

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOYCE J. THOMPSON and U.S POSTAL SERVICE,  
LAURAL CANYON ANNEX, North Hollywood, CA

*Docket No. 02-1686; Submitted on the Record;  
Issued November 26, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury to her shoulders in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing.

On June 6, 2000 appellant, then a 54-year-old distribution clerk, filed an occupational disease claim alleging that she sustained injuries to her shoulders due to the heavy lifting required in her job. She indicated that she first became aware of her condition on May 8, 2000.

By decision dated August 8, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish fact of injury.

By letter dated September 6, 2000 appellant requested an oral hearing.

In a report dated August 23, 2000, Dr. Ronald S. Kvitne, appellant's attending Board-certified orthopedic surgeon, stated that appellant had been having pain in her hands, arms, shoulders, and neck due to work-related activities. He provided findings on examination and diagnosed bilateral left adhesive capsulitis and rotator cuff tendinitis, extensor tenosynovitis of the right hand, and chronic cervical strain due to repetitive work activities since May 2000.

In a report dated January 12, 2001, Dr. Kvitne stated that appellant reported no significant improvement in her neck and shoulders. He noted that a MRI (magnetic resonance imaging) scan of the cervical spine was essentially normal. Dr. Kvitne provided findings on examination and diagnosed bilateral overuse, repetitive stress strain, rotator cuff tendinitis, bursitis, and chronic cervical spine strain. He indicated that these conditions were due to repetitive stress and strain at work during the past ten months.

On January 5, 2001 a hearing was held and appellant testified.

By decision dated March 22, 2001, the Office hearing representative set aside the Office's August 8, 2000 decision and remanded the case for further development.

In a report dated June 21, 2001, Dr. Ilmar Soot, a Board-certified orthopedic surgeon, provided a history of appellant's condition and findings on examination. His "diagnosis" was "pain in joint, shoulder, bilateral." Dr. Soot indicated that the condition was work-related.

In a report dated January 10, 2002, Dr. Steven Schilperoort, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition and a review of the medical evidence and noted that appellant felt that her problems with her arms and shoulders were due to repetitive use in her job. He provided detailed findings on examination. Dr. Schilperoort stated that passive range of motion of both shoulders was full and normal with no objective evidence that would support a diagnosis of adhesive capsulitis. He found motor strength to be normal. Dr. Schilperoort stated:

"[I] find no objective evidence that supports any ongoing pathology in [appellant's] shoulders, forearms, elbows, hands or wrists based on today's assessment. I am unable to corroborate her stated levels of pain. Any valid injuries that may have been incurred as a consequence of her work environment and reported on May 8, 2000 are not present today currently. I have no diagnosis that would support [appellant's] stated levels of pain today.

"No diagnosis is established today. Though there are stated diagnoses of forearm, hand and wrist tendinitis and shoulder adhesive capsulitis suggested by Dr. Kvitne, I cannot corroborate any of these on today's physical examination....

"I have reviewed the job description of a distribution clerk as well as the [medical] chart notes. I cannot affirm that the said description...could be reasonably responsible for an adhesive capsulitis or any form of tendinitis as it is described. [I am] unable to affirm that any injury has been incurred."

Dr. Schilperoort stated that appellant was capable of full, regular work without restriction.

By decision dated February 13, 2002, the Office denied appellant's claim on the grounds that the weight of the medical evidence, as represented by the report of Dr. Schilperoort, established that appellant did not have a work-related medical condition.

By letter dated March 25, 2002 appellant requested a hearing.

By decision dated May 9, 2002, the Office denied appellant's request for a hearing on the grounds that the request was untimely and the issue in the case could be resolved equally well through a request for reconsideration and the submission of new evidence.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury to her shoulders and arms causally related to factors of her employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>1</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>2</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>3</sup> must be one of reasonable medical certainty,<sup>4</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

In a report dated January 10, 2002, Dr. Schilperoort, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition and a review of the medical evidence and noted that appellant felt her problems with her arms and shoulders were due to repetitive use of her upper extremities in her job. He provided detailed findings on examination. Dr. Schilperoort stated that passive range of motion of both shoulders was full and normal with no objective evidence that would support a diagnosis of adhesive capsulitis. He found motor strength to be normal. Dr. Schilperoort stated:

“[I] find no objective evidence that supports any ongoing pathology in [appellant's] shoulders, forearms, elbows, hands or wrists based on today's assessment. I am unable to corroborate her stated levels of pain. Any valid injuries that may have been incurred as a consequence of her work environment and reported on May 8, 2000 are not present today currently. I have no diagnosis that would support [appellant's] stated levels of pain today.

“No diagnosis is established today. Though there are stated diagnoses of forearm, hand and wrist tendinitis and shoulder adhesive capsulitis suggested by Dr. Kvitne, I cannot corroborate any of these on today's physical examination....

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<sup>1</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>2</sup> The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may not be necessary. See *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

<sup>3</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>4</sup> See *Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>5</sup> See *James D. Carter, Jr.*, 43 ECAB 113, 123, (1991); *George A. Ross*, 43 ECAB 346, 351 (1991).

“I have reviewed the job description of a distribution clerk as well as the [medical] chart notes. I cannot affirm that the said description...could be reasonably responsible for an adhesive capsulitis or any form of tendinitis as it is described. [I am] unable to affirm that any injury has been incurred.”

Dr. Schilperoort stated that appellant was capable of full, regular work without restriction. Dr. Schilperoort’s rationalized opinion that appellant had no work-related medical condition is based upon detailed physical findings and a review of the medical reports.

In a report dated August 23, 2000, Dr. Kvitne, appellant’s attending Board-certified orthopedic surgeon, stated that appellant had been having pain in her hands, arms, shoulders, and neck due to work-related activities. He provided findings on examination and diagnosed bilateral left adhesive capsulitis and rotator cuff tendinitis, extensor tenosynovitis of the right hand, and chronic cervical strain due to repetitive work activities since May 2000. In a report dated January 12, 2001, Dr. Kvitne provided findings on examination and diagnosed bilateral overuse, repetitive stress strain, rotator cuff tendinitis, bursitis, and chronic cervical spine strain. He indicated that these conditions were due to repetitive stress and strain at work during the past ten months. However, Dr. Kvitne did not provide a description of appellant’s physical work duties or a rationalized explanation as to how appellant’s duties caused these medical conditions. Therefore, these reports are not sufficient to establish that appellant sustained any work-related medical condition.

In a report dated June 21, 2001, Dr. Soot, a Board-certified orthopedic surgeon, provided a history of appellant’s condition and findings on examination. His “diagnosis” was “pain in joint, shoulder, bilateral.” Dr. Soot indicated that the condition was work-related. However, he did not provide a specific diagnosis or a rationalized medical opinion explaining why he believed appellant’s shoulder pain was work-related. Therefore, this report is not sufficient to establish that appellant sustained a work-related shoulder condition.

The Board further finds that the Office properly denied appellant’s request for a hearing.

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.<sup>6</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>7</sup> As appellant’s request for a hearing was dated March 25, 2002, more than 30 days after the Office’s February 13, 2002 decision, appellant was not entitled to a hearing as a matter of right. The Office then exercised its discretion and determined that the issue in the case could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant’s untimely request for a hearing.

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<sup>6</sup> See 5 U.S.C. § 8124(a).

<sup>7</sup> See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990). See also 20 C.F.R. § 10.616(a).

The decisions of the Office of Workers' Compensation Programs dated May 9 and February 13, 2002 are affirmed.

Dated, Washington, DC  
November 26, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member