

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

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D.L., Appellant )  
and ) Docket No. 09-1078  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: January 5, 2010  
Philadelphia, PA, Employer )  
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*Appearances:*

*Jeffrey P. Zeelander, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 16, 2009 appellant filed a timely appeal from the February 18, 2009 merit decision of the Office of Workers' Compensation Programs denying acceptance of injuries other than to her left shoulder. 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 any medical condition other than left shoulder adhesive capsulitis and tendinitis due to her federal employment.

**FACTUAL HISTORY**

This is the second appeal in this case. The Board issued a decision on March 10, 2008 in which it set aside a September 5, 2007 decision of the Office. The case was not in posture on

whether appellant sustained medical conditions other than the accepted left shoulder condition.<sup>1</sup> The June 1, 2007 report of Dr. Richard I. Zamarin, an attending Board-certified orthopedic surgeon, was in need of clarification. He stated that appellant's repetitive work duties caused her to sustain an aggravation of degenerative disc disease of the cervical spine, chronic pain syndrome of the cervical spine, aggravation of degenerative disc disease of the lumbar spine, right-sided disc herniation at L4-5, chronic pain syndrome of the lumbar spine, bilateral cubital tunnel syndrome and right thoracic outlet syndrome.<sup>2</sup> Although Dr. Zamarin's report was not sufficient to meet her burden of proof to establish her claim, it was sufficient to require further development of the medical evidence.<sup>3</sup> The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office referred appellant and the case record to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for further evaluation. It asked him to provide all diagnosed conditions and address whether they were employment related. The Office did not specifically ask Dr. Hanley to advise whether the conditions diagnosed by Dr. Zamarin were employment related.<sup>4</sup>

In an April 16, 2008 report, Dr. Hanley noted a history that appellant had been in a modified-duty job since 1996. On November 12, 2007 appellant underwent a radical hysterectomy for ovarian cancer followed by a course of chemotherapy, which continued to the present time. Dr. Hanley stated that physical examination revealed limited bilateral shoulder motion with pain and bilateral shoulder impingement signs. He diagnosed active rotator cuff tendinitis, left greater than right, with low-grade adhesive capsulitis. Dr. Hanley advised that appellant was disabled due to her cancer treatment but that she could probably return to work after such treatment was completed. He stated that when she returned to work, her shoulder condition would prevent her reaching overhead, she would need to be able to walk about from time to time and not be required to lift more than five pounds. Dr. Hanley stated, "[Appellant] continues to suffer the residuals of the injury of April 2, 2006 with ongoing symptoms and

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<sup>1</sup> Docket No. 07-2345 (issued March 10, 2008). On July 6, 2006 appellant, then a 62-year-old mail carrier, filed a claim alleging that she sustained a left shoulder injury due to the repetitive duties of her job. In September 2007, the Office accepted that she sustained employment-related left shoulder adhesive capsulitis and tendinitis. Since late 2003, appellant performed work duties, which included handling central-markup mail, forwarding services and return-to-sender mail. These duties collectively required numerous repetitive motions, including reaching to lift mail (letters, flats, magazines and small parcels), sorting mail, placing mail in trays or cases, pushing mail carts, answering telephone calls, flipping through large printouts, tearing labels off their backings and placing labels on mail. The Office had previously accepted that on July 16, 1988 appellant sustained a herniated nucleus pulposus at L5 and lumbosacral strain/sprain with sciatica and that on October 3, 1988 she sustained a cervical strain with a radicular component.

<sup>2</sup> Dr. Zamarin also posited that appellant sustained employment-related left shoulder adhesive capsulitis and tendinitis and the Office's acceptance of these conditions was partially based on Dr. Zamarin's June 1, 2007 report. However, in a September 5, 2007 decision, the Office denied that the other conditions diagnosed by Dr. Zamarin were employment related.

<sup>3</sup> In a December 31, 2008 order granting petition for correction and affirming decision as modified, the Board corrected its March 10, 2008 decision to reflect that Dr. Zamarin's June 1, 2007 report was not in fact based on an Office produced statement of accepted facts.

<sup>4</sup> The record contains a March 21, 2008 statement of accepted facts which contains only a very brief history of appellant's medical conditions and work duties overtime.

findings at this time. This appears directly related to work activity. [Appellant's] other situations relative to her neck, shoulder and back are stable and do n[o]t need further intervention for now.”<sup>5</sup>

In a May 14, 2008 letter, the Office requested that Dr. Hanley clarify his opinion. It noted that he had diagnosed active rotator cuff tendinitis, left greater than right, with low-grade adhesive capsulitis. The Office asked him to further explain whether the right rotator cuff tendinitis was employment related. It also asked Dr. Hanley to advise whether there were any other medical conditions related to the “April 2, 2006 work injury.”

In a May 28, 2008 report, Dr. Hanley noted that he had pointed out in the April 16, 2008 report that appellant’s left shoulder remained the one that was most symptomatic. He repeated his prior statement that the situations relative to her neck, right shoulder and back were stable and did not need any further intervention. Dr. Hanley stated, “I do not believe however that the right shoulder symptomatology is related to the work injury of April 2, 2006 but rather [is] a coincidental development.”

In a February 18, 2009 decision, the Office denied appellant’s claim for employment-related conditions other than for her left shoulder. It found that the opinion of Dr. Hanley established that she did not sustain any additional occupational injuries.

### **LEGAL PRECEDENT**

An employee who claims benefits under the Federal Employees’ Compensation Act<sup>6</sup> has the burden of establishing the essential elements of her claim.<sup>7</sup> The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>8</sup> However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>9</sup>

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<sup>5</sup> Dr. Hanley completed a form indicating that appellant had various permanent restrictions. He limited various activities to four hours per day or less.

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

<sup>8</sup> *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>9</sup> *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

## ANALYSIS

The Board previously remanded the case to the Office for further development regarding whether appellant sustained any medical condition other than the accepted left shoulder adhesive capsulitis and tendinitis due to performing her job duties prior to mid 2006.

On remand, the Office referred appellant and case record to Dr. Hanley, a Board-certified orthopedic surgeon, for evaluation. In an April 16, 2008 report, Dr. Hanley diagnosed active rotator cuff tendinitis, left greater than right, with low-grade adhesive capsulitis. He indicated that appellant probably could return to work after she completed treatment for her nonwork-related cancer condition and recommended various work restrictions. Dr. Hanley stated, "She continues to suffer the residuals of the injury of April 2, 2006 with ongoing symptoms and findings at this time. This appears directly related to work activity. [Appellant's] other situations relative to her neck, shoulder and back are stable and do n[o]t need further intervention for now." In a supplemental May 28, 2008 report, Dr. Hanley stated, "I do not believe however that the right shoulder symptomatology is related to the work injury of April 2, 2006 but rather [is] a coincidental development."

The Board finds that the opinion of Dr. Hanley did not provide a rationalized opinion on the issue of whether appellant sustained any medical condition other than the accepted left shoulder adhesive capsulitis and tendinitis. Although appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>10</sup>

Dr. Hanley provided only a very brief history of appellant's medical conditions and work duties overtime.<sup>11</sup> Moreover, it is unclear whether he conducted an adequate physical examination as he only reported specific findings regarding her shoulders. Dr. Hanley indicated that appellant's right shoulder condition was not employment related as it was "a coincidental development." He did not adequately explain the basis for this conclusion. Dr. Hanley did not provide a detailed evaluation of whether her specific work duties overtime would have been competent to cause or aggravate such a condition. Dr. Zamarin has diagnosed various conditions of the neck, back and arms (other than related to the shoulders) but Dr. Hanley did not provide any notable discussion of whether such conditions were sustained prior to mid 2006 at the time appellant filed her claim and, if so, whether they were employment related.

For these reasons, the case will be remanded to the Office for further development of the medical evidence. After such development it deems necessary, the Office should issue an appropriate decision on this matter.

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<sup>10</sup> See *supra* note 9.

<sup>11</sup> Dr. Hanley made reference to an April 2, 2006 work injury but the meaning of the reference is unclear as there is no indication that appellant sustained a work injury on that date.

**CONCLUSION**

The Board finds that the case is not in posture regarding whether appellant met her burden of proof to establish that she sustained a medical condition other than left shoulder adhesive capsulitis and tendinitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 5, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board