

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY GRIMES and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 98-129; Submitted on the Record;
Issued February 2, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 22, 1994; and (2) whether appellant has met her burden of proof in establishing that she has a cervical, shoulder or fibrositis condition causally related to factors of her federal employment.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Appellant, a clerk, filed a claim alleging that on January 29, 1993 she injured her back in the performance of duty. The Office accepted appellant's claim for lumbar strain. On August 11, 1993 appellant, through her representative, requested reconsideration and asked that her claim be expanded to include cervical, shoulder and fibromyalgia condition as due to her employment injury. Appellant filed a second claim¹ on October 26, 1993 for occupational disease alleging that she developed bilateral chronic pain syndrome, including pain in the upper shoulder, arm, neck, back, wrists, hands and fibromyalgia due to factors of her federal employment. The Office denied the occupational disease claim on January 28, 1994 finding that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed condition and the accepted employment factors. Appellant requested an oral hearing and by decision dated February 10, 1995 and finalized on February 13, 1995, the hearing representative affirmed the Office's January 28, 1994 decision.

By decision dated July 22, 1994, the Office terminated appellant's compensation benefits finding that she had no residuals of her January 29, 1993 work injury. Appellant requested an oral hearing on August 3, 1994. By decision dated April 11, 1995 and finalized on April 12, 1995, the hearing representative affirmed the Office's July 22, 1994 decision. Appellant

¹ The Board notes that appellant had a previous claim accepted for muscle strain with tendinitis in both hands.

requested reconsideration on March 13, 1996 of both the April 12, 1995 decision and the January 28, 1994 decision.

By decision dated April 30, 1996, the Office reviewed the evidence submitted in support of appellant's reconsideration request in her occupational disease claim under the clear evidence of error standard, finding that her request was not timely filed and did not contain clear evidence of error.

In a decision dated May 3, 1996, the Office denied modification of its April 12, 1995 decision. The Office stated that the medical evidence submitted did not establish that the cervical, shoulder and fibrositis conditions were causally related to appellant's work duties. Appellant requested reconsideration on April 6, 1997 and by decision dated June 2, 1997, the Office denied modification of its April 12, 1995 decision. The Office weighed the new evidence in determining whether appellant had established fibromyalgia as causally related to her employment.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² 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 disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁵

In this case, the Office accepted that appellant sustained a lumbar strain due to lifting in the performance of duty. Appellant's attending physician, Dr. Robert Lancaster, a Board-certified family practitioner, completed a report on March 15, 1993, diagnosing back strain secondary to lifting at work. He also diagnosed the concurrent disease of fibromyalgia. On March 26, 1993 Dr. Lancaster noted appellant's history of injury and repeated his previous diagnosis. He also stated, "It would seem that as a result of the January 29, 1993 injury at work, she has suffered a generalized back strain or sprain and it also appears that she has triggered a fibromyalgia-type reaction which has led to decreased energy and sleep disturbance." In a report dated June 6, 1994, Dr. Lancaster indicated that he was treating appellant for repetitive use syndrome of the upper extremities, mid to low back strain secondary to the January 29, 1993 employment injury, fibrositis, hypothyroidism, radiculities with polyarthralgias and cervicaglia and Sjogren's syndrome. He stated that appellant's work restrictions were due to the lumbar strain.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

An Office second opinion physician, Dr. Thomas Roesener, a Board-certified orthopedic surgeon, completed a report on April 22, 1993. He noted appellant's history of injury, performed a physical examination and examined x-rays. Dr. Roesener diagnosed fibromyalgia and lumbosacral strain. He stated, "I think the magazine incident only caused a lumbar strain which is resolving. I think [appellant] has a preexisting fibromyalgia."

Dr. Howard Aidem, a Board-certified orthopedic surgeon and Office second opinion physician, completed a report on August 25, 1993. He noted appellant's history of injury and performed a physical examination. Dr. Aidem stated:

"[Appellant]'s complaints have been associated with a diagnosis of fibromyalgia and the exact status of this diagnosis is medically unclear to me. The literature suggests that there may be a connective tissue disturbance and yet the term is often used in the absence of definite pathology to indicate the basis of generalized problem unassociated with connective tissue disease."

In a supplemental report dated May 12, 1994, he stated:

"As best I can tell, the effects of a 'strain' have resolved. The problem with the opinion about a strain is the fact that there is still cervical and lumbar tenderness, and a connective tissue disease has been diagnosed. Accordingly, the persistent complaints may well be referable to a connective tissue process rather than to [a] traumatic episode."

Section 8123(a) of the Federal Employees' Compensation Act,⁶ 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." In this case, appellant's attending physician, Dr. Lancaster, opined that appellant had continuing restrictions causally related to her accepted employment injury of lumbar strain on June 6, 1994.⁷ The Office referred appellant for a second opinion with Dr. Aidem who stated that on May 12, 1994 the effects of the strain had resolved. As the physicians disagree on the issue of whether appellant has continuing disability causally related to her accepted employment injury, there is an unresolved conflict of medical opinion evidence in the record and the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

The Board further finds that appellant has failed to meet her burden of proof in establishing that she developed fibromyalgia as a result of her employment injury or duties.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ The Office second opinion physician, Dr. Roesener, indicated that appellant's accepted condition of lumbar strain was resolving on April 22, 1993. However, he did not opine that appellant's disability due to this condition had ceased. Therefore, his report does not support the Office's termination decision.

factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁸

In this case, appellant alleged that in addition to her accepted condition of lumbar strain, she also sustained fibromyalgia as a result of her January 29, 1993 employment injury. She asserted in the alternative that the fibromyalgia was the result of factors of her employment including computer work and lifting trays.

The medical records indicate that Dr. Paul F. Howard, a Board-certified internist, first diagnosed fibromyalgia on May 20, 1991. In a note dated February 19, 1993, he again diagnosed fibromyalgia and stated that this condition was likely related to her lumbar sprain.

Dr. Lancaster's March 26, 1993 report noted that appellant had a positive antinuclear antibody, the lupus test. He stated that this was an equivocal result. Dr. Lancaster referred appellant to Dr. Howard and concurred with this findings of fibromyalgia triggered by the lumbar strain.

In a note dated December 27, 1993, Dr. Sanford H. Roth, a Board-certified pathologist, diagnosed cervical radiculopathy. He stated that appellant's work-related problems could have impacted on her course of radiculopathy and that this condition was previously considered fibrositis.

Dr. Lancaster completed a report on January 10, 1994 and diagnosed repetitive overuse syndrome. He stated that other than occasional muscle spasm, appellant had no objective findings and that her condition worsened with repetitive motions at work and lessened when removed from these tasks.

Dr. Janet Whirlow completed a report on July 18, 1995. She noted appellant's history of injury and work history. Dr. Whirlow performed a physical examination and found no abnormalities other than tenderness in the right trapezius and rhomboid with a muscle cord spasm of the right trapezius. She diagnosed myofascial pain syndrome caused by appellant's work duties. Dr. Whirlow stated, "[Appellant's] myofascial pain syndrome is a direct result of her work tasks and aggravated by the work duties.... In examining [her], I am unable to find any other pathology to account for her symptoms." On November 30, 1995 Dr. Whirlow stated that myofascial pain syndrome was also known as fibromyalgia.

⁸ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

In a report dated October 12, 1995, Dr. R. Richard Maxwell, a Board-certified orthopedic surgeon, noted appellant's work history and diagnosed accumulative trauma syndrome. He stated that her condition was related to the injury of the repetitive motion which she is required to do working as a clerk. Dr. Maxwell stated, "The symptoms of accumulative trauma syndrome are difficult to document by objective status, but are well reasoned in knowledge of physiology. Electrical conductivity principles and muscle physiology make me feel strongly that the repetitive actions with which she has performed for the [employing establishment] have manifested her symptoms."

Dr. Debra Michel, a Board-certified internist, completed a report on February 8, 1996. She reviewed appellant's work and medical histories. Dr. Michel performed a physical examination and diagnosed fibromyalgia and mild osteoarthritis of the hands.

In a report dated March 4, 1997, Dr. Roth diagnosed fibromyalgia with radiculopathy and opined that this was aggravated or precipitated by her employment duties. He stated, "[Appellant's] past work history supported the difficulty she had with computer-type work requiring chronic, passive flexion position of the cervical spine and also repetitive activities during her ... work which materially aggravated the onset or precipitated her continuing difficulties by history and confirmed by follow-up findings...."

While appellant has submitted several medical reports which diagnose fibromyalgia and attributed this condition to either her accepted employment injury or to factors of her federal employment, appellant has failed to submit any medical evidence explaining how and why her work caused or contributed to this condition. Without medical rationale explaining the physiological relationship between appellant's work duties and employment injury and her diagnosed condition, she has failed to meet her burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 3, 1997 is reversed in regard to the termination of appellant's compensation benefits for a lumbar strain and affirmed in regard to the finding that she had not establish that her diagnosed condition of fibromyalgia is causally related to her federal employment.

Dated, Washington, D.C.
February 2, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member