

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA M. THOMAS and U.S. POSTAL SERVICE,
DALLAS BULK MAIL CENTER, Dallas, TX

*Docket No. 02-129; Submitted on the Record;
Issued February 19, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that her medical condition and claimed disability on or after January 25, 1993 were causally related to her February 18, 1988 employment-related cervical strain.

On August 29, 1988 appellant, then a 29-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained injuries to her right shoulder and right upper extremity as a result of her federal employment. She identified February 18, 1988 as the date she first became aware of her employment-related condition. Appellant attributed her condition to "the constant manipulating of the fingers of [her] right hand while keying in an uncomfortable position for long periods of time." The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and appellant received appropriate wage-loss compensation. Appellant initially returned to work in a part-time, limited-duty capacity in September 1988 and she gradually increased her workday to eight hours in early 1990. On February 22, 1992 appellant was involved in a nonemployment-related motor vehicle accident, which precluded her from working.

On February 17, 1993 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she was still having problems with her neck, shoulder and right arm. She returned to work in a limited-duty capacity on March 18, 1993. By decision dated November 4, 1993, the Office denied appellant's claim on the basis that she failed to establish a causal relationship between her current condition or disability and her accepted employment injury.

Appellant requested a hearing, which was held on January 22, 1998.¹ In a decision dated March 9, 1998 and finalized March 11, 1998, the Office hearing representative affirmed the

¹ The Office initially found that appellant abandoned her December 1, 1993 request, for a hearing as she did not appear for the scheduled hearing or file a timely written request for postponement of the hearing. On appeal, the Board reversed the Office's decision and remanded the case for scheduling of appellant's requested hearing. Docket No. 95-2260 (issued August 20, 1997).

November 4, 1993 decision. The hearing representative found that the claimed medical expenses after January 25, 1993, were not causally related to appellant's accepted employment injury. Additionally, the hearing representative found that appellant failed to establish that her claimed disability after November 1993 was causally related to her accepted cervical strain.

Appellant requested reconsideration on March 2, 1999, February 24, 2000 and April 3, 2001. In each instance the Office reviewed her claim on the merits and denied modification. The Office issued its most recent decision denying modification on July 5, 2001.

The Board finds that appellant failed to establish that her medical condition and claimed disability on or after January 25, 1993 were causally related to her February 18, 1988 employment-related cervical strain.

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴

As previously indicated, appellant was involved in a nonemployment-related motor vehicle accident (MVA) on February 22, 1992. As a result of the February 22, 1992 accident, she sustained cervical and lumbosacral strains and left knee and left tibia contusions. At the time of the accident, Dr. Tom G. Mayer, a Board-certified orthopedic surgeon, was still treating appellant for her 1988 employment-related cervical strain. When Dr. Mayer saw appellant prior to the accident on January 29, 1992 he reported that she looked very depressed and complained of general pains in the neck, shoulders and arms, without any specific findings. Her then job restrictions consisted of full-time work 8 hours per day with functional limitations of 10 pounds frequent lifting and 20 pounds occasional lifting.

In treatment notes dated March 31, 1992, Dr. Mayer stated:

“Though it looked like it was time to get [appellant] back to full duty, in fact she reports she hasn't worked at all over the past 5 [to] 6 weeks. First she took a 'leave of absence' because of problems with her baby and on February 22[, 1992] had an MVA developing 'back and neck problems' being treated by another physician with an 'unknown medication.' She actually seems quite chipper today

² 5 U.S.C. §§ 8101-8193.

³ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

coming in today wearing a cervical collar and though the injury is unrelated to her compensation, apparently there is a personal injury issue pending.

“From my point of view, she is capable of working in limited-duty capacity that she had been permitted to up until February 15. I never took her off work nor do I feel that this is justified from her job injury point of view. However, if she chooses to be on a leave of absence, that is her choice. Based on the new MVA I do not feel we can move her up to ‘full duty’ at this time....”

The March 31, 1992 treatment notes suggest that but for the February 22, 1992 MVA, Dr. Mayer would have released appellant to resume her regular duties in early 1992. In a report dated June 9, 1992, Dr. Mayer stated that he had not seen appellant for the past three months and apparently she had been out of work due to an unrelated MVA. Dr. Mayer further stated that another physician was treating appellant for the injuries sustained in her MVA and apparently the other physician did not plan to release appellant to return to work in even a limited-duty capacity for another six to eight weeks. Dr. Mayer indicated that he was seeing appellant only for issues related to her ongoing worker’s compensation injury. He further stated that “[appellant] is not disabled because of the worker’s (sic) compensation injury, but for an ongoing third[-]party MVA.”

Dr. Lorinda Richardson, a Board-certified family practitioner, submitted a report dated March 16, 1993, describing the treatment she provided appellant relevant to her February 22, 1992 MVA.⁵ Dr. Richardson stated that appellant had apparently been completely disabled since February 22, 1992 due to her MVA. She also noted referrals to an orthopedist, a physiatrist and a neurosurgeon, which revealed no specific orthopedic problems and essentially negative objective test results. Dr. Richardson also indicated that she referred appellant back to Dr. Mayer, but he declined the referral because appellant was reportedly “no longer covered under Workers’ Compensation due to the intervening injury.” She further indicated that appellant had returned to her pre-MVA baseline and could return to work on March 18, 1993 with restrictions. However, Dr. Richardson cautioned that much improvement was not anticipated due to appellant’s well-documented depression.

In a follow-up report dated July 21, 1993, Dr. Richardson reiterated that appellant was back to her baseline chronic pain level after an intervening MVA, which occurred in February 1992. She further stated that appellant’s chronic pain was the direct result of the injury sustained originally in February 1988. Dr. Richardson, however, offered no explanation for her apparent ability to distinguish the lingering effects of appellant’s February 1988 cervical strain from the injury appellant sustained on February 22, 1992.

Regarding the etiology of appellant’s current condition, Dr. Richardson stated in a March 21, 1994 report, that it was “baffling to [her] that the condition which had been accepted ... in the past [as] causally related to [appellant’s] [1988] injury [was] now no longer understood to be causally related.” Dr. Richardson went on to explain that appellant’s condition

⁵ Dr. Richardson had initially treated appellant for her 1988 employment-related cervical strain and later referred appellant for treatment with Dr. Mayer in August 1989. She resumed treating appellant in August 1992; approximately six months after appellant’s February 1992 motor vehicle accident.

prior to her MVA was related to her employment and “never significantly improved.” Appellant reportedly advised Dr. Richardson that her chronic right shoulder pain was currently at the same level as her pre-MVA baseline. Dr. Richardson further stated that the intervening MVA exacerbated appellant’s symptoms, but her original disability never disappeared. The doctor diagnosed chronic right shoulder pain and depression.

Dr. Richardson’s statement that appellant’s February 1988 cervical strain “never significantly improved” is inconsistent with Dr. Mayer’s findings just prior to appellant’s February 22, 1992 MVA. As previously noted, Dr. Mayer stated on March 31, 1992 that “it looked like it was time to get [appellant] back to full duty.” Thus, while he did not subsequently release appellant to full duty because of her February 22, 1992 MVA, Dr. Mayer’s contemporaneous treatment notes indicated that appellant’s employment-related condition had improved prior to her February 22, 1992 MVA.⁶

When Dr. Mayer next saw appellant in October 1995, he diagnosed chronic episodic cervical radicular syndrome, persistent deconditioning syndrome and persistent or recurrent depression with current suicidal ideation. He also reported that appellant’s visit was arranged by her in an effort to document the permanency of her condition dating back to her original injury in February 1988. Dr. Mayer, however, did not attribute appellant’s current condition to her February 1988 employment injury. Appellant reportedly stated that her condition was unrelated to the 1992 MVA. Dr. Mayer noted that appellant related her current cervical and upper extremity symptoms to her return to work in 1993, which she ultimately discontinued in November 1993. As Dr. Mayer had not treated appellant for more than 3 years, he would not specifically comment on appellant’s job duties in mid-1993. However, Dr. Mayer stated that recurrent symptoms from high stress and static positioning in appellant’s former position was a possible reason for recurrence.

Dr. Charles D. Mitchell, a Board-certified orthopedic surgeon, examined appellant on October 30, 1998 and noted a number of possible or likely diagnoses, including bilateral carpal tunnel syndrome, chronic cervical strain and cervical radiculopathy. The only definitive diagnosis he offered was depression. In a follow-up report dated January 28, 1999, Dr. Mitchell stated that appellant was partially disabled due to residuals from her carpal tunnel syndrome and cervical strain. Although he stated that appellant’s condition was work related, he did not explain the basis of his opinion nor did he specifically attribute appellant’s current cervical condition to her February 1988 employment injury.

Appellant was examined by at least three other physicians since 1998, however, only Dr. James J. Pollifrone provided an opinion regarding the cause of appellant’s current condition. Dr. Pollifrone, an osteopath, initially examined appellant on October 6, 1999 and diagnosed degenerative cervical disc disease of the lower cervical spine, carpal tunnel syndrome of the right hand and right later epicondylitis. He recommended a magnetic resonance imaging scan and an electromyogram, which were performed on October 13 and 22, 1999.

⁶ In a November 29, 2000 letter, Dr. Mayer stated that when he prepared his March 1992 treatment notes he was “considering a full[-]duty release at some time in the near future,” but it was inappropriate to do so at that time because of appellant’s lack of work over the previous five to six weeks due to her MVA.

After reviewing appellant's recent test results on November 1, 1999 Dr. Pollifrone diagnosed bilateral carpal tunnel syndrome, bilateral ulnar nerve neuropathy and Form C-7 radiculopathy on the right. He described appellant's cervical radiculopathy as chronic and moderate to severe in nature. He also stated that appellant's history and physical findings were consistent with her history of occupational injury.

In a report dated March 26, 2001, Dr. Pollifrone stated that appellant had been under his care since October 1999, for problems with her neck and bilateral upper extremities secondary to "occupational disease" that she had been affected with since 1988. Dr. Pollifrone noted that appellant had previously been treated by Dr. Mayer for "cervical disc problems and bilateral upper extremity problems." He further stated that when he examined appellant in 1999 her diagnosis was confirmed for bilateral carpal tunnel syndrome, bilateral ulnar nerve neuropathy and cervical disc disease. Dr. Pollifrone reported that appellant had since undergone bilateral carpal tunnel decompression and bilateral ulnar nerve transpositions. Regarding the etiology of appellant's condition, he stated:

"I have no reason to believe [appellant's] injuries were secondary to a motor vehicle accident in 1992, as she was complaining of these same problems prior to the accident of 1992 and continued to relate the same story to me when I saw her in 1999."

Neither Drs. Mitchell nor Pollifrone provided a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted employment-related cervical strain.⁷ Dr. Mitchell offered no explanation for his opinion that appellant's condition was work related. Dr. Pollifrone's opinion appears to be based exclusively on appellant's statement that her current problems relate back to her initial injury in 1988. Although Dr. Pollifrone made a passing reference to Dr. Mayer's prior treatment, his March 26, 2001 report does not otherwise identify the underlying documentation that Dr. Pollifrone purportedly relied on in support of his opinion on causal relationship. As the record is devoid of rationalized medical evidence attributing appellant's current condition to her employment-related cervical strain, the Office properly denied appellant's claim for compensation.

⁷ See *Victor J. Woodhams*, *supra* note 4.

The July 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 19, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member