

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA J. McPHERSON and U.S. POSTAL SERVICE,  
POST OFFICE, Austin, TX

*Docket No. 98-805; Submitted on the Record;  
Issued April 3, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that she developed disability due to a latent condition, causally related to exposure to an animal pathology specimen in the performance of duty.

On March 31, 1985 appellant, then a 29-year-old clerk, filed a traumatic injury claim alleging that on that date she was exposed to fluids leaking from a package containing a veterinary pathology specimen, a decomposing dog's head, which was being sent through the mail to the laboratory for a rabies test. Appellant claimed that the leaking fluids got into a paper cut on her hand and that she had possibly contracted rabies or hepatitis.<sup>1</sup> This claim was assigned the OWCP No. A16-0094934. The Office of Workers' Compensation Programs denied this claim on June 18, 1985 finding that no traumatic injury had been established.

On November 19, 1993 appellant filed a claim for occupational disease resulting from the March 31, 1985 incident, which was assigned the OWCP case No. A16-0233520. Appellant alleged that she had developed Lyme disease as a result of the March 31, 1985 exposure. The employing establishment indicated that appellant had notified her supervisor of the exposure on March 31, 1985 and had stopped work from April 5 through 13, 1985. Appellant claimed that she was first aware of the condition on April 6, 1985 and that she first related her Lyme disease to the March 31, 1985 incident on November 21, 1990.

In support of her claim, appellant submitted certain medical evidence.

An April 20, 1984 preexposure medical summary from Dr. Russell B. Krienke, a Board-certified family practitioner, noted that from 1981 through 1983 appellant had been treated for

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<sup>1</sup> Appellant received rabies vaccine for this exposure. The injury compensation specialist noted on April 17, 1985 that the health department had determined that, of the two dog heads mailed by the veterinarian, one dog head was negative for rabies and the other was inconclusive due to decomposition.

recurrent serous otitis, allergies, frontal sinusitis, complaints of possible intestinal parasites, pharyngitis, gastroenteritis, situational stress with depression and somatic complaints secondary to this, chronic anxiety symptoms exacerbated by stress at work, a breast mass, bronchitis, left temporomandibular joint dysfunction, chronic back pain and a foot laceration.

A May 8, 1985 report from Dr. Ron Chiles, a physician of unlisted specialty, noted appellant's work history of exposure to drainage from a biological specimen, which had come into contact with an open wound on her hand and he diagnosed "suspected rabies exposure." He noted that appellant reported having diarrhea and anorexia for two weeks.

A March 26, 1987 report from Dr. Barry Hafkin, an infectious disease specialist, noted that he had treated appellant on several occasions in 1987 for low grade fever, chronic malaise and fatigue of unclear etiology. He stated that he had no acceptable explanation for her symptoms other than the possibility of chronic non-A, non-B hepatitis.<sup>2</sup>

Reports dated August 17 and September 27, 1988 from Dr. Marshall R. Sack, a Board-certified internist specializing in rheumatic diseases, indicated that appellant was seen for musculoskeletal pain in multiple areas; however, no reference to the March 31, 1985 work incident was made.

A March 10, 1989 examination for Lyme disease was conducted and it was noted that appellant's 11-year-old Doberman was negative for Lyme disease. The March 13, 1989 blood test results were noted to be negative for *Borrellia*/Lyme disease.<sup>3</sup>

Dr. Nicholas F. Tsourmas, a Board-certified orthopedic surgeon, treated appellant from January 14, 1988 through December 17, 1990 for impingement syndrome and bicipital tendinitis and an elbow condition. He did not mention a March 31, 1985 employment incident.

A November 13, 1990 report from Dr. Edward R. Rensimer, a Board-certified internist specializing in infectious diseases, noted that he had treated appellant for the past year for an illness that expressed itself mainly by inordinate fatigue. No diagnosis was given and no reference to a March 31, 1985 incident was made.

A December 13, 1990 note from Dr. Jim Donovan, a pediatrician, stated that appellant had a positive Lyme titer and that she required rest as an essential part of her treatment.<sup>4</sup> By report dated January 29, 1991, Dr. Donovan indicated that appellant had been treated for presumptive Lyme disease based upon a positive Lyme titer. He noted that appellant complained of headaches, ringing in her ears, eyes twitching, rhinorrhea, memory lapses, disorientation, leg cramps, elbow pain and fatigue and opined that it was "unclear whether these symptoms are directly related to her Lyme disease." Continuation of light duty was recommended. By report

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<sup>2</sup> Dr. Hafkin did, however, find evidence of chronic depression and low grade stress syndrome.

<sup>3</sup> *Borrellia burgdorferi* is the spirochete causing Lyme disease; see DORLAND'S *Illustrated Medical Dictionary*, 27th Edition, (1988), p.226.

<sup>4</sup> He did not, however, give any opinion concerning any causal relationship with her employment or the March 31, 1985 fluid exposure.

dated December 9, 1992, Dr. Donovan noted that appellant had been followed for several years for an illness manifested by mildly increased temperatures, chronic fatigue and joint aches. He noted that appellant had the positive Lyme titer approximately two years earlier but he provided no opinion as to whether appellant's condition was due to the March 31, 1985 incident of exposure.

By report dated June 15, 1993, Dr. J. Todd Bagwell, a Board-certified internist specializing in infectious diseases, noted appellant's history of exposure to the dog head on March 31, 1985, reviewed her history of treatment and noted that Dr. Donovan had advised appellant that she had Lyme disease, even though she had a negative Lyme antibody titer in 1989.<sup>5</sup> Dr. Bagwell noted that appellant had no significant travel history or exposure history to Lyme disease and that she had no history of tick bites or flea bites. He also noted that appellant had no history of the type of rash typically seen with Lyme disease. Dr. Bagwell noted that appellant's current problems were fatigue, difficulty waking in the morning, hypersomnolence and various joint aches and he opined:

“[Appellant] does seem to have a fatigue problem. The fatigue problem is not related to Lyme disease. Lyme disease is not a cause of chronic fatigue. I doubt strongly the diagnosis of Lyme disease in [appellant]. She has had no travel or exposure to any animal from an endemic area. The symptoms do not fit and there are far more false-positive Lyme serologies than there are true positives. I don[o]t think her problem anyway relates to the diagnosis of Lyme disease. She seems to be having problems with some arthralgias and various joint pains and fatigue, but they are not related to Lyme disease.”

Dr. Bagwell opined that appellant had a strong functional component to her complaints and indicated that no activity restrictions were medically required based upon the diagnosis of Lyme disease.

In a report dated July 29, 1993, the employing establishment fitness-for-duty examiner, Dr. James R. Staten, recommended that appellant have a light-duty assignment based on her various musculoskeletal complaints, but he noted that “[i]t does not appear that she has ever had Lyme disease.”

Appellant also submitted a listing of the correct dates that she received rabies injections and a statement of her symptoms. A newsletter concerning treatment of Lyme disease and multiple articles and references about Lyme disease were additionally submitted.

Reports dated December 30, 1993 and January 13, 1994 from Dr. Thomas C. Baldacchino, a Board-certified cardiologist, were provided and a reference to Lyme disease was made as a possible component of appellant's chest pain, but no opinion concerning causal relationship with appellant's employment was provided.<sup>6</sup>

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<sup>5</sup> Dr. Bagwell noted that seven days post exposure appellant was complaining of fatigue, jaundice, “ice cubes crawling up [her] legs,” arthralgias, a rotator cuff injury and tendinitis.

<sup>6</sup> Appellant had undergone cardiac angiography and a balloon angioplasty on December 28, 1993 for stenosis due

By decision dated April 25, 1994, the Office rejected appellant's claim finding that it was not timely filed.

By letter dated May 21, 1994, appellant requested an oral hearing on the April 25, 1994 decision. A review was conducted by the Branch of Hearings and Review and by decision dated August 25, 1994, the hearing representative remanded the case for determination as to whether or not the claim was timely filed and for adjudication of the claim on its merits.

By report dated November 18, 1994, Dr. Donovan discussed his treatment of appellant from January 1989 through December 1992. He noted that she had a negative Lyme titer in 1989 before the positive titer in November 1990. Dr. Donovan stated that it was impossible to tell definitively the cause of appellant's symptoms or the etiology of her positive titer. According to Dr. Donovan, there was no definite case on record of Lyme disease caused by exposure in the way appellant was exposed.<sup>7</sup>

By decision dated November 28, 1994, the Office accepted that the employment exposure occurred on March 31, 1985 as alleged, but that the medical evidence of record failed to demonstrate that appellant sustained an illness or medical condition causally related to the accepted fluid exposure.

On December 27, 1995 appellant requested a hearing. In support she submitted multiple articles from publications about Lyme disease and medical reports previously submitted to the record.

A December 8, 1994 report from Dr. Tsourmas addressed appellant's problems from chronic microtrauma and noted that her chronic pain had caused her to psychiatrically decompensate. He recommended retraining.

A hearing was held on March 27, 1996 at which appellant testified.

By decision dated July 31, 1996, the hearing representative affirmed the November 28, 1994 finding that appellant had failed to establish that she sustained Lyme disease causally related to her federal employment. The hearing representative found that the medical evidence of record failed to establish a clear etiology for appellant's diagnosed condition.

By letter dated July 30, 1997, appellant requested reconsideration and in support she submitted new arguments and further excerpts from publications regarding Lyme disease. Appellant argued rules of evidence and the Federal Liability Act (employer negligence).

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to two-vessel disease.

<sup>7</sup> Dr. Donovan noted that many of appellant's symptoms were consistent with Lyme disease but to definitively diagnose Lyme disease would require not only a positive titer but positive identification of the rash specific to Lyme disease, namely erythema chronicum migrans.

By decision dated September 18, 1997, the Office affirmed the July 31, 1996 decision, finding that appellant had failed to meet her burden of proof to establish her claim. The Office found that none of the medical evidence submitted established that the March 31, 1985 exposure to a pathology specimen caused her present diagnosed conditions.

The Board finds that appellant has failed to establish that she developed disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established.<sup>8</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>9</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.<sup>10</sup> In this case, the Office has accepted that the incident of exposure occurred as alleged. Therefore, examination of the medical evidence is required.

To establish a causal relationship between appellant’s condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>11</sup> Appellant failed to submit such medical evidence in this case.

Dr. Chiles, in his May 8, 1985 report, merely offered a working diagnosis of “suspected rabies exposure” related to the March 31, 1985 incident. However, rabies was not demonstrated in the pathology specimens sent to the laboratory and appellant did not manifest any symptoms of the disease. She further received full rabies prophylaxis and was not noted to demonstrate any side effects from the therapy. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to her exposure to an animal pathology specimen in the performance of duty.

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<sup>8</sup> 20 C.F.R. § 10.5(15), (16) define a traumatic injury as a wound or other condition caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift. As appellant’s exposure occurred only during one work shift, it is being treated as a latent disease or condition arising from a “traumatic” work incident within a single day.

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

<sup>11</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

Dr. Hafkin's March 26, 1987 report noted that he had no acceptable explanation for appellant's symptoms other than possibly non-A, non-B hepatitis. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

Dr. Sack's reports from 1988 only note that appellant was seen for musculoskeletal pain in multiple areas; no mention of a March 31, 1985 work exposure was made. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

March 13, 1989 blood test results were negative for Lyme disease. This report does not support that appellant sustained disability due to a latent condition, causally related to a March 31, 1985 exposure.

Dr. Tsourmas's reports addressed only her orthopedic conditions and their treatment and failed to mention a March 31, 1985 exposure. Therefore these reports do not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

The November 13, 1990 report from Dr. Rensimer did not present a diagnosis nor refer to a March 31, 1985 exposure incident. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

The multiple reports from Dr. Donovan noted that appellant had a positive Lyme antibody titer and that he had been treating her for suspect Lyme disease, but he provided no opinion as to whether this disease was causally related to appellant's March 31, 1985 exposure incident. In his November 18, 1994 report, Dr. Donovan even admitted that it was impossible to tell definitely the cause of appellant's symptoms or the etiology of her positive Lyme antibody titer and noted that there was no definite case on record of Lyme disease caused by exposure in the way appellant was exposed. Therefore, these reports do not support that appellant sustained disability due to a latent condition, Lyme disease or otherwise, causally related to a single March 31, 1985 exposure to a biological pathology specimen in the performance of duty.

Dr. Baldacchino, appellant's cardiologist, merely referred to appellant's chest pain as possibly being in part due to her Lyme disease, but no relationship of the suspected Lyme disease to appellant's March 31, 1985 was provided. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

Finally, the June 15, 1993 report of Dr. Bagwell disputed that appellant even had Lyme disease, noting that her symptoms did not fit and that there were a significant number of false positive results on Lyme disease serology and he opined that her fatigue problem was not related to Lyme disease and that she had a strong functional component to her complaints. Therefore, this report does not support that appellant sustained disability due to a latent condition, causally related to a single exposure to a biological pathology specimen in the performance of duty.

Appellant also submitted multiple excerpts from medical publications and pamphlets. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and appellant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.<sup>12</sup> Therefore, this material is not probative on the issue in question.

The only evidence of record which suggests that appellant's March 31, 1985 exposure to a decomposing dog head caused her to develop Lyme disease diagnosed five years later are appellant's own unsupported assertions. The Board has held that lay individuals, such as appellant, are not competent to render a medical opinion.<sup>13</sup> Therefore, appellant's opinions do not support that she sustained disability due to a latent condition, causally related to a single March 31, 1985 exposure to a biological pathology specimen in the performance of duty.

As appellant has submitted no rationalized medical opinion evidence supporting that her March 31, 1985 exposure to a leaking package containing a pathology specimen caused a latent condition tentatively diagnosed in 1990 as Lyme disease, she has failed to meet her burden of proof to establish her claim.

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<sup>12</sup> *George A. Johnson*, 43 ECAB 712 (1992).

<sup>13</sup> *Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 18, 1997 is hereby affirmed.

Dated, Washington, D.C.  
April 3, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member