

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE M. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, El Cajon, CA

*Docket No. 02-1994; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's left shoulder condition is causally related to her accepted right shoulder condition as a consequential injury.

On February 9, 1999 appellant, then a 27-year-old casual clerk, filed a notice of traumatic injury (Form CA-1) alleging that, on February 5, 1999, while performing her federal duties, her right arm began to hurt. On April 2, 1999 the Office of Workers' Compensation Programs accepted appellant's claim for right shoulder, arm and elbow strain, and compensation was paid. By decision dated June 5, 2001, appellant's benefits were reduced based on a constructed wage-earning capacity. On June 18, 2001 she received a schedule award based on a 25 percent impairment of her right upper extremity.

On September 24, 2001 appellant began complaining to her chiropractor of pain in her left anterior shoulder. She submitted progress notes commencing September 19, 2001 by her treating orthopedic surgeon, Dr. William L. Shoemaker, which indicated that appellant experienced left shoulder pain. Dr. Shoemaker requested authorization to evaluate appellant's left shoulder. In a medical report dated February 12, 2002, he noted his impressions as: (1) left shoulder impingement syndrome, industrially related; (2) left shoulder trapezius myofascial strain, industrially related; (3) right shoulder impingement syndrome; (4) status post right shoulder arthroscopy; (5) mild lateral epicondylitis, right elbow; and (6) cervicothoracic musculoligamentous sprain/strain syndrome. Dr. Shoemaker noted that appellant was on temporary partial disability for 35 days and that she was not yet permanent stationary. He restricted appellant from above shoulder work for her left upper extremity and requested a magnetic resonance imaging (MRI) scan of her left shoulder.

On March 11, 2002 appellant had an MRI scan of her left shoulder which was interpreted by Dr. Steven S. Eilenberg, a Board-certified radiologist, as showing an intact rotator cuff, mildly enlarged acromioclavicular joint and subacromial hook.

In a letter to the Office dated March 13, 2002, appellant indicated that she believed that her left shoulder condition was related to her right shoulder injury because of the increased use of her left shoulder.

By letter dated April 15, 2002, the Office requested that Dr. Shoemaker provide medical rationale to support his determination that appellant's left shoulder condition was industrially related. In a medical report dated April 25, 2002, Dr. Shoemaker indicated that the symptoms in appellant's left shoulder had not improved, that the findings on the recent MRI scan were consistent with an impingement syndrome environment and that this was consistent with her left shoulder symptoms and complaints. He indicated that appellant will require surgical intervention in the form of a left shoulder subacromial decompression.

By decision dated May 30, 2002, the Office denied appellant's claim for a consequential left shoulder condition as the medical evidence was not sufficient to establish that the claimed left shoulder condition was caused by the injury.

The Board finds that appellant has not met her burden of proof.

The only decision before the Board on this appeal is the Office's May 30, 2002 decision denying appellant's claim for a consequential injury to her left shoulder. Because more than one year has elapsed between the issuance of the Office's June 5 and 18, 2001 decisions and July 18, 2002, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the June 5 and 18, 2001 decisions.¹

The basic rule respecting consequential injuries is that "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment."² The subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury."³ With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and in the course of employment.

In the instant case, appellant submitted in support of her claim a February 12, 2002 medical report by Dr. Shoemaker wherein he indicated that appellant had industrial-related left shoulder impingement syndrome and industrial-related left shoulder trapezius myofascial strain. However, Dr. Shoemaker did not explain the rationale he utilized in making this determination. Other medical reports indicated that appellant was suffering from problems with her left shoulder, but none of these opinions relate this to appellant's accepted work-related injury. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her

¹ 5 U.S.C. § 8128(a).

² Larson, *The Law of Workers' Compensation* § 13.00; see *Raymond A. Nester*, 50 ECAB 173 (1998).

³ *Id.* at § 13.11.

condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁴

The decision of the Office of Workers' Compensation Programs dated May 30, 2002 is affirmed.

Dated, Washington, DC
February 24, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).