

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSELYN I. STEWART and U.S. POSTAL SERVICE,
POST OFFICE, Lexington, KY

*Docket No. 00-988; Submitted on the Record;
Issued March 9, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an employment-related right upper extremity condition.

In March 1998 appellant, then a 47-year-old flat sorter machine clerk, filed a claim alleging that she sustained a right upper extremity condition due to the repetitive mail sorting duties of her job. She alleged that she sustained tendinitis and a partial rotator cuff tear of her right shoulder and an aggravation of her fibromyalgia.¹ Appellant stopped working for the employing establishment on July 10, 1996.² By decision dated July 16, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related right upper extremity condition. By decisions dated October 28, 1998, January 29 and November 3, 1999, the Office affirmed the Office's July 16, 1998 decision.

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained an employment-related right upper extremity condition.

An employee who claims benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim.⁴ The claimant has the burden of

¹ The Office of Workers' Compensation Programs had previously accepted that appellant sustained employment-related bilateral tibia contusions on June 14, 1994. The Office also accepted that she sustained left wrist and knee strains due to a fall at work on March 9, 1995.

² Appellant began working in a light-duty position in early 1995. Between the early and mid 1990s, appellant filed several claims with the Office regarding her upper extremities which were denied. It does not appear that the files from these claims have been combined with the file for the present claim.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵ However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶

The Board notes that, while none of the reports of Dr. Rita M. Egan, a Board-certified internist, are completely rationalized, they are consistent in indicating that appellant sustained an employment-related right upper extremity condition, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed condition and employment factors, and are sufficient to require the Office to further develop the medical evidence and the case record.⁷

In a report dated December 19, 1997, Dr. Egan indicated that she initially saw appellant on September 15, 1997 at which time she displayed fibromyalgia that was thought to be due to "sleep disturbance and immune factors." Dr. Egan stated that diagnostic testing showed appellant had tendinitis and a partial rotator cuff tear in the right shoulder and that the rotator cuff tear was most likely due to overhead and repetitive use of the shoulder. She stated, "Unfortunately, this was and would be exacerbated during her job where she is required to use her arms in abduction and flexion such that she is going to repetitively irritate the rotator cuff." In a report dated June 8, 1998, Dr. Egan indicated that medical evidence dated between 1990 and 1995 showed that appellant had right shoulder tendinitis and a possible rotator cuff tear. She indicated that appellant's rotator cuff tear was due to a March 9, 1995 fall and overhead and repetitive use of her shoulder. Dr. Egan noted that she was aware that appellant had not worked since 1996 but that the pain in her shoulder was exacerbated by continued use of her shoulder during work.

In a report dated August 12, 1998, Dr. Egan noted that appellant developed fibromyalgia secondary to her right shoulder pain, which in turn was caused by her work. She also indicated that appellant's right shoulder tendinitis was due to employment factors. In reports dated November 23, 1998, January 7 and June 18, 1999, Dr. Egan provided similar opinions regarding the employment-related cause of appellant's right shoulder problems. She emphasized that appellant's problems had been objectively identified since at least 1990 and continued to be present.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related right upper extremity condition. The Office should prepare a statement of accepted facts and obtain a medical opinion

⁵ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁷ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

on this matter.⁸ After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated November 3 and January 29, 1999 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
March 9, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ The Office should also attempt to combine the files from appellant's prior relevant claims with the file for the present claim.