

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. LUCAS and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Melville, NY

*Docket No. 01-1903; Submitted on the Record;
Issued July 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability causally related to her accepted work injuries.

Appellant's claim filed on March 28, 1994 was accepted for carpal tunnel syndrome, lateral epicondylitis and tennis elbow after a tray of mail broke and her left elbow forcibly banged into a transport cart. She had surgery on January 18, 1995 for lateral epicondylitis of her left elbow and on August 9, 1995 for release of her carpal tunnel. The Office of Workers' Compensation Programs authorized further resection surgery on her left elbow on March 29, 1996.

Subsequently, the Office referred appellant to Dr. Arnold M. Illman, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence over whether appellant's right shoulder condition was work related.¹

Based on its February 26, 1997 report, the employing establishment offered appellant a full-time light-duty job answering telephones, photocopying and performing other administrative tasks. She accepted the position and returned to work on May 27, 1997.

On March 20, 1998 the employing establishment informed appellant that her administrative position was no longer available, that the place and hours of her light-duty job would be changed, effective March 23, 1998, and that her assigned duties would consist of the manual distribution of mail into a letter case.²

¹ In a report dated October 9, 1995, Dr. Seymour Einhorn, a Board-certified orthopedic surgeon, stated that appellant's right acromioclavicular joint pain was due to stress and overuse of her right arm because of the work-related injuries to her left arm. In a report dated October 5, 1995, Dr. John C. Killian, a Board-certified orthopedic surgeon, concluded that appellant's right shoulder complaints were not related to work but rather to arthritis.

² This assignment was later changed to repairing damaged mail. Appellant testified at the hearing on July 14,

On April 7, 1998 appellant filed a recurrence of disability claim, alleging that she still had severe pain in her left arm and light use of her right arm and had reduced her workday to six hours, based on the advice of her long-time treating physician, Dr. Einhorn. On September 23, 1998 the Office referred appellant to Dr. Robert V. Moriarty, a Board-certified orthopedic surgeon, to resolve a conflict in medical opinion evidence between Dr. Einhorn, who opined that appellant could work only six hours a day and that her right shoulder condition was due to her accepted work injury and Dr. Illman, who found no connection between appellant's shoulder problem and her left upper extremity injuries and opined that she was capable of full-time, light-duty work.

Based on Dr. Moriarty's October 8, 1998 report, the Office denied appellant's claim for partial wage-loss compensation on February 3, 1999 finding that, while the nature and extent of appellant's light-duty assignment had changed, the new duties were within her restrictions and there had been no worsening of her accepted work injuries.

Appellant requested a hearing, which was held on July 14, 1999. At the hearing, Dr. Einhorn testified that appellant had developed reflex sympathetic dystrophy (RSD) as a result of her work injuries and increasing pain in her left arm and shoulder had required her to work fewer hours. On February 16, 2000 the hearing representative denied appellant's claim on the grounds that the medical evidence did not establish that the reduction in her work hours was causally related to her left elbow injuries. The hearing representative advised appellant to file a new claim for her right shoulder condition.

Appellant requested reconsideration and filed an occupational disease claim on January 16, 2001 alleging that because of her 1994 work injuries, she had developed overuse syndrome in her right upper extremity.³ On April 25, 2001 the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board finds that this case is not in posture for decision due to a conflict in the medical opinion evidence.

When an employee, who is disabled from the job he or she held when injured, returns to a light-duty position or the medical evidence establishes that the employee can perform the duties of such a position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence, a recurrence of total disability.⁴ As part of this burden, the employee

1999 that this assignment worked out well for six hours a day.

³ This claim has not been adjudicated by the Office in the record and is thus not before the Board; *see* 20 C.F.R. § 501.2(c), 501.3(d)(2); *Thomas J. Engelhart*, 50 ECAB 322, 333 n. 1 (1999).

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.⁵

In this case, appellant established that the employing establishment changed the requirements of her light-duty position in April 1998 when it transferred her from an administrative job to casing mail by hand.

Initially, Dr. Einhorn stated on January 13, 1997 that appellant could work for four hours a day, with no repetitive motion of her left hand, fingers and elbow. She returned to light duty full time on May 27, 1997. Dr. Einhorn completed a form dated November 25, 1997 stating that appellant could work eight hours a day, with lifting limited to five pounds or less and simple grasping and fine manipulation limited to two hours a day each.

In its March 20, 1998 letter informing appellant of the light-duty change, the employing establishment stated that the physical requirements of casing mail manually included: lifting under one pound, sitting, standing, walking and simple grasping, intermittently eight hours; bending and stooping, occasionally as needed; and no climbing, kneeling, pulling, pushing, or reaching above the shoulder. The letter stated that appellant had restricted use of her left arm.

On April 7, 1998 Dr. Einhorn stated that appellant could lift five pounds or less for four hours a day, but could work only six hours. On April 13, 1998 he stated that appellant reported that casing mail was more difficult to do, that she developed pain after four hours and “excruciating” pain after six hours and that she was forced to stop work and take medication.

In a letter dated May 18, 1998, Dr. Einhorn stated that manual casing with her right arm only aggravated appellant’s right shoulder joint and that his diagnosis was still lateral epicondylitis of the left elbow and aggravation of the right acromioclavicular joint due to overuse and arthritis. Subsequent monthly reports from Dr. Einhorn stated that appellant still had a great deal of pain in working six hours a day.

In referring appellant to Dr. Moriarty, the Office found a conflict of medical opinion between Drs. Einhorn and Illman over how many hours appellant could work.⁶ However, Dr. Illman’s opinion that appellant could work eight hours a day was based on desk-type work and was dated February 26, 1997, prior to the time that appellant’s duties changed from administrative tasks to casing mail manually in April 1998. He did not review the casing duties to determine if appellant could perform them for eight hours. Therefore, the Board finds that the Office erred in finding a conflict of medical opinion evidence between Dr. Illman and Dr. Einhorn.

In his October 8, 1998 report, Dr. Moriarty diagnosed chronic pain syndrome of the left elbow, possibly related to reflex sympathetic dystrophy. He found a mild disability and stated

⁵ *Glenn Robertson*, 48 ECAB 344, 352 (1997).

⁶ The Federal Employees’ Compensation Act provides 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. 5 U.S.C. § 8123(a).

that appellant “should be able to work an eight-hour day in a light-duty position,” based on “the lack of objective evidence to suggest that she could not participate in this type of work.” Dr. Moriarty found no evidence of a worsening of appellant’s left upper extremity condition.⁷

The Board finds that the opinion of Dr. Moriarty conflicts with that of Dr. Einhorn regarding how many hours a day appellant can work due to the accepted work injuries and what duties she is capable of performing. Because this conflict remains unresolved, the case must be remanded to the Office for further development.⁸ On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an impartial medical evaluation regarding appellant’s work capacity. After such development of the case as the Office deems necessary, a *de novo* decision shall be issued.

The April 25, 2001 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
July 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ Dr. Moriarty listed no restrictions on bending, squatting, kneeling, twisting, standing, limited lifting to 20 pounds and climbing intermittently for four hours a day. He found no restrictions of simple grasping and fine manipulation.

⁸ The Board notes that appellant’s duties changed again from casing mail to repairing damaged mail, but the record is unclear when this occurred. In a January 16, 2001 report, Dr. Einhorn stated that appellant’s job consisted of returning mail to the sender. In a February 16, 2001 report, he noted that appellant was working eight hours a day.