

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**THOMAS B. BOWMAN, Appellant**

**and**

**U.S. POSTAL SERVICE, AIRPORT MAIL  
CENTER, Baltimore, MD, Employer**

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**Docket No. 04-2271  
Issued: April 8, 2005**

*Appearances:*  
*Thomas B. Bowman, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On September 17, 2004 appellant filed a timely appeal of a June 17, 2004 decision of the Office of Workers' Compensation Programs, which denied his claim for intermittent disability on and after March 22, 2004. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant established that he is entitled to intermittent wage-loss compensation for the period March 22 to 23, 2004 as a result of his accepted condition of aggravation of fibromyalgia.

**FACTUAL HISTORY**

On September 15, 1998 appellant, a 42-year-old mail handler, filed an occupational disease claim alleging that on September 10, 1998 he first realized that the aching of his muscles

was employment related. The Office accepted the claim for aggravation of fibromyalgia<sup>1</sup> and paid compensation for intermittent wage loss for the period March 15, 1996 through January 28, 2004.

On March 24, 2004 appellant submitted a claim for compensation for the period March 22 to 23, 2004.

In a letter dated May 12, 2004, the Office acknowledged receipt of appellant's claim for intermittent wage loss for the period March 22, 2004 and continuing. The Office informed him that he must submit medical evidence for each period of claimed intermittent wage loss and that the last medical narrative was dated March 12, 2001. Appellant was informed that, while the Office had previously paid him wage-loss compensation for intermittent periods of disability "without providing a detail (sic) well-rationalized medical report" and that "[t]his will no longer be done."

In response to the Office's letter, appellant submitted a June 9, 2004 report by Dr. Ramana Gopalan, a treating Board-certified internist, who indicated that appellant "continues to be symptomatic from fibromyalgia" and that he "has frequent episodes of decompensation that necessitate periods of rest." Dr. Gopalan opined that appellant was unable to work "[d]uring these frequent episodes of exacerbations of his disease." In concluding, he stated:

"In summary [appellant] continues to have ongoing fibromyalgia requiring treatment. He will continue to have episodic decompensation which will require absence from work plus treatment, each episode lasting several days. [Appellant] should avoid prolonged shift work, take frequent rest periods and avoid exposure to changes of temperature, dust, vibration and other physical stressors."

By decision dated June 17, 2004, the Office denied appellant's claim for intermittent wage loss for the period March 22, 2004 and continuing. In support of this conclusion, the Office found Dr. Gopalan's opinion equivocal and unrationalized. The Office also found the record lacked any rationalized medical opinion explaining how appellant's current fibromyalgia condition was causally related to factors of his employment and the accepted March 12, 1996 employment injury.<sup>2</sup>

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<sup>1</sup> The Office noted the date of injury as March 15, 1996, which was the date appellant stated that he was first aware of the condition on his claim form.

<sup>2</sup> The Board notes that the record contains a preliminary determination dated May 24, 2004, informing appellant of the existence of an overpayment in the amount of \$180.91. The Office informed appellant that the overpayment occurred because of erroneous reimbursement for pharmacy services and determined that he was at fault in the creation of this overpayment. As no final decision has been issued with regards to the overpayment, the Board does not have jurisdiction to consider this issue. Accordingly, the overpayment issue is not properly before the Board. *See* 20 C.F.R. § 501.2(c).

## LEGAL PRECEDENT

Appellant has the burden of proof to establish by a preponderance of the evidence that he is disabled for work as a result of his employment injury for the specific periods claimed.<sup>3</sup> Whether a particular injury causes an employee to become disabled for employment and the duration of that disability are medical issues which must be proved by reliable and substantial medical evidence.<sup>4</sup>

To establish a causal relationship between appellant's accepted aggravation of fibromyalgia and the claimed period of disability, he 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, 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>5</sup>

## ANALYSIS

In the June 17, 2004 decision, the Office determined that the medical record lacked probative evidence to support appellant's claim for disability from March 22, 2004 and continuing as a result of the accepted employment injury. On March 24, 2004 he submitted a Form CA-7 claim for wage-loss compensation for the period March 22 to 23, 2004. The record does not contain any claim for wage-loss compensation for a subsequent period. In support of his claim, appellant submitted the June 9, 2004 report by Dr. Gopalan, a treating Board-certified internist, who indicated that appellant continued to require treatment for fibromyalgia. He stated that appellant "will continue to have episodic decompensation which will require absence from work plus treatment, each episode lasting several days." Dr. Gopalan related that he "should avoid prolonged shift work, take frequent rest periods and avoid exposure to changes of temperature, dust, vibration and other physical stressors." The Board finds that he did not fully explain how appellant was disabled with a rationalized medical opinion addressing the nature of the relationship between his condition on or after March 22, 2004 and the accepted aggravation of fibromyalgia. Dr. Gopalan merely related that appellant would continue to have episodes of decompensation due to fibromyalgia without identifying how the disability was employment related. He did not identify the dates appellant was disabled, but merely noted that he would continue to have "episodic decompensation" which would require appellant to be off work. The underlying issue in the claim is essentially medical in nature, *i.e.*, whether appellant was disabled for work March 22 to 23, 2004, due to his accepted work-related fibromyalgia. The Board will not require the Office to pay compensation for disability in the absences of medical evidence

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<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> *Betty J. Smith*, 54 ECAB \_\_\_\_ (Docket No. 02-149, issued October 29, 2002).

directly addressing the particular period of disability. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.

**CONCLUSION**

The Board finds that appellant has not established that he is entitled to compensation for the period March 22 to 23, 2004 as a result of his accepted condition of aggravation of fibromyalgia.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 17, 2004 is affirmed.<sup>6</sup>

Issued: April 8, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> The Board notes that subsequent to the June 17, 2004 decision the Office received additional medical evidence. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).