

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

JACQUELINE P. ADAMS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, FL, Employer**

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**Docket No. 04-890
Issued: July 1, 2004**

Appearances:
Jeffrey A. Miller, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On February 17, 2004 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated November 18, 2003 wherein the Office denied modification of its earlier decision as it found that appellant had not established that her left shoulder impingement was caused or aggravated by work factors of June 2000. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a left shoulder impingement causally related to factors of her federal employment.

FACTUAL HISTORY

On November 14, 2001 appellant, then a 44-year-old postal clerk, filed an occupational disease claim alleging that she sustained an injury causally related to her federal employment which she first noticed on June 22, 2000. In a letter dated December 31, 2001, appellant clarified her claim by contending that she sustained a left shoulder impingement.

The record contained a copy of claims and medical reports regarding previous injuries appellant had sustained to her neck, left arm and shoulder. As a result of these injuries, appellant accepted a permanent limited-duty job offer from the employing establishment on February 7, 1995. This position required appellant to perform parcel keying, bundle sorter keying and sorting parcels of up to 40 pounds. The position required sitting and standing intermittently, lifting 10 to 40 pounds intermittently and no reaching above the shoulder with her left arm. In a note dated November 25, 2001, a supervisor indicated that appellant's position for the past year had been as a clerk, with the primary responsibility of finding zip codes on parcels.

In support of her claim, appellant submitted a magnetic resonance imaging (MRI) scan of the cervical spine taken on June 22, 2000 which was interpreted by Dr. Carlos A. Leon-Barth, a Board-certified neurologist, as showing minimal bulging C6-8 posteriorly and minimal syndesmophytes. Appellant also submitted a medical report by Dr. F. Reed Murtagh, a Board-certified radiologist, wherein he interpreted this MRI scan as evidencing impingement upon the supraspinatus tendon by the acromion without evidence of tear. Appellant submitted a June 28, 2000 report by Dr. Jacob Green, a Board-certified radiologist, wherein he indicated that appellant had cervical sprain with radiculopathy, chronic. Finally, appellant submitted numerous medical reports by Dr. John F. Lovejoy, Jr., a Board-certified orthopedic surgeon, and his partner, Dr. R. David Heekin, a Board-certified orthopedic surgeon, wherein they indicated that they treated appellant from September 5, 2000 to September 12, 2001 for right carpal tunnel syndrome and left shoulder impingement syndrome. In a September 12, 2001 note, Dr. Lovejoy indicated that appellant's "impingement was definitely [related to] work, but the beaking was probably preexisting and aggravated."

By decision dated March 27, 2002, the Office denied appellant's claim for compensation as it found that appellant had submitted no medical evidence indicating a causal relationship between her employment activities and her alleged condition.

On April 16, 2002 appellant requested reconsideration. In support thereof, she submitted numerous documents already in the record. She also submitted a copy of a March 1, 2002 revised rehabilitation job offer by the employing establishment which she had accepted on March 24, 2002. In addition, appellant also submitted reports by Dr. Lovejoy dated November 16, 2001 and January 11 and April 2, 2002. In his November 16, 2001 note, Dr. Lovejoy indicated that appellant's left shoulder impingement was work related as "reparative motion during the course of [appellant's] employment has been causing the aggravation...." By decision dated June 19, 2002, the Office denied modification of the prior decisions as appellant had not provided sufficient medical documentation to support her claim.

By letter dated October 18, 2002, appellant requested reconsideration. In support thereof, appellant submitted a September 17, 2002 report by Dr. Lovejoy wherein he indicated:

"[Appellant's] wrist has healed to the point that I think she can be discharged, but she is still having trouble with her left shoulder. She has difficulty reaching over to sort the mail out or doing any other activity where she reaches away from the body or overhead. Workman's [c]omp[ensation] has denied this as a workman's comp[ensation] injury; however, I do think that she has a documented injury and she does a job where she reaches away and overhead in a repetitive fashion that

does cause aggravation of this. I do think that it does need to be decompressed so that she can use the arm better with fewer symptoms.

“In the patient’s letter of June 19, 2002 from [the Office] it states that my statement was too general into what motion caused this. I think the motion that is causing this is the lifting of the packages away from the body and overhead and reaching to do the sorter and computer. I do think that this repetitive motion is causing the problems and I do think that it would be improved with decompression.”

On December 11, 2002 the Office denied appellant’s request for reconsideration as the medical evidence did not establish causal relationship.

By letter dated August 11, 2003, appellant, through her attorney, requested reconsideration. In support thereof, appellant submitted a May 9, 2003 report by Dr. Leon-Barth wherein he diagnosed disc herniations, neck pain, left C8-7 radiculopathy, right ulnar neuropathy of the elbow, left shoulder rotator cuff injury and bilateral carpal tunnel syndrome. Appellant also submitted a January 29, 2003 report by Dr. Leon-Barth addressing appellant’s right hand carpal tunnel syndrome. Dr. Leon-Barth noted that he was a neurologist, and that his expertise is limited to that. Appellant also submitted electromyogram/nerve conduction studies performed by Dr. Michael Pulley, a Board-certified neurologist, on March 11, 2003 and a May 6, 2003 report by Dr. Germaine Rodriguez, a Board-certified radiologist, wherein he indicated that appellant had central disc herniations at C4-5, C5-6, T2-3 and T3-4 and not stenosis of the spinal canal or neural foramina at any level. Appellant also submitted a copy of a limited-duty job offer which she accepted on June 3, 2003. In a decision dated November 18, 2003, the Office denied modification of its earlier decisions, as it found that the evidence was still not sufficient to support that the left shoulder impingement was caused or aggravated by the claimed work factors of June 2000.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹ The Board has held that opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.²

¹ *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

² *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

ANALYSIS

The Board has carefully reviewed the record and finds that there is no medical report of record which addresses with sufficient medical rationale how appellant's left shoulder impingement was caused by the alleged work factors. The reports of Drs. Murtagh, Green, Rodriguez and Pulley are simply diagnostic reports concerning tests on appellant; these reports do not address the crucial issue of the causal relationship between appellant's left shoulder impingement and her federal employment. Dr. Leon-Barth is a neurologist, not an orthopedic specialist and he does not clearly link the shoulder impingement with appellant's employment. The only physician who attempts to connect appellant's left shoulder impingement to her employment is Dr. Lovejoy who opined that appellant's documented injury was caused because she has a job where "she reaches away and overhead in a repetitive fashion." However, as appellant had been working limited duty and was restricted from lifting her hand over her shoulder, it appears that Dr. Lovejoy did not have a proper description of appellant's job. Dr. Lovejoy's earlier statements indicating that the condition was work related were not specific as to what job duties caused this condition. Accordingly, the medical evidence does not establish that appellant had a work-related left shoulder impingement, as alleged.

CONCLUSION

The Office properly determined that appellant has not met her burden of proof to establish that she sustained a left shoulder impingement causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2003 is affirmed.

Issued: July 1, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member