

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA R. LIVINGSTON and U.S. POSTAL SERVICE,
POST OFFICE, Valley Park, MO

*Docket No. 03-461; Submitted on the Record;
Issued August 1, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that her claimed consequential injuries to the left shoulder and cervical area were causally related to the accepted employment injuries.

On March 7, 1996 appellant, then a 41-year-old distribution window clerk, filed a traumatic injury claim alleging that on March 6, 1996 she jammed her left hand, thumb and wrist while putting down a tub of metered mail. On April 18, 1996 the Office of Workers' Compensation Programs accepted the claim for left wrist strain. On June 26, 1996 appellant filed a second traumatic injury claim alleging that she twisted and injured her left wrist and arm that day while trying to pick up a tray of letters to flip on a case. The Office accepted the subsequent injury to appellant's left wrist as work related and combined the case with the initial claim. Appellant stopped work on June 26, 1996 and underwent tenolysis with release surgery for her wrist injury on September 16, 1996. On July 17, 1997 appellant sustained a nonemployment-related neck injury while she was talking on her cellular telephone. The record reflects that there were also complaints of shoulder problems. She later sustained a work injury to her left elbow on September 8, 1999, which was combined with the initial claim for left elbow epicondylitis and surgery was approved. Appellant returned to permanent limited-duty work following a period of disability until November 20, 1999 when she stopped work. Sometime in 1999 appellant requested that her claim be expanded to include a cervical and left shoulder condition causally related to the identified employment factors.

In a July 26, 1999 report, Dr. Vic Glogovac, a Board-certified orthopedic surgeon who performed appellant's left wrist tenolysis surgery in 1996, stated that, during appellant's treatment of the left wrist area, appellant developed other problems with her left upper extremity including problems at various points with her neck and shoulder. He opined that, with the specific type of work that appellant performed, along with the hours involved despite her notable discomfort, that these problems resulted from the load put on the left upper extremity at work. Dr. Glogovac explained that, when a patient has tendinitis of the wrist, and that patient is forced to use the extremity, he or she does so in awkward ways to protect it, which puts greater stress on the elbow and shoulder areas such that problems develop. He noted that appellant's major

problem at that point however was the left lateral epicondylitis for which she received ongoing treatment. Dr. Glogovac further stated: "Therefore, it is my opinion, after caring for [appellant] since June 1996 that this left lateral epicondylitis is directly related to the fact that she worked continuously in spite of the wrist pain and tendinitis leading toward further stresses in the elbow area." Dr. Glogovac submitted additional reports to the Office indicating appellant's ongoing problems with upper extremity conditions including intermittent problems with her neck and shoulder.

On September 24, 1999 the Office referred the case record to Dr. David Zimmerman, an Office medical director who reviewed the medical record to determine whether the claimed cervical and left shoulder condition were consequential to the accepted employment injuries. In a November 7, 1999 report, Dr. Zimmerman concluded that appellant's reported neck and shoulder problems were unsupported by diagnostic testing, history and physical examination however recommended that a second opinion be obtained.

The Office thereafter referred appellant for a second opinion examination with Dr. Ronald Fischer, a Board-certified physician in physical medicine and rehabilitation, to determine the relationship if any of the claimed consequential injuries to appellant's work. In a report dated December 8, 1999, Dr. Fisher stated:

"In terms of the elbow, shoulder and left neck symptoms, it is unclear as to when these actually started. The review of the physician records and PT [patient] records indicate that she was having problems in the left elbow and shoulder.... Thus within several months after her two injuries in 1996, there is documentation in the medical records of problems in the left elbow, shoulder and trapezius. Based on the description of the injury in March 1996 and June 1996, it would seem possible that she could have sustained left lateral epicondylitis from those events. It is not clear that the March 1996 and June 1996 events triggered the trapezius and shoulder symptoms. However, it is possible that the change in usage of the left arm shortly after the initial injuries and when she returned to work could have caused a consequential injury to the left shoulder girdle/trapezius area."

In an April 14, 2000 report, Dr. Glogovac maintained that appellant continued to have significant discomfort with her left upper extremity with spasms in the neck and shoulder musculature. In a report dated May 29, 2001, Dr. Glogovac indicated that appellant's symptoms remained the same and that it was obvious that she was getting notable atrophy of the forearm musculature of the left when compared to the right. He stated that the longer surgical intervention was put off he believed her prognosis would continue to deteriorate. In a report dated July 24, 2001, Dr. Glogovac stated that appellant was facing significant problems with her neck and shoulder area on the left which might require surgery. In reports dated August 8, September 4, September 19 and November 6, 2001, Dr. Glogovac stated his belief that appellant should be seen by Dr. William Schroer for reevaluation for both her elbow and shoulder condition.

Dr. Zimmerman reviewed the file again and, in a report dated November 26, 2001, concluded that the mechanism of injury which affected the left wrist and possibly the distal

forearm did not cause conditions affecting the cervical spine, left shoulder or left elbow as a result of the March 1996 injury. He noted that in the spring of 1997 the medical record reflects that appellant reported pain symptoms in the cervical spine and left shoulder; however, when examinations were carried out, the pain symptoms were never correlated with diagnostic impressions associated with neck and left shoulder pathology. Dr. Zimmerman opined that considering the diagnostic studies, examination findings and the history reported by appellant in the medical evidence, the Office should not accept any diagnoses of the cervical spine or left shoulder as causally related to employment factors.

By decision dated May 23, 2002, the Office rejected appellant's claim that the left shoulder and cervical condition were consequential injuries to the accepted work-related wrist and elbow injuries sustained in 1996 and 1999. In a letter dated June 3, 2002, appellant requested a review of the written record.

On June 12, 2002 the Office referred appellant to Dr. David Strege, a Board-certified orthopedic surgeon, for his opinion as to whether appellant had any left upper extremity conditions and disability caused, aggravated, accelerated or precipitated by the work injuries of March 6, 1996 and/or September 8, 1999.

In a medical report dated July 10, 2002, Dr. Strege reviewed the medical record and his examination of appellant that day and stated:

“She first sustained injury to her left upper extremity on March 6, 1996. Upon that day she was lifting a tub of mail which she states was very heavy, weighing approximately 40 pounds. The tub of mail began to fall, it suddenly landed on the ground and her left hand was ‘jammed’ against the mail tub. She began experiencing pain over the radial and dorsal aspect of the left wrist. She was treated by a number of physicians for this injury.... As symptoms did not resolve she underwent surgical intervention September 13, 1996 by Dr. Glogovac. Postoperatively, she underwent physical therapy and was apparently off work from September 16, 1996 until May 19, 1997. She was returned to work activities at the time with a 20-pound lifting restriction. She continued to have pain in the wrist and forearm and then at some point began experiencing pain around the elbow and subsequently in the region of the left shoulder and left side of the neck. She denies any specific injury which brought on these symptoms.... On September 8, 1999 there was a second traumatic injury wherein she was lifting a cash drawer out of a safe.... She notes that her left elbow ‘gave out’ and she began to drop the cash drawer. She noted a considerable increase in pain from that point on. She continued to be treated by Dr. Glogovac as well as Dr. Schorer for lateral epicondylitis as well as extensor tendinitis to the wrist and forearm. She was able to work intermittently from September 1999 until November 20, 1999. She has been unable to return to her work activity since November 20, 1999.”

In response to various questions posed by the Office regarding appellant's condition, Dr. Strege stated:

"I believe [appellant] has signs and symptoms of ongoing left lateral epicondylitis which was likely accelerated by her injury of September 8, 1999. I believe the location of tenderness and pain on her physical examination today are consistent with left lateral epicondylitis as continuing to be active. Her examination today is inconsistent with ongoing tenosynovitis in the left wrist and forearm. I do not believe that there are any preexisting conditions that have been affected by her employment. [Appellant] continues to complain of pain in her left shoulder. MRI [scan] has demonstrated possible superior labral tear and there may also be an element of tendinitis in the shoulder. [Appellant's] current condition of lateral epicondylitis is unlikely to return to the preinjury status without further treatment. I believe she will require surgical intervention with fasciotomy of the lateral epicondyle. Even in spite of surgical intervention, however, in view of the longstanding nature of her symptoms and her constant symptoms which interfere [with] her activity, I believe it is unlikely that she will ever be able to return to her preinjury status. Based on her examination today and review of the medical record, I believe that it would be unlikely that [appellant] would currently be able to return to full unrestricted activities involving her upper extremity.... I do not believe that any further treatment is necessary for tenosynovitis of the left wrist and forearm.... I believe she would benefit from further treatment for her lateral epicondylitis.... She also continues to have pain in her left shoulder which I believe is a nonwork-related injury."

By decision dated October 24, 2002, an Office hearing representative found that appellant had not submitted sufficient causal relationship evidence in support of the claim. The Office hearing representative noted that the medical evidence from appellant's treating physician was speculative concerning the issue of causal relationship of the claimed consequential conditions and that the Office medical adviser provided a well-rationalized medical opinion based on the relevant medical evidence that appellant had not sustained a left shoulder or cervical consequential injury. The Office hearing representative noted further that the second opinion report from Dr. Strege supported that appellant's left shoulder condition was not work related and that there were no objective findings supporting a cervical condition. The Office hearing representative therefore affirmed the prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed consequential injuries were causally related to the accepted employment injuries.

The general rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury similarly arises out of the employment unless it is the result of an independent intervening cause. An employee who asserts that a nonemployment-related injury

was a consequence of a prior employment-related injury has the burden of proof to establish that such was the fact.¹

In this case, the record contains insufficient medical evidence to establish a consequential causal relationship between appellant's claimed left shoulder and cervical conditions and the accepted work injuries. The reports of record from Dr. Glogovac beginning July 26, 1999 in support of appellant's claim were equivocal and speculative on the issue of whether appellant's left shoulder and cervical conditions were a consequence of her accepted employment-related left wrist and left elbow conditions and therefore lacked probative value to establish appellant's claim. Dr. Glogovac in his July 26, 1999 report concluded without reservation that the left lateral epicondylitis was directly related to the fact that appellant worked continuously in spite of the wrist pain and tendinitis leading toward further stresses in the elbow area. He noted generally though that appellant problems with her neck and shoulder which developed after her return to work could be a result of the load put on the left upper extremity at work. With some supposition, the physician explained that since appellant was forced to use her wrist with diagnosed tendinitis, she might have used it in awkward ways to protect it, which could have put greater stress on at least the shoulder area such that problems developed. In future status reports, Dr. Glogovac simply outlined the progression of appellant's left upper extremity symptoms and maintained that appellant required surgical intervention to prevent continued deterioration of musculature on her left side without further discussing causal relationship.

Dr. Zimmerman, the Office medical adviser, reviewed the record and concluded that there were no diagnostic findings to support that appellant had consequential injuries to the shoulder and neck related to the accepted injuries, and the physician recommended that the record be reviewed again by another physician to make a determination on the issue. Dr. Strege provided a detailed report concerning appellant's medical history, current complaints of upper extremity pain and diagnosed conditions related to employment factors, and also concluded that appellant's current shoulder condition was not a consequential injury of the accepted work injuries. He noted that an MRI had demonstrated a possible superior labral tear and there might have also been an element of tendinitis in the shoulder but concluded the report with his belief that appellant's shoulder pain was not work related. While the Board notes that Dr. Strege did not discuss whether there was a relationship between appellant's claimed cervical condition and the accepted work injuries, he reported that appellant had complained of neck pain and also noted his objective findings, which he believed were accelerated by the 1999 employment injury, which did not include a neck condition.

The Board therefore finds that the evidence of record is insufficient to discharge appellant's burden of establishing that her left shoulder and neck conditions were consequential injuries of the accepted left wrist and elbow conditions. Both Dr. Zimmerman, the Office medical adviser, and Dr. Strege, the second opinion physician, concluded that, although appellant had continued symptoms of neck and shoulder pain and a possible shoulder tear, there were no objective findings to support a cervical condition and there was no evidence that the progression of appellant's shoulder condition was accelerated due to the accepted employment injuries. Appellant, therefore, has not met her burden of proof in this case.

¹ See *William F. Gay*, 50 ECAB 276 (1999).

The October 24 and May 23, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
August 1, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member