U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARLETHA BAREFIELD and HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Bakersfield, CA

Docket No. 03-2110; Submitted on the Record;
Issued November 26, 2003

DECISION and ORDER

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

The issue is whether appellant has established that she sustained left shoulder tendinitis, left elbow epicondylitis and left upper extremity repetitive strain conditions in the performance of duty.

On June 10, 2002 appellant a 63-year-old mail clerk, filed a Form CA-2 claim for benefits, alleging that she developed left shoulder and upper extremity conditions causally related to factors of her employment. In a written statement dated June 10, 2002, appellant alleged that these conditions were caused by heavy computer usage. She stated that the Office of Workers' Compensation Programs had previously accepted a claim for her right arm and right upper extremities.[1]

In a report dated August 3, 2002, Dr. Abid Haq, Board-certified in internal medicine, diagnosed left elbow epicondylitis, left upper extremity repetitive strain injury, musculoskeletal work-related disorder and cumulative trauma disorder, which he opined had resulted, "more likely than not" for the many years of repetitive keyboarding, writing, typing and TAP terminal use, which constituted her usual and customary work duties. He stated:

> "[Appellant] has cumulative trauma disorder which is also known as repetitive strain injury or overuse syndrome or musculoskeletal work-related disorder. This condition is considered to result from prolonged repetitive job functions involving grasping, gripping, hand motions, keyboarding, writing, reaching, pulling, pushing and lifting. It is a form of tendinitis in combination with myositis and neuritis. The patient may complain of burning, aching pain involving the affected extremity, especially with precipitating activity, together with complaints of numbness and paresthesias. There is subjective tenderness with palpation over the muscles and tendons of the involved wrists, forearm and elbow. The etiology

[1] The Office also accepted a claim for left wrist/left arm strain on June 11, 1999.

includes nerve compression and tendinitis, secondary to micro tears at the tendon insertion together with friction irritation. Repeated flexion/extension movements increase the shear traction forces on the tendons at their attachment to the bone. These forces cause tenosynovitis of the tendons. Work postures, which involve static muscle tension with prolonged isometric contraction as well as prolonged repetitive kinetic movements such as keyboarding and writing can cause this disorder. The resulting work disability is high and even though most patients improve with a multi-disciplinary treatment approach, which must include mandatory work -- rest cycles, some do not fully recover.

By decision dated September 11, 2002, the Office denied appellant's claim on the grounds that she did not submit medical evidence sufficient to establish that the claimed medical conditions were causally related to her federal employment.

By letter dated January 9, 2003, appellant requested reconsideration.

In a report dated December 27, 2002, Dr. Haq essentially reiterated his previous findings and conclusions. He also stated that appellant had developed left shoulder tendinitis and left upper extremity repetitive strain injury causally related to the work factors listed in his August 3, 2002 report.

In order to determine whether appellant's claimed conditions were causally related to factors of her employment, the Office referred appellant to Dr. Ghol Bahman Ha`erhi, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 2, 2003, Dr. Ha`erhi diagnosed mild cervical disc degeneration and spondylosis at multiple levels in the C3-4, C4-5 and C5-6 and small left paracentral disc protrusion at C5-6. He opined that this was a degenerative condition which was not work related, although it entailed symptoms which were exacerbated by work duties. This did not, however, constitute an aggravation of the underlying condition. Dr. Ha`erhi advised that there was no objective evidence of any orthopedic condition in appellant's left shoulder and that the diagnosed cervical spine condition was not work related.

By decision dated April 8, 2003, the Office denied appellant's request for reconsideration.

By letter dated May 7, 2003, appellant requested reconsideration.

By decision dated July 3, 2003, the Office denied appellant's request for reconsideration.

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

In this case, there was disagreement between Dr. Haq and Dr. Ha`erhi regarding whether appellant's alleged left shoulder, left elbow epicondylitis and left upper extremity conditions were sustained in the performance of duty. Dr. Haq stated that appellant had cumulative trauma disorder/repetitive strain injury/overuse syndrome/musculoskeletal work-related disorders in her left shoulder and left upper extremity which were causally related to factors of her employment. These included prolonged repetitive job functions involving grasping, gripping, hand motions, keyboarding, writing, reaching, pulling, pushing and lifting. Dr. Haq opined that these factors of employment had resulted in appellant's current work-related conditions of left shoulder

tendinitis, left elbow epicondylitis and left upper extremity repetitive strain. Dr. Ha`erhi diagnosed mild cervical disc degeneration and spondylosis at multiple levels in the C3-4, C4-5 and C5-6 and small left paracentral disc protrusion at C5-6, but opined that these conditions were not work related. He also advised that there was no objective evidence to support Dr. Haq's diagnoses of left shoulder, left elbow and left upper extremity overuse/repetitive motion conditions. When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also know as an "impartial medical examiner."[2] It was therefore incumbent upon the Office to refer the case to a properly selected impartial medical examiner, using the Office procedures, to resolve the existing conflict. Accordingly, as the Office did not refer the case to an impartial medical examiner, there remains an unresolved conflict in medical opinion.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist selected in accordance with the Office's procedures, to resolve the outstanding conflict in medical evidence. The Office should, therefore, on remand refer the case to an appropriate medical specialist to submit a rationalized medical opinion on whether appellant's claimed left shoulder tendinitis, left elbow epicondylitis and left upper extremity repetitive strain conditions were sustained in the performance of duty. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

[2] Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

The Office of Workers' Compensation Programs' decision of April 8, 2003 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
November 26, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member