U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE A. MURRELL and DEPARTMENT OF TREASURY, U.S. CUSTOMS SERVICE, Long Beach, CA

Docket No. 99-1444; Submitted on the Record;
Issued May 7, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that her fibromyalgia is causally related to factors of her federal employment.

On September 13, 1996 appellant, then a 45-year-old supervisor mission support specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her fibromyalgia was due to her employment.[1]

In a report dated August 29, 1996, Dr. Jacob P. Verghese, an attending Board-certified neurologist, diagnosed fibromyalgia and bilateral mild carpal tunnel syndrome. Based upon a musculoskeletal examination, Dr. Verghese noted:

> "The patient did have marked tightness and spasm in the neck muscles. There are multiple trigger points in and around the cervical paraspinous muscles, sternomastoids, levator scapulae and muscles across the shoulder blades, sacroiliac joints, both shoulders, deltoid insertion, extensor expansions bilaterally, over both heads of teres, as well as a positive Finkelstein's test. She did have tenderness to palpation of the joints in both wrists, left side worse than right. Tinel's test was positive as well."

[1] The Office of Workers' Compensation Programs assigned claim number 13-1113860 to this claim. Appellant previously filed an occupational claim for depression, which the Office assigned claim number 13-1122584 and denied by decision dated June 2, 1997. Appellant had also filed a claim for bilateral carpal tunnel syndrome, which the Office accepted and assigned claim number 13-1098518.

In support of his diagnosis of fibromyalgia, Dr. Verghese relied upon appellant's medical history and trigger points. Specifically, he stated:

> "She started off by getting symptoms consistent with carpal tunnel, but very quickly developed upper extremity pain with multiple trigger points which are evident at this point in time, all of which are consistent with a diagnosis of fibromyalgia."

In a November 12, 1996 report, Dr. Sterling B. Mutz, an attending Board-certified orthopedic surgeon, indicated that appellant's subjective complaints including "a constant, aching burning and prickling type of pain which is occasionally minimal, slightly slight and occasionally moderate to severe, aggravated by activities" were consistent with the diagnoses of fibromyalgia and bilateral carpal tunnel syndrome. In conclusion, Dr. Mutz opined that appellant's fibromyalgia was the primary source of her complaints and that the fibromyalgia was employment related.

On February 3, 1997 the Office referred appellant for a second opinion evaluation with Drs. Sanjay J. Chauhan, a Board-certified neurologist and Jamshid Tamiry, a Board-certified internist, to determine the relationship between her fibromyalgia and factors of her employment as well as any disability due to this condition or to her accepted bilateral carpal tunnel syndrome.

In a February 24, 1997 report, Dr. Chauhan diagnosed subjective complaints of trigger pain and points in her neck, upper back, scapular and shoulder areas, left carpal tunnel syndrome and status post right carpal tunnel release surgery with continued symptoms. Regarding whether appellant had fibromyalgia, Dr. Chauhan noted that her treating physician had diagnosed appellant with fibromyalgia, but concurred with Dr. Tamiry's opinion that appellant did not have fibromyalgia.

In a report dated February 28, 1997, Dr. Tamiry concluded that appellant did not have fibromyalgia. In reaching this conclusion, he noted that appellant "had some trigger points, predominantly in the upper part of her body," but qualifying for the diagnosis of fibromyalgia requires 18 trigger points at a minimum. Furthermore, the physician indicated that "there has been no definitive diagnosis of any collagen vascular disease, hormonal imbalance, hypothyroidism, rheumatoid arthritis or systemic lupus erythematosus" and, therefore, the examination failed "to reveal evidence of objective findings consistent with fibromyalgia." Lastly, Dr. Tamiry stated that the objective tests performed were within normal limits and that he was unable to determine the cause of appellant's subjective symptomatology.

By decision dated May 8, 1997, the Office denied appellant's claim on the basis that the medical evidence of record was insufficient to establish that her fibromyalgia was causally related to factors of her employment.

By letter dated May 17, 1997, appellant requested an oral hearing which was held on September 22, 1998.

In a report dated July 15, 1997, Dr. Rick F. Pospisil, an attending Board-certified orthopedic surgeon, diagnosed fibromyalgia of the upper extremities, bilateral carpal tunnel

syndrome, cervical disc radiculopathy and depression due to her fibromyalgia and bilateral carpal tunnel syndrome.

In a report dated December 21, 1997, Dr. Robert M. Kachenmeister, a second opinion Board-certified plastic surgeon, diagnosed bilateral carpal tunnel syndrome, postfibromyalgia, in both upper extremities and depression. Dr. Kachenmeister opined that "the diagnosis of fibromyalgia may be secondary to the unresolved and unmitigating symptoms, which would be secondary to her employment."

In a January 13, 1998 report, Dr. Gerald W. Rothacker, Jr., an attending Board-certified orthopedic surgeon, based upon a review of her medical records and physical examination, diagnosed fibromyalgia, mild bilateral carpal tunnel syndromes, degenerative disc disease and depression. Dr. Rothacker indicated that appellant's "rheumatology workup was not revealing of any rheumatologic condition other than fibromyalgia.

In a May 17, 1998 report, the Office medical adviser concluded, based upon a review of the medical evidence, that neither appellant's depression nor her fibromyalgia were employment related.

By decision dated January 28, 1999, the hearing representative affirmed the May 8, 1997 decision.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[4]

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Gary L. Fowler*, 45 ECAB 365, 371; *Ern Reynolds*, 45 ECAB 690, 695 (1994).

Section 8123(a) of the Act[5] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[6]

In the instant case, there is a conflict in the medical evidence, as there were opposing medical opinions regarding the issue of whether appellant had fibromyalgia caused or aggravated by factors of her federal employment. There is a conflict on the issue of whether appellant has fibromyalgia as Drs. Chauhan and Tamiry, the Office second opinion physicians, concluded that appellant did not have fibromyalgia and Drs. Mutz, Pospisil and Verghese, appellant's attending physician, all concluded that appellant had fibromyalgia causally related to her employment. Accordingly, a conflict in the medical evidence exists and the case must be referred to an impartial medical examiner to resolve the conflict in medical evidence regarding whether appellant's claimed condition was causally related to factors of her federal employment. Accordingly, a conflict in the medical evidence exists.

On remand therefore the Office should further develop the medical evidence by referring the case file and a statement of accepted facts to an impartial medical examiner to resolve the issue of whether appellant's bilateral osteoarthritis is causally related to factors or incidents of her employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated January 28, 1999 is set aside and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC
May 7, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

[6] *Charles S. Hamilton*, 52 ECAB ___ (Docket No. 99-1792, issued October 13, 2000).