U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET PEARSON and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, White River Junction, VT

Docket No. 03-661; Submitted on the Record;
Issued March 10, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained fibromyalgia, causally related to factors of her federal employment or to her accepted right arm tenosynovitis.

The Office of Workers' Compensation Programs accepted that on January 1, 1994 appellant, then a 43-year-old administrative assistant, sustained right arm radial tenosynovitis and right carpal tunnel syndrome from repetitive use of her right arm. She underwent a right carpal tunnel release and stopped work following her surgery.

On August 21, 2001 the Office referred appellant, together with a statement of accepted facts and questions to be addressed, to Dr. David J. Patek, a Board-certified rheumatologist, for a second opinion examination to determine whether she had sustained employment-related fibromyalgia.

In a report dated September 6, 2001, Dr. Patek noted that in 1996 appellant developed more generalized musculoskeletal pain, especially of the hips and thigh muscles, which was diagnosed as fibromyalgia by Dr. Lin A. Brown, appellant's attending Board-certified rheumatologist. Dr. Patek stated:

> "Fibromyalgia, which developed subsequently in 1996, may occur in someone under stress who has suffered an injury, especially one that appears disabling. I believe [appellant] has fibromyalgia and that it is related to the injury that necessitated her stopping work...."

In response to an Office request for a supplemental report on causal relationship, Dr. Patek stated on October 12, 2001 as follows:

> "I have related [appellant's] fibromyalgia syndrome to the chronic pain in the upper extremities that forced her to stop work. Pain became generalized, associated with insomnia, anxiety and depression."

On January 30, 2002 the Office referred the case record to an Office medical consultant, Dr. George L. Cohen, a Board-certified rheumatologist. By report dated February 5, 2002, Dr. Cohen noted that Dr. Patek found that appellant had multiple tender areas consistent with fibromyalgia. He diagnosed work-related right carpal tunnel syndrome as a consequence of repetitive use of her upper extremities and tenosynovitis, but noted that "[t]he diagnosis of fibromyalgia is not a work-related condition and is not in any way associated with right radial tenosynovitis, right carpal tunnel syndrome and overuse of the right upper extremity in this instance."

In a February 14, 2002 report, Dr. Brown noted:

> "My impression is that [appellant's] fibromyalgia syndrome and lupus-like disease has flared off of her medicines. While I believe that the majority of her upper extremity disability is related to fibromyalgia secondary to her work as a keyboard operator and administrative assistant, there is no question that some of her symptoms may be aggravated by the concurrence of her lupus-like illness, which includes interface dermatitis, photosensitivity, Raynaud phenomenon, positive anticardiolipin antibodies and possibly her history ... of seizures."

On March 5, 2002 Dr. Cohen noted that, beside appellant's accepted tenosynovitis and right carpal tunnel syndrome, she had been diagnosed with fibromyalgia and a lupus-like illness.[1] He reiterated that appellant's fibromyalgia was not related to her right radial tenosynovitis, carpal tunnel syndrome and/or overuse syndrome of the right upper extremity and was not a work-related condition. Dr. Cohen stated:

> "Fibromyalgia is a condition which is manifested by diffuse musculoskeletal pain associated with classical tender points which [appellant] appears to have. It is not typically localized to one extremity, although symptoms in a single extremity can be worse than elsewhere.
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> "The claim has been accepted for tenosynovitis and right carpal tunnel syndrome secondary to repetitive use of the right upper extremity at work. There is absolutely no evidence in the record or in the recent medical report to substantiate the statement that right upper extremity impairment is related to fibromyalgia or that fibromyalgia is a work-related condition.
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> "In addition [appellant] has a lupus-like illness which is not work related and is considered responsible for some of her extremity symptoms."

By decision dated March 14, 2002, the Office denied appellant's claim for fibromyalgia, finding that the evidence of record failed to establish that it was causally related to her accepted work-related conditions or to other factors of her federal employment. The Office found that the second opinion specialist, Dr. Patek, provided an unrationalized report. The Office found that the weight of the medical opinion rested with the Office medical consultant, Dr. Cohen.

[1] Systemic lupus erythematosus is a connective tissue disorder. *See* DORLAND'S ILLUSTRATED *Medical Dictionary*, 27th Edition (1988), p 958.

By report dated April 1, 2002, Dr. Cohen noted:

> "[Appellant] is being treated by her physicians for several diagnoses including fibromyalgia, a 'lupus-like illness,' right carpal tunnel syndrome and tenosynovitis of the right wrist. Carpal tunnel syndrome and tenosynovitis have been accepted as work-related conditions. Fibromyalgia and the 'lupus-like' illnesses are not work related."

In a letter dated April 23, 2002, appellant requested reconsideration of the March 14, 2002 decision and submitted a report dated April 10, 2002 from Dr. Brown, who noted appellant's negative serologies for lupus. He stated:

> "[Appellant] does for sure have the fibromyalgia syndrome that is classic in its presentation and current state. [She] began with a work-related overuse syndrome affecting the right upper extremity. Conservative measures were not helpful in relieving this pain and it became more generalized and associated with a sleep disturbance.... It is my belief that if not causal in the usual medical sense of the word, that it did act as a triggering event in generating the widespread musculoskeletal pain associated with greater than 11 myofascial tender points being painful to digital palpation.
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> "The cause of fibromyalgia is unknown and may in fact be multifactorial or caused by different etiologies in different patients. It seems reasonable to assert that her symptoms of musculoskeletal pain followed her repetitive use of the right upper extremity in keyboarding in her job at the [employing establishment]."

Some physical therapy records were also submitted.

By decision dated July 25, 2002, the Office denied modification of its March 14, 2002 decision, finding that the evidence submitted was insufficient to warrant modification.

By letter dated August 26, 2002, appellant requested reconsideration of the July 25, 2002 decision and submitted excerpts from a medical encyclopedia regarding fibromyalgia, some internet information and a monograph on fibromyalgia.

On November 26, 2002 the Office referred appellant's case record to Dr. Cohen for an additional opinion regarding her fibromyalgia.

By report dated November 27, 2002, Dr. Cohen replied that fibromyalgia was a condition of unknown etiology and that when the etiology of something is unknown, it is often incorrectly attributed to factors that could not reasonably be considered to cause the condition. He opined that it was not reasonable to consider that a gradual chronic repetitive injury to a single limb could result in severe pain in all four extremities and in the trunk. He further noted that fibromyalgia sometimes appeared to develop after an acute generalized bodily injury such as following a significant fall or motor vehicle accident and he opined that appellant's fibromyalgia was more likely due to her "lupus-like illness."

By decision dated December 2, 2002, the Office denied modification of its July 25, 2002 decision, finding that Dr. Cohen's reports remained the weight of the medical opinion evidence.

The Board finds that this case is not in posture for decision due to a conflict in medical opinion evidence between the Office consultant, Dr. Cohen, and appellant's attending physician, Dr. Brown.

Appellant's treating physician, Dr. Brown, originally diagnosed fibromyalgia in 1996 and found a causal relationship between its development and her right upper extremity overuse syndrome related to her work as a keyboard operator and administrative assistant. He stated that appellant's right upper extremity overuse syndrome acted as a triggering event in generating her fibromyalgia and the widespread musculoskeletal pain associated with greater than 11 myofascial tender points.

Appellant was then examined by Dr. Patek, a second opinion specialist, who noted Dr. Brown's findings and opined that appellant had "fibromyalgia and that it is related to the injury that necessitated her stopping work." Upon request for clarification, Dr. Patek merely reiterated his opinion and did not include any further explanation or rationale. The Board finds, therefore, that as Dr. Patek's reports were conclusory and were not explained or rationalized and that they could not be further clarified upon request, they are of diminished probative value and are insufficient to establish appellant's claim.

The Office referred the case record to Dr. Cohen, an Office medical consultant, who opined that the diagnosis of fibromyalgia was not a work-related condition and was not associated with the accepted right radial tenosynovitis, right carpal tunnel syndrome or overuse of the right upper extremity in this instance. He noted that there was no evidence in the record to substantiate that appellant's right upper extremity impairment was either related to fibromyalgia or that fibromyalgia was a work-related condition and he noted that appellant was being treated for several diagnoses including fibromyalgia and a "lupus-like illness" which were not work related.

Title 5 U.S.C. § 8123(a) states in pertinent part: "If there is a 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."

In this case, the Office medical consultant, Dr. Cohen, provided several opinions which were in conflict with those of appellant's treating rheumatologist, Dr. Brown, on the issue of causal relationship of her fibromyalgia.

As this conflict between the reports of Dr. Cohen and Dr. Brown exists, a referral of appellant, together with a statement of accepted facts and specific questions to be addressed, must be made to an impartial medical specialist Board-certified in rheumatology for a rationalized medical opinion as to whether appellant's fibromyalgia is causally related to her accepted employment injuries or to other factors of her federal employment.

Consequently, the decisions of the Office of Workers' Compensation Programs dated December 2, July 25 and March 14, 2002 are hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC
March 10, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member