

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESA MARIE IANNIELLI-HUBER and U.S. POSTAL SERVICE,  
POST OFFICE, Tacoma, Wash.

*Docket No. 96-2435; Submitted on the Record;  
Issued December 10, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits in this case; and (2) whether appellant has established that her fibromyalgia and dystonia conditions are causally related to her accepted employment injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

In the present case on January 13, 1995 the Office accepted that appellant, a mail clerk, sustained cervical and lumbar subluxations as a result of lifting bags and parcels over a two-week period prior to August 30, 1993. Appellant initially continued working six hours a day and the Office paid for two hours of wage-loss benefits per day. Appellant stopped work on May 1, 1994 and the Office paid total disability compensation benefits. On January 30, 1995 the Office issued a notice of proposed termination of compensation advising appellant that the evidence of record indicated that her disability resulting from the accepted injury had ceased. Appellant returned to work on February 2, 1995, but would often leave work early submitting leave slips noting "on the job injury." The Office terminated appellant's compensation benefits on March 1, 1995 on the grounds that the panel report of Dr. Michael C. Bidgood, a Board-certified orthopedic surgeon, and Dr. George P. Delyanis, a Board-certified neurologist, dated January 6, 1995 constituted the weight of the medical evidence and established that appellant's accepted employment-related conditions had ceased. An Office hearing representative affirmed the termination of appellant's compensation benefits by decision dated November 9, 1995. The hearing representative found that the weight of the medical evidence was represented by the report from Drs. Bidgood and Delyanis, second opinion medical consultants, who concluded that appellant had no residuals of the employment injury. The hearing representative also found that the medical evidence of record was not sufficient to establish that appellant's diagnosed fibromyalgia and dystonia conditions were employment related.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup>

Regarding appellant's accepted conditions of cervical and lumbar subluxations, the Board notes that the Office accepted these conditions and paid compensation benefits based upon reports from chiropractor Dr. Susan E. Strobel that appellant had lumbar and cervical subluxations.<sup>2</sup> Dr. Strobel continued to submit attending physician's reports through February 17, 1995 indicating diagnoses of lumbar and cervical subluxations and indicating that appellant remained disabled from work. In a report dated February 1, 1995, Dr. Strobel stated he had been informed that appellant had been released to return to regular duty as of February 2, 1995 by an Office physician. Dr. Strobel stated that she strongly disagreed with that decision as appellant's last examination revealed she still had significant decreases in both cervical and lumbar ranges of motion as well as positive orthopedic testing to show that she was unable to resume full-time regular duty.

Drs. Bidgood and Delyanis conducted a panel second opinion evaluation on January 6, 1995. In a lengthy narrative report, these physicians concluded that appellant had current diagnoses of marked functional overlay and degenerative disc disease of the lumbar spine, preexisting and unrelated to the industrial injury of August 30, 1993. Drs. Bidgood and Delyanis noted that there was presently no objective evidence of any residuals from the work-related condition. These physicians concluded that appellant was able to be gainfully employed based upon the medical evidence of record, her history of injury and physical examination.

The Board finds that the reports of Dr. Strobel and Drs. Bidgood and Delyanis provide conflicting medical opinions as to whether appellant continued to have residuals of the accepted cervical and lumbar subluxations after March 1, 1995, which caused disability. In situations where there exists opposing medical reports of virtually equal weight and rationale, the Office should refer the case to an impartial medical specialist for the purpose of resolving the conflict.<sup>3</sup> As the Office did not resolve the conflict in the medical opinion evidence, it did not meet its burden of proof to establish that the accepted condition of cervical and lumbar subluxations had ceased and no longer disabled appellant after March 1, 1995.

The Board also finds that the Office did properly deny appellant's claim that her fibromyalgia and dystonia conditions were causally related to her federal employment. In the

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> In a report dated October 7, 1994, Dr. J. Greg Zoltani, Board-certified in neurology, had opined that appellant's chiropractic treatment had been reasonable and necessary, and that it would be "prudent" to maintain a level of chiropractic intervention during appellant's re-corporation into her work activities. Dr. Kevin McNamara, an Office second opinion physician, had reported on December 8, 1993 that further chiropractic treatment would be palliative. In a report dated March 23, 1994, Dr. Robert E. Ettlinger noted that he would recommend hydrotherapy rather than continuing chiropractic treatment.

<sup>3</sup> *John F. Cain*, 46 ECAB 565 (1995).

decision dated November 9, 1995, the Office hearing representative summarized the medical evidence of record and noted that appellant bore the burden of proof to establish causal relationship for the claimed conditions of fibromyalgia and dystonia, which had not been previously accepted by Office as employment related.<sup>4</sup> Further, the hearing representative noted that the Board has held that an obscure etiology of a disease or condition does not shift the burden of proof to the Office to disprove an employment relationship. Neither does the absence of a known etiology for a condition relieve an appellant of the burden of establishing causal relationship by the weight of the evidence which includes affirmative medical opinion evidence based on the material facts with supporting rationale.<sup>5</sup> The only physician who addressed the question of causal relationship of the diagnosed fibromyalgia condition was Dr. Zoltani. While he stated that the condition was causally related to the accepted employment injury, he offered no medical explanation as to how the accepted injury would have medically caused the condition. Likewise, Dr. Patrick J. Hogan, an osteopathic physician, concluded that appellant's dystonia condition was causally related to her employment trauma, but did not offer the necessary medical rationale to explain why he concluded that the employment injury caused the condition, and pathophysiologically how this occurred. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.<sup>6</sup> The Board finds that the decision of the Office's hearing representative, dated and finalized on November 9, 1995 is in accordance with the facts and law in this case and hereby adopts the findings and conclusions of the hearing representative.

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<sup>4</sup> *Carl Epstein*, 38 ECAB 539 (1987).

<sup>5</sup> *Judith A. Peot*, 46 ECAB 1036 (1995).

<sup>6</sup> *See Michael Stockert*, 39 ECAB 1186 (1988).

The decision of the Office of Workers' Compensation Programs dated November 9, 1995 is hereby reversed regarding the termination of appellant's benefits for the accepted conditions of cervical and lumbar subluxations and the decision is affirmed regarding the denial of benefits for the claimed condition of fibromyalgia and dystonia.

Dated, Washington, D.C.  
December 10, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member