

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA J. GLENN and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 01-65; Submitted on the Record;
Issued October 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT,

The issues are: (1) whether appellant met her burden of proof in establishing that her medical conditions arose within her federal employment, as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing as untimely filed.

On November 19, 1999 appellant, then a 34-year-old relief window and distribution clerk, filed an occupational disease claim alleging that her federal job duties contributed or aggravated her curved back condition of Scheuermann's kyphosis of which she first became aware in November 1995 and realized was causally related to factors of her federal employment in April 1999. In a supplemental statement of October 5, 1999, appellant described her job duties which she felt contributed to and/or aggravated her diagnosed condition of Scheuermann's kyphosis. Described were her original distribution duties, which she had not performed since October 2, 1998, and her light duties performed thereafter. Appellant related that her distribution duties stopped October 2, 1998 as she had suffered thoracic and lumbar strains which the Office accepted under a different claim number.¹ Medical reports were also submitted. In response to its December 27, 1999 letter requesting additional information, the Office received further medical reports and factual information. Appellant additionally claimed that her federal duties contributed to or aggravated her right elbow condition of cubital tunnel syndrome. By decision dated March 31, 2000, the Office denied appellant's claim on the grounds that the evidence did not establish that the claimed conditions were causally related to her federal employment. By decision dated June 21, 2000, the Office denied appellant's request for an oral hearing on the basis that the request was untimely made.

The Board has duly reviewed the case record on appeal and finds that appellant established that her claimed conditions are causally related to factors of her federal employment.

¹ Appellant referred to claim number 14-0336283 for her October 1998 thoracic and lumbar strains.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.¹ The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.² Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment conditions caused or aggravated his condition is sufficient to establish causal relationship.³ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁴ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁵

In the present case, appellant indicated that her federal work duties of a distribution clerk and her modified duties after October 2, 1998 contributed to and/or aggravated her preexisting back condition of Scheuermann's kyphosis and also her right elbow condition of cubital tunnel syndrome. She submitted medical reports by Dr. Blake G. Johnson, a Board-certified orthopedic surgeon. In a November 12, 1999 report, Dr. Johnson indicated that appellant has Scheuermann's kyphosis with a work-related injury consisting of repetitive lifting away from the body which has worsened her symptoms. Dr. Johnson stated that he believed that this was secondary to status posturing combined with repetitive use of the upper extremities that provided aggravation of her preexisting pathology. He opined that Scheuermann's kyphosis can be aggravated by repetitive work with lifting with the upper extremities at the waist or above waist level. He indicated that appellant now has chronic residual pain related to overuse activities of the upper extremities. A significant improvement with light duty was noted.

In a December 22, 1999 report, Dr. Johnson indicated that appellant has been on significant work restrictions and that they have been trying to get appellant back to a work level which was agreeable with her symptoms in regard to her Scheuermann's kyphosis. Dr. Johnson indicated that, according to his last note of November 2, 1999, appellant was having increased pain in the mid thoracic region again consistent with her disease process. He indicated that appellant would benefit from a work hardening program. He stated that if appellant was unable to maintain repetitive movements after the work hardening program that he was of the opinion that appellant's current job duties and activities would not be compatible with her current symptoms secondary to Scheuermann's kyphosis.

¹ *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

² *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

³ *See Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁵ *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

The Board finds Dr. Johnson's opinion sufficiently rationalized to be of probative value. Dr. Johnson is familiar with appellant's medical history, knows her employment factors, and has adequately explained how appellant's preexisting condition of Scheuermann's kyphosis in conjunction with her work-related injury has aggravated or contributed to appellant's chronic residual pain. Dr. Johnson stated that Scheuermann's kyphosis may be aggravated by repetitive work with lifting with the upper extremities at or above the waist level. He opined that appellant's status posturing combined with repetitive use of the upper extremities aggravated her preexisting pathology. Moreover, Dr. Johnson demonstrated adequate knowledge of appellant's light-duty work and its effect on appellant's medical condition. As there are no opposing medical reports of record, the reports of Dr. Johnson are sufficient to establish that appellant's claimed conditions are causally related to factors of her federal employment.

Accordingly, the March 31, 2000 decision of the Office Workers' Compensation Programs is reversed.¹

Dated, Washington, DC
October 12, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

¹ In light of this finding, the Board will not address the second issue in this case as it is rendered moot. The Board further notes that the record contains new evidence which was received after the Office's merit decision of March 31, 2000. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.

Michael J. Walsh, dissenting:

I respectfully dissent from the majority opinion. The majority finds that appellant has sustained her burden of proof that her job duties aggravated her preexisting curved back condition of Scheuermann's kyphosis. I do not believe the medical evidence is sufficient to warrant that result but does suffice to require further development of the medical issue involved. The pertinent medical evidence consists of a November 12, 1999 report by her treating physician, Dr. Blake E. Johnson, a Board-certified orthopedic surgeon, in which he points out that he had previously seen appellant on April 21, 1999 for complaints of thoracic back sprain, complaining of an on-the-job injury on October 2, 1998.¹ He noted in this report that she had a kyphotic deformity with end plate changes at T9, T10 and T11. He further opined that repetitive lifting worsened her symptoms of Scheuermann's kyphosis. He recommended light duty, lifting less than 20 pounds and no repetitive motion. He further found she had chronic residual pain related to overuse activity of the upper extremities. He concluded by stating "Scheuermann's kyphosis can be aggravated by repetitive work with lifting with the upper extremities at the waist or above waist level."

The record contains a December 22, 1999 letter from Dr. Johnson in which he states that he tried physical therapy, pain relieving modalities and a work hardening program, and it was unnecessary for her to further treat with him.

Finally, the record contains a March 24, 2000 report from Dr. Kenneth D. Sawyer, an orthopedic surgeon consulting for the employing establishment, in which he reviews appellant's medical history and concludes that her symptoms were due to a natural progression of Scheuermann's kyphosis "completely unrelated to any traumatic injury or work activity." He indicated that restrictions would be for protection from the natural progression of her nonindustrial condition. Dr. Sawyer did not treat or examine appellant.

Dr. Johnson has asserted that appellant's work activities aggravated her preexisting condition. His reports do not go into any great detail what her job entailed but he does lend support to her claim and he pursued a number of areas of treatment which lends credence to his opinion. The report of Dr. Sawyer, acting in a consulting capacity, while probative, does not carry the weight of the treating physician as he did not examine or treat appellant.

Dr. Johnson's reports lack a detailed medical rationale to sustain appellant's burden of proof but they are sufficient to require further development.²

¹ The Office of Workers' Compensation Programs accepted the October 2, 1998 injury for lumbar sprain and thoracic sprain.

² *Shirley A. Temple*, 49 ECAB 404, 409; *John J. Carlone*, 41 ECAB 354 (1989).

I submit the case should be remanded to the Office for further development on the medical issue of aggravation of her Scheuermann's kyphosis, overuse of her upper extremities and disability resulting therefrom, if any.

Michael J. Walsh
Chairman