U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE SHEPARD and U.S. POSTAL SERVICE,
LAKEWOOD POST OFFICE, Lakewood, NJ

Docket No. 02-1734; Submitted on the Record;
Issued November 27, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of total disability.

On November 17, 1999 appellant, then a 35-year-old distribution clerk, was pushing a bulk mail carrier through a set of doors when the carrier stopped, jarring appellant's left shoulder. Appellant filed a claim for a left shoulder strain. She stopped working November 18, 1999. She returned to light-duty work on December 11, 1999 and received continuation of pay for the period she did not work. The Office of Workers' Compensation Programs accepted appellant's claim for a left shoulder strain.

On September 7, 2000 Dr. S. Dhawlikar performed arthroscopic surgery on appellant's left shoulder. He diagnosed left shoulder impingement, a partial tear of the rotator cuff and anterior and inferior shoulder instability. He performed debridement of the labrum, anteriorly and superiorly, subacromial decompression, rotator cuff debridement and acromioplasty. Appellant received temporary total disability compensation for the period August 12 to October 7, 2000. Appellant returned to work, four hours a day, on December 13, 2000.

On March 10, 2001 appellant filed a claim for a recurrence of disability. She indicated that she had stopped working on February 20, 2001. In a June 12, 2001 decision, the Office denied appellant's claim on the grounds that the evidence of record had not established either a change in the nature or extent of her employment-related injury or a change in the nature or extent of her light-duty position. Appellant requested a hearing before an Office hearing representative, which was conducted on November 15, 2001. In a February 25, 2002 decision, the Office hearing representative affirmed the Office's June 12, 2001 decision.

The Board finds that the case is not in posture for decision.

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 disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

After appellant filed her claim for recurrence of disability, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Irving Strouse for an examination and a second opinion. In a May 14, 2001 report, he indicated that appellant continued to complain of constant pain staring in the scapula and radiating to the left shoulder, down into the axilla. Dr. Strouse noted that appellant also complained of pain radiating down the left arm to the left hand and of profuse sweating in the axilla and the left hand. He reported that appellant had no tenderness over the paracervical muscles. Dr. Strouse found some tenderness over the left trapezius, the left acromioclavicular joint, the supraclavicular area on the left side, and the left rotator cuff area. He indicated that appellant had no atrophy of the muscles of the left shoulder. Dr. Strouse commented that appellant had an active range of 45 degrees of abduction and flexion in the left shoulder. He did not attempt a rotation of appellant's shoulder or test the left shoulder for strength. Dr. Strouse stated that appellant had good muscle strength in the left arm, in the elbow, wrist and hand but had a half-inch atrophy in the left forearm. He reported that sensation appeared to be intact in both arms. Dr. Strouse diagnosed tendinitis and impingement of the left shoulder and status post arthroscopic subacromial decompression of the left shoulder. He related that appellant's tendinitis and impingement of the left shoulder to the November 17, 1999 employment injury. Dr. Strouse stated that appellant could not perform her regular work duties but could perform light-duty work eight hours a day. In a May 21, 2001 work capacity evaluation form, Dr. Strouse indicated that appellant could sit, stand, walk, twist, squat, kneel and perform repetitive motions of the wrist and elbow eight hours a day. He reported that appellant could reach one hour a day and climb two hours a day. Dr. Strouse stated that appellant could not reach above her shoulder with the left arm. He indicated that appellant could push, pull and lift with the left arm for 2 hours a day, with limits of 15 pounds while pushing or pulling and 10 pounds while lifting.

Appellant's attorney submitted a series of reports from Dr. Dhawlikar, describing appellant's condition, surgery and recovery from surgery. In a February 13, 2001 note, Dr. Dhawlikar stated that appellant's left arm had been quite bothersome. He noted that appellant complained of sweating in the left palm and left axilla and of lower back pain. Dr. Dhawlikar recommended further treatment, including a stellate ganglion block to treat possible reflex sympathetic dystrophy.

The attorney also submitted reports from Dr. Philip Getson, an osteopath, who in a February 28, 2001 report, stated that appellant had bilateral hand shaking with intense pain. He noted that appellant complained of forgetfulness with personality change, decreased tolerance, agitation, depression, headaches, nausea, visual disturbance, intermittent blurred vision and sweating in the left axilla. Dr. Getson indicated that appellant had hyperhidrosis of the right arm and right hand which had developed recently, and had previously existed in the left hand for

[1] *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

some time. Appellant stated that, when she rested her hands, they felt as if they were freezing. He reported that three days previously, the veins in appellant's right hand appeared to blow up and the hand became numb. Dr. Getson stated that appellant had a constant burning pain in the left shoulder blade which had not subsided since the employment injury. He reported that appellant had a grinding motion in the left arm when she moved it. Dr. Getson noted that appellant had soreness in the trapezius muscles, a sharp stabbing pain in the left shoulder and numbness and sharp pain radiating down the left arm with diminished reaction time. He reported color changes in the lower portions of both arms. He also reported that appellant had swelling and pain in the lower lumbar spine with pain radiating down the left leg. In a March 6, 2001 report, Dr. Getson diagnosed reflex sympathetic dystrophy of three limbs, predominately the left arm. He stated that the severity of appellant's condition prevented her from working at any occupation for the foreseeable future. In a March 19, 2001 report, Dr. Getson stated that a thoracic outlet study was abnormal for sympathetic pain.

In an August 10, 2001 report, Dr. Getson stated that appellant had sustained reflex sympathetic dystrophy as a consequence of her left shoulder injury. He indicated that the disease had progressed to other limbs with bilateral symptoms in both arms, problems with both legs, lumbar spine pain and associated symptoms of insomnia, nausea, light-headedness and memory impairment. He stated that all the symptoms were directly attributable to a progression of the complex regional pain syndrome or reflex sympathetic dystrophy. Dr. Getson concluded that appellant's condition was not a recurrence of the employment injury but a progression of the neurologic component of that injury.

In response to an Office request, Dr. Strouse stated that he did not consider the diagnosis of reflex sympathetic dystrophy definite. He recommended that further diagnostic tests be performed, including a three-phase bone scan. In a September 21, 2001 report, Dr. Strouse stated that a bone scan performed on July 31, 2001 showed mild increased activity over the left shoulder joint, which might reflect underlying inflammatory process. He concluded that appellant was suffering from a mild form of reflex sympathetic dystrophy for which he recommended further physical therapy. He stated that during this time appellant could work an eight-hour day in accordance with the restrictions he had previously given.

Drs. Getson and Strouse therefore concurred that appellant had reflex sympathetic dystrophy. Dr. Getson stated that the reflex sympathetic dystrophy was a progression of the neurologic component of the employment injury. Dr. Strouse did not address the issue of the cause of the reflex sympathetic dystrophy. Dr. Getson concluded that appellant was unable to work due to the reflex sympathetic dystrophy. Dr. Strouse stated that appellant would be able to work eight hours a day at the light-duty position while she received physical therapy. There is therefore a conflict in the medical evidence between Drs. Strouse and Getson on whether there was a change in the nature or extent of appellant's physical condition to the point that she was unable to perform the duties of the light-duty position she held after she returned to work from her left shoulder surgery. When there are opposing medical reports of virtually equal weight and rationale, the case will be referred to an impartial specialist, pursuant to section 8123(a) to

resolve the conflict in the medical evidence.[2] The case must therefore be remanded for resolution of this conflict.

On remand, the Office should refer appellant, together with a statement of accepted facts, a description of the physical requirements of appellant's light-duty position, and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be requested to give a diagnosis of appellant's conditions, including whether appellant has reflex sympathetic dystrophy. He should discuss whether appellant's diagnosed conditions are causally related to the November 17, 1999 employment injury. He should then state whether appellant was able to perform the duties of the light-duty position she held at the time she stopped work or at any time thereafter. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs, dated February 25, 2002 and June 12, 2001, are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
November 27, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[2] *Theresa Goode*, 51 ECAB 650 (2000).