

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA E. KERNOUL and U.S. POSTAL SERVICE,
POST OFFICE, Leavenworth, WA

*Docket No. 99-305; Submitted on the Record;
Issued November 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any disability after March 13, 1995 causally related to her October 24, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that she had any disability on or after March 13, 1995 causally related to her October 25, 1994 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.⁵

¹ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

² *Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁴ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁵ *Joseph T. Gulla*, *supra* note 3.

On October 25, 1994 appellant, then a 42-year-old rural carrier, sustained right shoulder tendinitis in the performance of duty. She stopped work on that date and did not return to work. Appellant began receiving compensation benefits as of February 2, 1995. By decision dated April 17, 1995, the Office of Workers' Compensation Programs denied her claim for continuing disability on the grounds that the evidence of record failed to establish that she had any disability on or after March 13, 1995 causally related to her October 25, 1994 employment injury. By decision dated July 19, 1996, an Office hearing representative affirmed the Office's April 17, 1995 decision. By decisions dated December 3, 1997 and August 25, 1998, the Office denied modification of its decision.

The record shows that appellant was initially treated by a Dr. Johnson who, in a report dated November 21, 1994, related that appellant's right shoulder tendinitis was slowly improving. In notes dated December 15, 1994, Dr. Roger J. Volkmann, a Board-certified orthopedic surgeon, related that appellant had been cleaning in the office at work and felt increased pain in her shoulder. In notes dated January 4, 1995, he related that appellant's shoulder had been feeling better but she had recently been loading wood and felt she might have overdone it. In a report dated February 3, 1995, Dr. Patrick J. Wendt,⁶ a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan revealed no convincing evidence of a tear of the rotator cuff tendon. The study was described as a normal MRI scan of the shoulder.⁷ In notes dated February 7, 1995, Dr. Volkmann indicated that an arthrogram and MRI scan were negative for a rotator cuff tear.

In notes dated March 7, 1995, Dr. Volkmann related that appellant was washing a window at home approximately 10 days previously and had increased shoulder pain. He provided findings on examination and advised that appellant could return to regular duty on March 13, 1995. Dr. Volkmann stated that appellant was still complaining of pain but he could not find any significant objective evidence to support her continued loss of time from work. As he indicated that there was no objective evidence to support disability and stated appellant could perform her regular job as of March 13, 1995, these notes do not establish that she sustained a work-related disability on or after that date.

In a narrative report and two form reports dated March 22, 1995, Dr. Stuart D. Freed, a Board-certified family practitioner, provided a history of appellant's condition and findings on examination and stated his opinion that she had a chronic rotator cuff tendinitis. He indicated that appellant could perform light-duty work as of March 22, 1995. However, Dr. Freed did not relate the rotator cuff condition to appellant's October 25, 1994 employment injury, right shoulder tendinitis and therefore these reports do not establish that she had any work-related disability on or after March 13, 1995, the date that Dr. Volkmann released her to regular duty.

⁶ At the oral hearing held in this case on February 26, 1996, the radiologist was identified as Dr. Wendt.

⁷ In a December 26, 1995 addendum to his February 3, 1995 report, Dr. Wendt stated: "[Appellant] had a right shoulder arthrogram [in] February 1995 and an MRI [scan] of the shoulder on February 3, 1995. Initially, the interpretation was that the MRI [scan] and arthrogram [were] normal[;] however, after reviewing the images with the Dr. Starkweather with additional clinical information, I suspect that there may be a subtle partial tear of the articular surfaces of the rotator cuff tendon. Again, reviewing these images it appears as though there are findings that support the clinical diagnosis of a partial intersubstance tear of the articular surface of the rotator cuff tendon."

In a report dated April 27, 1995, Dr. Richard P. McCullough, a Board-certified orthopedic surgeon, provided a history of appellant's condition, a review of x-rays and detailed findings on examination as well as a summary of the medical evidence. He diagnosed right shoulder strain by history and stated that there were presently no objective findings to support disability or an ongoing medical problem. Dr. McCullough stated that there were no orthopedic or neurologic findings that would preclude her returning to work as a rural carrier.

As Dr. McCullough opined that appellant was able to return to her regular job, this report does not discharge her burden of proof to establish that she had any disability on or after March 13, 1995 causally related to her October 25, 1994 employment injury.

In a report dated June 2, 1995, Dr. Freed stated that appellant likely had some degree of chronic right shoulder tendinitis and possibly even some mild capsulitis, but that there was no further need for continued therapy. As he did not opine that appellant was disabled on or after March 13, 1995, this report does not discharge her burden of proof.

In a report dated June 8, 1995, Dr. Freed related that appellant's shoulder was not in need of further treatment and that there was no medical explanation, physiological or anatomical, for her complaints of continued pain. Thus this report does not support appellant's contention that she had any continuing disability on or after March 13, 1995 causally related to her October 25, 1994 employment injury.

In notes dated August 23, 1995, Dr. Roger J. Starkweather, a Board-certified orthopedic surgeon, provided a history of appellant's condition and opined that appellant had a rotator cuff tear as documented on an MRI scan. However, a rotator cuff tear is not an accepted condition in this case and Dr. Starkweather provided no medical rationale explaining how this condition was causally related to appellant's October 25, 1994 employment injury. Therefore, these notes do not discharge appellant's burden of proof.

In a report dated April 7, 1997, Dr. Freed related that appellant had chronic right shoulder pain. He stated that appellant was not fit for full duty as a rural mail carrier because she would be required to lift up to 70 pounds of weight and this would exacerbate her chronic right shoulder pain. However, Dr. Freed provided no medical rationale explaining how appellant's disability in 1997 was causally related to her October 25, 1994 employment injury. Therefore, this report is not sufficient to establish that appellant had any work-related disability on or after March 13, 1995, the date her attending physician released her to regular work.

In a report dated May 29, 1997, Dr. Volkmann related that appellant continued to have pain and weakness and difficulty using her shoulder despite physical therapy. He stated that she had full motion of her shoulder but a lot of guarding and pain and weakness which appeared to be primarily impingement-type pain. Dr. Volkmann stated, "my feeling is that more probably than not her present complaints directly relate to the injury ... of October 1994." However, he provided no rationale explaining why he believed there was a causal relationship between appellant's shoulder problems in 1997 and her 1994 employment injury and therefore this report is not sufficient to discharge appellant's burden of proof.

In a report dated June 2, 1997, Dr. Starkweather related that appellant continued to have pain in her shoulder following her employment injury in which she fell gripping onto something as she fell and stated that this was a common mechanism for injury to the rotator cuff. He stated that an MRI scan and arthrogram demonstrated a partial tear of the rotator cuff which explained appellant's continued pain. Dr. Starkweather stated:

"We have been delayed in delivering any kind of care to [appellant] due to a ... controversy as to whether her [employment injury] was valid. I think the confusion arose because at first Dr. Volkmann perhaps did not appreciate the partial tear and allowed her to return to work, [when] in fact she had an ongoing problem."

However, Dr. Starkweather provided no rationalized medical opinion explaining how the rotator cuff condition was related to the October 25, 1994 employment injury and this report is therefore insufficient to establish a work-related disability on or after March 13, 1995.

In a report dated July 2, 1997, Dr. Volkmann indicated that appellant was disabled from her job as a rural mail carrier due to her shoulder problems. He stated:

"Even though I did not treat [appellant] actively for almost a two-year period, the records would indicate that she has been consistently disabled since the accident date of October 1994 until present being unable to lift the 70 pounds which is required by the [employing establishment] regulations and is unable to do repetitive reaching overhead with her right arm because of the right shoulder injury."

However, Dr. Volkmann had released appellant to regular work as of March 13, 1995 and so his statement that she had been consistently disabled since her October 25, 1994 employment injury is not accurate. Furthermore, he failed to provide a rationalized medical opinion explaining how appellant's condition was causally related to her 1994 employment injury. Due to these deficiencies, this report is not sufficient to discharge appellant's burden of proof.

In a report dated July 7, 1997, Dr. Starkweather stated that appellant sustained a partial tear of her rotator cuff as a result of her 1994 employment injury which resulted in pain and difficulty in lifting and she had been disabled since that time. However, this report is not accurate because, as noted above, Dr. Volkmann had released appellant to regular work as of March 13, 1995. Additionally, Dr. Starkweather did not provide an explanation as to how appellant's rotator cuff tear was causally related to her employment-related right shoulder tendinitis. Therefore, this report does not establish that appellant had any disability on or after March 13, 1995 causally related to her October 25, 1994 employment injury.

In a report dated January 19, 1998, Dr. Starkweather provided findings on examination and noted that Dr. Volkmann initially had interpreted an arthrogram as normal but he stated that the radiologist had circled a finding of a torn rotator cuff at the original reading and this was objective evidence of a partial tear in the rotator cuff. He stated appellant had significant disability due to loss of range of motion and continued pain. However, Dr. Starkweather did not

explain how the rotator cuff tear was causally related to the accepted injury, tendinitis. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated February 5, 1998, Dr. Volkmann related that he had seen appellant periodically for right shoulder pain dating back to her employment injury, provided findings on examination and diagnosed an impingement syndrome of the rotator cuff tendons. He stated that, not being aware of any other injuries, he would have to assume that her ongoing difficulties were due to her October 1994 employment injury and stated that she could not perform her regular work. However, Dr. Volkmann's statement that he was not aware of any other injuries is not accurate as he had related in notes dated December 15, 1994 and January 4 and March 7, 1995, that appellant had been cleaning in the office at work and felt increased pain in her shoulder, had been loading wood and felt she might have overdone it and had been washing a window at home and had increased shoulder pain. Moreover, he failed to provide a rationalized medical opinion explaining causal relationship between appellant's impingement syndrome and her October 25, 1994 employment injury and he did not explain why he felt appellant had a work-related disability when he had released her to regular work as of March 13, 1995.

As appellant has failed to provide rationalized medical opinion evidence establishing that she was disabled on or after March 13, 1995 due to her October 25, 1994 employment injury, the Office properly denied her claim for continuing compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated August 25, 1998 and December 3, 1997 are affirmed.

Dated, Washington, DC
November 14, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member