

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNDA E. MEREDITH and U.S. POSTAL SERVICE,
POST OFFICE, East Hartford, CT

*Docket No. 01-1038; Submitted on the Record;
Issued June 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability on December 3, 1999 causally related to the December 16, 1997 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and right rotator cuff tear and related surgery.

On December 18, 1999 appellant, then 46 years old, filed a claim for a recurrence of disability commencing December 3, 1999 causally related to the December 16, 1997 employment injury. In an attached statement, appellant stated that when she returned to work, she was not handicapped or limited but gradually started having pain in her neck, shoulder blades and right shoulder which radiated down to her arm and fingers and caused her fingers to go numb. She stated that she also had lower back pain, which traveled down her right leg to her foot and her foot went numb. The record indicates that appellant returned to work with restrictions on September 17, 1998. Appellant stated that her mail work involved constant up and down and side to side motions, lifting and carrying buckets of flat mail weighing approximately 33 pounds and placing parcels which sometimes weighed more than 50 pounds into her car.

Appellant had some physical problems with her neck prior to the December 16, 1997 employment injury as shown by the report of Dr. Stephan C. Lange, a Board-certified neurological surgeon, dated March 24, 1997, in which he stated that appellant complained of radiating left arm pain which traveled into her left hand with numbness and tingling "along the distribution of the pain" and that appellant related episodes of severe left posterior scapular pain. He stated that these problems began in late November 1996 and "are essentially spontaneous." Dr. Lange stated that a magnetic resonance imaging (MRI) scan showed that appellant had herniated cervical discs at C5-6 and C6-7. In a report dated February 9, 1998, Dr. Lange stated that appellant had a right C4-5 disc rupture based on an MRI scan. In an attending physician's report dated February 26, 1998, he checked the "yes" box that appellant's herniated cervical disc was aggravated by her employment.

In a report dated December 20, 1999, appellant's treating physician, Dr. James T. Mazzara, a Board-certified orthopedic surgeon, stated that appellant came in for an evaluation of problems she was having with the right upper extremity and right lower extremity. He stated that she had been out of work since early December "as a result of increased pain and discomfort in the right cervical area arm and numbness and tingling in the radial three fingers of the right hand." Dr. Mazzara stated that appellant's symptoms had been increasing for months and appellant attributed them to her work-related activities of repetitive use of the right upper extremity, standing, lifting, twisting and use of her lower back as well as the cervical area and upper extremities. He stated that appellant also complained of pain and discomfort in her lower back, buttock area and right leg including numbness and tingling of the outer right foot. Dr. Mazzara diagnosed cervical radiculopathy and right sciatica with an absent reflex suggestive of an L5-S1 disc herniation. He indicated that appellant was disabled for two or three weeks "because of the involvement in both cervical and lumbosacral areas."

In an attending physician's report dated December 28, 1999, Dr. Mazzara diagnosed cervical radiculopathy and low back pain and checked the "yes" box that appellant's condition was work related. In a report dated February 29, 2000, Dr. Mazzara opined that appellant's symptoms of shoulder and right upper extremity cervical radiculopathy were work related based on appellant's verbal report to him that she was injured in a motor vehicle accident. He noted that appellant did not have an injury prior to December 16, 1997. In a report dated May 5, 2000, Dr. Mazzara stated that appellant could only return to restricted work based on her cervical radiculopathy or residual right shoulder and tendinopathy symptoms. He stated that the repetitive filing, moving and shifting of mail parcels and letters "seem[ed] to aggravate her shoulder pain and discomfort" and she should refrain from those activities.

In an attending physician's report dated January 10, 2000, Dr. Mazzara diagnosed cervical radiculopathy and checked the "yes" box that it was work related, with a statement "repetitive use and significant physical demands. Same symptoms as when [appellant] initially provoked in 1998" due to the motor vehicle accident. He stated that appellant was totally disabled from December 3, 1999 through January 12, 2000.

In a report dated January 11, 2000, Dr. Mazzara stated that appellant showed some signs of improvement but her cervical neck pain and right upper extremity symptoms were entirely consistent with findings that "were seen and treated previously at the original referral to our office several years ago" when she was treated for cervical radiculopathy and shoulder pain. He stated that, at the time, appellant's symptoms were felt to be most appropriately attributed to the shoulder impingement and tendinitis that was treated through surgery. Dr. Mazzara stated that at that time appellant's cervical symptoms "seemed to resolve to a point where she could deal with them and she has subsequently had a recurrence of those symptoms in the upper extremity consistent with a right radiculopathy of the c-spine." On physical examination he found appellant's range of motion of the cervical spine was normal with pain down her arm but no weakness with ipsilateral bending to the right. Dr. Mazzara stated that her "most predominant symptoms" were in the right lower extremity in the area of the right gluteal area down the posterolateral aspect of the right foot, calf, "to the plantar aspect of the right heel."

In a progress note dated January 31, 2000, he stated that appellant's cervical spine symptoms showed "some" improvement and her lumbosacral spine and her right sciatica

condition were “remarkably improved.” Addressing her neck, he stated that appellant had stiffness and discomfort, which worsened with activity and occasional pain referred to the right shoulder which was “not really consistent with shoulder pain” and was “much more consistent with referred cervical spondylosis.”

In a report dated May 5, 2000, Dr. Mazzara stated that appellant’s pain was attributable to her cervical radiculopathy or residuals of right shoulder tendinopathy and prevented her from returning to unrestricted work. He stated that the repetitive filing, moving and shifting mail parcels and letters “seemed to aggravate” her shoulder pain and discomfort and she should refrain from those acts.

By letter dated June 21, 2000, the Office informed appellant that it could not process her claim because cervical radiculopathy was not an accepted condition.

By decision dated September 25, 2000, the Office denied appellant’s claim, stating that the evidence failed to establish that the claimed period of disability was causally related to the December 16, 1997 employment injury.

By letter dated November 27, 2000, appellant requested reconsideration of the Office’s decision and submitted a report from Dr. Mazzara dated October 17, 2000. In his report, Dr. Mazzara stated that appellant’s right shoulder pain, cervical symptoms and “both injuries to the cervical spine and right shoulder” were directly attributable to the December 1997 employment injury. He stated that appellant had no symptoms prior to that injury and “... as is sometimes the case, [appellant’s] cervical symptoms were referred to the right shoulder and her shoulder pathology appeared to be more significant at that time and was addressed surgically. It is not uncommon to have symptoms from two problems, which overlap creating difficulty differentiating between the two sources of the patient’s pain and discomfort. The injuries to the right shoulder was well as those to the cervical spine are without question related to the injury in December 1997.”

Dr. Mazzara stated that appellant had no symptoms prior to the December 1997 employment injury.

By decision dated March 1, 2001, the Office denied appellant’s request for modification.

The Board finds that appellant did not establish that she sustained a recurrence of disability on December 3, 1999 causally related to the December 16, 1997 employment injury.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

disability and show that she cannot perform such light duty.² As part of this burden, the employee 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.³ This burden includes the necessity of furnishing medical evidence from a physician, who on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture or speculation or appellant's unsupported belief of causal relation.⁵

In his December 20, 1999 report, appellant's treating physician, Dr. Mazzara, stated that she attributed her increased symptoms of pain in her right cervical area, arm, lower back, buttock area extending into her right leg and numbness in her right foot and some of her right fingers to her activities at work involving repetitive use of her right upper extremity, standing, lifting and twisting. He diagnosed cervical radiculopathy, right sciatica and possibly an L5-S1 disc herniation. In his February 29, 2000 report, Dr. Mazzara stated that appellant's symptoms of shoulder and right upper extremity cervical radiculopathy were work related, referring to her December 16, 1997 employment injury and noted that she did not have an injury prior to December 16, 1997. He stated that appellant's cervical radiculopathy and tendinopathy prevented her from returning to unrestricted work. In his January 10, 2000 attending physician's report, in checking the "yes" box that appellant's cervical radiculopathy was work related, Dr. Mazzara stated that it was due to repetitive use and significant physical demands and they were the same symptoms as appellant had following her 1997 car accident. In his May 9, 2000 report, he stated that appellant was partially disabled due to cervical radiculopathy and residual tendinopathy and the repetitive filing, moving and shifting parcels and letters seemed to aggravate her symptoms. None of these reports establish that she sustained a recurrence of disability on December 3, 1999 as Dr. Mazzara attributed appellant's shoulder and neck condition due, in part, to her repetitive motion activities at work or to her cervical radiculopathy and tendinopathy. The Office, however, did not accept those conditions as work related. Moreover, aggravation of a preexisting injury constitutes a new injury, not a recurrence of disability.⁶

In his January 10, 2000 report, Dr. Mazzara stated that appellant's current symptoms of cervical neck and right upper extremity pain were the same as when he originally treated appellant several years ago for cervical radiculopathy and shoulder pain. On physical examination he found appellant's predominant symptoms were in the right lower extremity in the area of the right gluteal area down the posterolateral aspect of the right foot. In his January 31, 2000 progress note, Dr. Mazzara stated that appellant's symptoms in her neck and back and her sciatica were improved and the occasional pain referred to the right shoulder was more consistent

² *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ *See Nicolea Brusio*, 33 ECAB 1138 (1982).

⁵ *See William S. Wright*, 45 ECAB 498, 503 (1994).

⁶ *See* 20 C.F.R. § 10.104; *Willie J. Clements, Jr.*, 43 ECAB 244, 247 n. 8 (1991).

with cervical spondylosis than shoulder pain. These reports do not establish that appellant sustained a recurrence of disability on December 3, 1999 because problems in her lumbar spine, the right sciatica and spondylosis were not accepted conditions.

Dr. Mazzara's October 17, 2000 report, in which he opined that appellant's injuries to the right shoulder and cervical spine were related to the December 16, 1997 employment injury, provides no rationalized opinion explaining his conclusions. Given that, in his previous reports, Dr. Mazzara diagnosed a possible herniated disc, cervical radiculopathy, right sciatica and tendinopathy and he at times attributed the onset of appellant's condition in December 1999 to her repetitive motion activities at work, his report does not explain how appellant's shoulder and neck condition arose from a recurrence on December 3, 1999 as opposed to those other medical conditions which were not accepted or from her work activities. Moreover, he incorrectly stated that appellant had "no injury" prior to December 16, 1997 when in fact Dr. Lange found in his March 24, 1997 report that appellant complained of radiating left arm pain which traveled into her left hand accompanied by numbness and tingling and the MRI scan showed evidence of two herniated cervical discs at C5-6 and C6-7. In fact, Dr. Mazzara did not make any reference to an incident occurring on December 3, 1999.

Appellant has not presented rationalized medical evidence showing that her neck, right arm, hand, back and leg pain were due to a recurrence of disability on December 3, 1999 of the accepted conditions of right cervical sprain and rotator cuff tear.⁷ She has not shown that her work requirements changed or that her accepted injury changed. Appellant has, therefore, failed to establish that she sustained a recurrence of disability on December 3, 1999 resulting from the December 16, 1997 employment injury.

⁷ See *Bernard Snowden*, 49 ECAB 144, 148 (1997).

The March 1, 2001 and September 25, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 20, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member