

**United States Department of Labor
Employees' Compensation Appeals Board**

JACKIE N. LUCAS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AK, Employer**

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**Docket No. 03-2204
Issued: February 11, 2004**

Appearances:
Jackie Lucas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 8, 2003. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of her work-related condition effective September 14, 2000 to present.

FACTUAL HISTORY

On November 16, 1989 appellant, then a 48-year-old mail clerk, filed a notice of occupational illness and claim for compensation (Form CA-2) alleging that her employment factors caused pain in her left arm, elbow and hands. In a March 1, 1990 report, Dr. Harold Chakales, an orthopedic surgeon, diagnosed her with acute medial epicondylitis and de Quervains of the left thumb. In a May 31, 1990 decision, the Office accepted appellant's

claim for rotator cuff tendinitis of the left shoulder and lateral epicondylitis of the left distal humerus. She returned to light-duty work on April 9, 1990 and to regular duty on January 8, 1992.

On May 24, 1995 appellant filed another Form CA-2 alleging that constantly throwing mail in the course of her employment caused pain in her arms, shoulder, wrist and hands. In a June 12, 1995 report, Dr. Michael Moore, an orthopedic surgeon, wrote that appellant complained of bilateral diffuse hand and arm, elbow and shoulder pain along with numbness in her fingers. He also reported that a nerve conduction study was normal, ruling out carpal tunnel syndrome. Dr. Moore diagnosed myofascial pain from overuse. In a September 11, 1995 decision, the Office denied appellant's claim due to insufficient medical evidence. In a September 11, 1995 report, Dr. Christopher Adams, a rheumatologist, diagnosed appellant with right rotator cuff tendinitis, osteoarthritis at multiple sites, myofascial pain, right serious olitis and carpal tunnel pain syndrome. In a December 8, 1995 decision, the Office vacated its prior decision and accepted bilateral carpal tunnel pain syndrome and myofascial pain. Appellant remained off work until May 28, 1998 when she accepted a light-duty job offer. In a June 8, 1998 report, Dr. Joe Crow, an orthopedist and Office referral physician diagnosed bilateral chronic subdeltoid bursitis with rotator cuff irritation and impingement, bilateral carpal tunnel and a history of bilateral epicondylitis. Dr. Crow also opined that appellant could work eight hours a day of light duty and that these restrictions would be permanent.

In an April 12, 1999 report, Dr. David Reding, a neurologist, wrote that appellant presented with degenerative arthritis of multiple joints and a four-year history of burning sensation in her hands that is worsening. On examination he found that her hands and wrists normal, good strength in all muscle groups and mildly positive Tinel's sign that was not reproducible. Dr. Reding opined that, in light of appellant's other conditions, carpal tunnel was a minor part of her overall problem.

In a September 14, 2000 report, Dr. Marcus Hixson, an orthopedist, wrote that appellant had mild Phalen's test bilaterally at the carpal tunnels and a positive Tinel's sign at the cubital tunnel with the rest of her examination normal. He diagnosed upper extremity pain syndrome but did not feel that appellant was a good candidate for surgery because her conduction tests were normal and she had a negative response to cortisone injections. Dr. Hixson increased appellant's medical restrictions to include no repetitive gripping, pinching or grasping and no elbow or shoulder activity. In a September 19, 2000 progress note, Dr. Adams wrote that appellant's symptoms have gradually worsened and she needed to stop working for a while to see if she improved. He recommended that she not work until December 10, 2000. On September 25, 2000 appellant filed a recurrence claim effective September 14, 2000 alleging that she is in constant pain, cannot sleep and is hampered in all her daily activities. In an October 18, 2000 report, Dr. Adams wrote that he was in complete agreement with Dr. Hixson that appellant can do no repetitive gripping, pinching or grasping and no elbow or shoulder activity. He added that he has reviewed appellant's job description and appellant is required to do a considerable amount of these activities and both he and Dr. Hixson believe that, if appellant continues to perform these activities, her rheumatologic condition will worsen.

In a November 27, 2000 report, Dr. Lorne Ryan, a neurologist and Office referral physician, wrote that nerve conduction studies ruled out carpal tunnel syndrome or any neurologic condition. She noted that appellant's symptoms did not improve when she stopped working. Dr. Ryan opined that appellant can do her light-duty job of repairing torn mail. The record contains an exchange of December 6, 2000 emails between appellant and the Office in which appellant alleges that she was sent home by the employing establishment because they had no job within her new medical restrictions. In a December 7, 2000 letter, the employing establishment offered appellant a job doing light office clerical tasks such as light typing on an intermittent basis, use of computer work station to input data, send and receive email, answer the telephones, take messages and file records at her own pace. The job description also included intermittent grasping with hands, infrequent use of upper extremity, keyboarding and walking, no lifting over 10 pounds and intermittent walking. A conflict in the medical evidence was found and appellant was referred for an impartial medical examination.

In a February 5, 2001 report, Dr. William Blankenship wrote that appellant, on examination, had no atrophy and a full range of motion in her shoulders, her elbows were not swollen and that she could actively flex both elbows to complete extension. He found no pain over her epicondyle areas. Dr. Blankenship noted that her hands showed no atrophy or intrinsic weakness. He concluded that he could find no objective evidence for appellant's complaints and that she was capable of working her light-duty job eight hours a day. In a March 14, 2001 decision, the Office denied appellant's recurrence claim finding the medical evidence established that she had no residuals from her accepted conditions and that she could do her light-duty job.

Appellant requested a review of the written record and submitted a May 14, 2001 report from Dr. Adams who wrote that appellant has pain in her neck, trapezius, shoulder area and hands. He noted that appellant has pain with abduction of her shoulders and numbness in her fingers. Dr. Adams wrote that appellant's pain worsens with repetitive physical activity. He noted that appellant had positive Tinel's sign and Phalen's test of the wrists, bilaterally and had myofascial pain and tenderness across the mantle of the shoulder girdle with palpable spasm in the cervical spine. He noted that a May 1, 2001 magnetic resonance imaging (MRI) scan of her shoulders showed thinning of the suprapinatus tendon consistent with fraying and subacromionial and subdeltoid bursitis. Dr. Adams noted there was a central disc bulge at C5/6. He diagnosed myofascial shoulder pain with rotator cuff tendinitis and chronic shoulder bursitis as documented on MRI scans in 1995, 1997 and 2001. Dr. Adams opined that appellant's work aggravated her chronic bursitis, tendinitis and myofascial shoulder pain and carpal tunnel syndrome by virtue of the need to repetitively move, lift and bend the shoulders. He noted that the MRI scan revealed no cervical radiculopathy and, therefore, it was medically impossible for the numbness in her hands to be caused by any condition other than carpal tunnel syndrome.

On May 22, 2001 appellant filed an occupational disease claim alleging she had developed shoulder condition as a result of her federal employment. In a May 30, 2001 letter, the employing establishment informed appellant that, as her new medical restrictions were now permanent, she was no longer fit to meet the requirements of a mail handler and she should either file for disability retirement or request a permanent reassignment. In a June 7, 2001 decision, the Office accepted appellant's May 22, 2001 claim for bilateral shoulder bursitis. In a

July 26, 2001 decision, the employing establishment informed appellant that, due to her recent medical restrictions, she could not perform the position of mail handler.

In a September 4, 2001 decision, the hearing representative remanded appellant's recurrence claim finding that Dr. Blankenship's report was based on an inaccurate medical history and, therefore, there remained an unresolved conflict in the medical evidence between Drs. Adams and Ryan. On September 24, 2001 appellant took disability retirement.

In a December 13, 2001 report, Dr. Thomas Rooney, a Board-certified orthopedic surgeon and the new impartial examiner, reported that the only diagnosis made on an objective basis is an incomplete tear of appellant's rotator cuff, bilaterally and a mild central bulge at C5. He added that appellant's electrical studies do not support carpal tunnel syndrome. Dr. Rooney opined that the objective evidence did not support that appellant could not work as of September 14, 2000 due to her shoulders, though he did feel that work would aggravate her symptoms and that her current condition was permanent. He concluded that appellant could perform her modified mail clerk position eight hours a day.

In a December 10, 2002 letter, the Office accepted bilateral carpal tunnel syndrome.¹ In a February 7, 2003 decision, the Office denied appellant's September 25, 2000 recurrence claim finding the medical evidence of record insufficient to establish that appellant could not perform her light-duty job that was offered to her. In a March 7, 2003 letter, appellant requested reconsideration and submitted a March 14, 2003 report from Dr. Adams who wrote that the light-duty job the employing establishment provided appellant was outside the medical restrictions he set for her as the job required substantial repetitive work. In a March 31, 2003 decision, the Office denied appellant's request for reconsideration without a merit review finding the medical evidence was repetitious and the weight still rested with Dr. Rooney who opined, that while appellant had residuals, her residuals did not prevent her from performing her light-duty position as of September 14, 2000, the date she stopped working.

In a June 29, 2003 letter, appellant again requested reconsideration and submitted a May 14, 2001 report from Dr. Adams who wrote that appellant's work aggravated her chronic bursitis, tendinitis and myofascial shoulder pain and carpal tunnel syndrome. In a June 15, 2001 report, Dr. Adams wrote that appellant has had numerous evaluations, physical therapy, treatment with anti-inflammatory medications, local injections of joints and muscles and fairly exhaustive course of treatment without chronic benefit. He added that, in his opinion, which has been documented on numerous CA-17 forms, appellant is incapable of performing the mail handler's position as she cannot lift objects up to 70 pounds, cannot carry 45 pounds or over and perform repeated bending with twisting and lifting or lift above her shoulders or perform repetitive motion such as hand canceling, sorting and culling. Dr. Adams concluded that these restrictions are permanent.

On June 29, 2003 appellant requested reconsideration of the February 7, 2003 denial. She submitted a June 25, 2003 report in which Dr. Adams wrote that an MRI scan taken on

¹ The Office treated this case separately assigning it case number 162018715.

April 30, 2001 showed that appellant's bursitis had progressed to a rotator cuff tear in her right shoulder and that appellant continued to suffer from carpal tunnel syndrome.

In an August 18, 2003 decision, the Office denied modification finding the medical evidence insufficient to support modification and suggested appellant pursue relief under claim number 162018715, her accepted shoulder condition.

LEGAL PRECEDENT

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.²

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

ANALYSIS

In the present case, on September 25, 2000, appellant claimed a recurrence of total disability beginning on September 14, 2000. In a September 14, 2000 report, Dr. Hixson wrote that appellant had mild Phalen's test bilaterally at the carpal tunnels and a positive Tinel's sign at the cubital tunnel with the rest of her examination normal. He diagnosed upper extremity pain syndrome and increased appellant's medical restrictions to include no repetitive gripping, pinching or grasping and no elbow or shoulder activity. In a November 27, 2000 report, Dr. Ryan, a neurologist and Office referral physician, wrote that nerve conduction studies ruled out carpal tunnel syndrome or any neurologic condition. She noted that appellant's symptoms did not improve when she stopped working. Dr. Ryan opined that appellant could do her light-duty job of repairing torn mail.

The Office determined that there was a conflict in the medical opinion between Dr. Adams, appellant's attending physician and Dr. Ryan, a neurologist acting as an Office referral physician, on whether appellant sustained a recurrence beginning September 14, 2000. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Rooney, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.⁴

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁴ Section 8123(a) of the Act provides in pertinent part: "If there is 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." 5 U.S.C. 8123(a).

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Rooney, the impartial medical specialist selected to resolve the conflict in the medical opinion. The December 13, 2001 report of Dr. Rooney establishes that appellant's accepted condition did not cause her to stop work on September 14, 2000 and that she could perform her modified mail clerk position eight hours a day.

The Board has carefully reviewed the opinion of Dr. Rooney and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Rooney provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁵ Dr. Rooney provided medical rationale for his opinion by explaining that the only diagnosis made on an objective basis is an incomplete tear of appellant's rotator cuff, bilaterally and a mild central bulge at C5. He added that appellant's electrical studies did not support carpal tunnel syndrome. Dr. Rooney opined that the objective evidence did not support that appellant could not work as of September 14, 2000 due to her shoulders, though he did feel that work would aggravate her symptoms and that her current condition was permanent. He concluded that appellant could perform her modified mail clerk position eight hours a day and it did not prevent her from performing her light-duty assignment on September 14, 2000.

On appeal appellant has alleged that the employing establishment sent her home on September 14, 2000 because it had no job within her medical restrictions. But the record does not support that allegation. Appellant's light-duty job was repairing damaged mail at her own pace which the medical evidence supported she could do. The employing establishment and the Office both stated this work was available to her and that appellant stopped work on her own as she refused to do work that she felt was repetitive and, therefore, outside her restrictions. As mentioned above there is no evidence in the record to support that the employing establishment withdrew this limited-duty work.

CONCLUSION

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Rooney, the impartial medical specialist selected to resolve the conflict in the medical opinion. His December 13, 2001 report establishes that appellant did not stop work on September 14, 2000 as a result of a recurrence of her accepted conditions.

⁵ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 18 and February 7, 2003 are affirmed.

Issued: February 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member