

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS REDFEARN and DEPARTMENT OF LABOR,  
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,  
Syracuse, N.Y.

*Docket No. 97-2490; Submitted on the Record;  
Issued May 13, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning January 30, 1992.

The Board has duly reviewed the case on appeal and finds that this case is not in posture for decision.

This case has been before the Board previously. By decision dated May 23, 1996, the Board remanded the case to the Office of Workers' Compensation Programs for further development.<sup>1</sup> On remand, the Office was to prepare an updated statement of accepted facts which was to include a complete and accurate statement regarding appellant's work duties after her original injury up to the time of the claimed recurrence of disability. The Office was to then refer appellant, together with the complete medical record and the updated statement of accepted facts to Dr. Reinhard Bothe, an orthopedic surgeon, who had provided a second opinion evaluation for the Office. He was to clarify whether appellant had any employment-related condition or disability beginning January 30, 1992 and, if so, the extent and duration of any such condition or disability. The facts and background of the case contained in the prior decision are incorporated herein by reference.

Following the May 23, 1996 decision, the Office prepared an addendum to the statement of accepted facts and then referred appellant to Dr. Bothe. He was provided with the updated statement of accepted facts, a set of questions and the medical record and submitted reports dated August 2 and December 30, 1996.<sup>2</sup> By decision dated May 30, 1997, the Office denied the claim, crediting the opinion of Dr. Bothe. The instant appeal follows.

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<sup>1</sup> Docket No. 94-1541.

<sup>2</sup> In the August 2, 1986 report, Dr. Bothe noted that he had examined appellant on July 30, 1996 at which time

When working conditions are alleged as a factor in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding such working conditions prior to submitting the case record to a medical expert for an opinion as to causal relationship. As stated by the Office in its Procedure Manual, “[w]hen the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on an SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”<sup>3</sup>

In this case, on remand the Office was to prepare an updated statement of accepted facts which was to include a complete and accurate statement regarding appellant’s work duties at the employing establishment after her original injury up to the time of the claimed recurrence of disability. This it did not do. The addendum to the statement of accepted facts merely includes a description of appellant’s part-time outside work and does not discuss her work duties at the employing establishment from the time she returned to work on July 15, 1991 to January 30, 1992, the date of the claimed recurrence of disability. Dr. Bothe, therefore, relied upon an incomplete statement of accepted facts which seriously diminishes the probative value of his opinion. Consequently, the case must again be remanded to the Office for further development. On remand, the Office should prepare a new statement of accepted facts which accurately documents appellant’s work duties at the employing establishment after her original injury until January 30, 1992 and refer this and appellant, together with the complete medical record, to Dr. Bothe for a rationalized medical report in which he clarifies whether appellant had any employment related condition or disability beginning January 30, 1992 and, if so, the extent and duration of any such condition or disability. After such further development as it may deem necessary, the Office should issue a *de novo* decision.

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she had no objective findings of abnormalities at the cervical spine, shoulders or upper extremities and had recovered from cumulative trauma disorder in the upper extremities. He advised that if she returned to her regular work or activity that required repetitive motion of the wrist or elbows, the cumulative trauma disorder could recur but that she had no other restrictions to her activity. Upon review of the records of Dr. Michael B. Lax, who is Board-certified in preventive medicine and had treated appellant in 1992, by report dated December 30, 1996, Dr. Bothe stated that he did not believe that appellant was totally disabled on January 30, 1992 but that since her limited-duty work was too strenuous, Dr. Lax advised that she not work. Dr. Bothe concluded that appellant could have worked with appropriate restrictions.

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (1990).

The decision of the Office of Workers' Compensation Programs dated May 30, 1997 is hereby set aside and the case is remanded to the Office for action consistent with this decision.

Dated, Washington, D.C.  
May 13, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member