that appellant's diagnosed conditions were related, in part, to factors of her federal employment. Appellant was referred to Dr. Bergman by Dr. David E. Wisner, a rheumatologist, due to excessive swelling and pain. Dr. Wisner noted that almost all of appellant's work activities involved her thumb and index finger and caused a slow progressive inflammation of the involved joints. With respect to the issue of whether the diagnosed conditions of rupture of the extensor pollicis longus and extensor tenosynovitis were causally related to factors of her federal employment, Dr. Bergman stated, "It is difficult, basically impossible, to say which entity (*i.e.*, work verses rheumatoid arthritis) is more responsible for the present condition." He indicated that it was clearly a combination of these two processes and that absent rheumatoid arthritis, it was very unusual to develop fulminant extensor tenosynovitis and spontaneous rupture of the extensor tendon.

The Office referred appellant to Dr. Maurice Skeith, a Board-certified orthopedic surgeon, for a second opinion examination and opinion. Dr. Skeith reported that it was problematic determining whether or not appellant's work contributed to her conditions, but that after reviewing a typical workday, her work did contribute to her problems. He indicated that the high degree of repetitive use of her thumb while sorting mail and delivering it, more likely than not, caused problems with the MCP of the thumb and early rupture of the extensor longus pollicis longus.

The Office denied acceptance of the rupture of appellant's tendon and surgery based on the Office medical adviser's disagreement with the opinions of Drs. Bergman and Skeith. Thus, there is an unresolved conflict concerning whether or not appellant's ruptured tendon was related to factors of her federal employment. Section 8123(a) of the Act<sup>3</sup> states that if there is 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 the present case, there is an unresolved conflict between the Office medical adviser and Dr. Bergman, appellant's treating physician as well as Dr. Skeith, an Office referral physician. This requires remand for resolution of the conflict by an impartial medical examiner.

Moreover, in any case, the Office did not develop the issue of whether appellant's required surgery was related to either her accepted condition or factors of her federal employment. While the Office did request reports from both Drs. Bergman and Skeith concerning the diagnosed conditions and their causal relationship to appellant's federal employment, the Office did not request an opinion concerning whether the required surgery was medically necessary due to her accepted condition or factors of her federal employment. As there is an unresolved conflict in the medical evidence and the issue of whether the surgery was medically necessary in light of appellant's accepted condition has not been fully developed, this case must be remanded for this purpose.

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<sup>3</sup> 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated November 25, 1997 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.  
June 6, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member