

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY WILLIAMS and U.S. POSTAL SERVICE,  
DENVER AIRPORT MAIL CENTER, Denver, CO

*Docket No. 03-1394; Submitted on the Record;  
Issued September 16, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning on or after August 2, 2000 causally related to her February 29, 2000 employment injury.

On May 18, 2000 appellant, then a 46-year-old casual mailhandler, filed a notice of traumatic injury alleging that on February 29, 2000 she was hit in the back of the head with a letter tray weighing 15 to 17 pounds and injured her head and neck. Appellant did not miss any work as a result of this incident and did not seek medical treatment until May 18, 2000.

Appellant submitted reports from physician's assistant, Craig Robinson, who indicated on May 18, 2000 "neck and trapezius strain" and "possible fibromyalgia," but did not indicate whether this was related to the work incident. On examination he reported limited cervical and shoulder motion and tenderness in the trapezius area. In a report dated July 19, 2000, Dr. Eric Tentori, an attending osteopath, noted that appellant had mild tenderness in the left trapezius area with neurological and vascular examination intact. He also noted "fibromyalgia" and released appellant to return to regular full-duty work with no restrictions on July 19, 2000.

On December 3, 2001 the Office of Workers' Compensation Programs accepted that appellant sustained a neck strain and trapezius strain in the performance of duty on February 29, 2000.

On December 24, 2001 appellant filed a claim for recurrence of disability (Form CA-2a.) alleging that she was totally disabled beginning August 2, 2000 causally related to the February 29, 2000 work injury. She claimed that "nothing changed" and that her symptoms were "the same" after she returned to work, that appellant continued to suffer from neck and shoulder pain, in addition to upper back pain, headaches, dizziness, fatigue, sleeplessness and low mental and energy levels. She also indicated that on June 15, 2000 her position was changed from a mailhandler to a clerk and she was terminated from federal employment on August 2, 2000 for unsatisfactory job performance.

Dr. Peter M. Nicholson, an attending Board-certified internist, indicated in an October 29, 2001 report that appellant suffered from fibromyalgia, a chronic condition, which included diffuse pain, fatigue, poor sleep, emotional stress, headaches and mood disorder such as depression. He opined that the fibromyalgia was related to the February 29, 2000 work injury, noting that if a traumatic injury was not resolved in a reasonable period of time that this could trigger the onset of fibromyalgia and chronic pain. Dr. Nicholson stated that the fibromyalgia limited appellant's ability to do even light-duty work.

By decision dated January 30, 2002, the Office denied appellant's claim for recurrence of disability, finding that the evidence of record failed to establish that the claimed recurrence was causally related to the February 29, 2000 work injury.<sup>1</sup>

Appellant disagreed with the Office's decision and requested an oral hearing. At the oral hearing held on December 20, 2002, appellant claimed that she "could n[o]t keep up with" the quantity of work and heavy lifting requirements of the mail clerk position. She also indicated that she did not seek medical treatment until May 18, 2000, because she could not obtain approval for the doctor's visits.

Appellant submitted monthly progress notes from Dr. Nicholson diagnosing fibromyalgia, insomnia and depression. In a report dated December 30, 2002, he stated:

"[Appellant], at the time of her presentation to me, had a chronic pain syndrome with wide-spread pain, bilaterally, above and below the waist, including her axial skeleton and has consistently met criteria regarding 'pain in all 11 of 18 tender point sites on digital palpitation' according to criteria for the classification of fibromyalgia.

"I do not have any reason to suspect that [appellant] acquired this diagnosis due to anything other than the February 29, 2000 injury. After reviewing Concentra's past medical records, I do believe the medical evidence at that time supported their diagnosis of fibromyalgia, but they failed to follow up with treatment specific for the diagnosis."

By decision dated March 6, 2003, the Office hearing representative affirmed the previous decision, finding that the record did not contain well-reasoned medical evidence to establish that appellant's condition was related to the February 29, 2000 work injury.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability beginning on or after August 2, 2000 causally related to her February 29, 2000 work injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the

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<sup>1</sup> The Office also disallowed appellant's claim for compensation benefits (Form CA-7).

accepted injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

In this case, appellant did not submit sufficient medical evidence to establish that she suffered a recurrence of disability as a result of her accepted employment injury. The Office accepted that appellant sustained a neck strain and trapezius strain on February 29, 2000, when she was hit in the back of the neck and head with a letter tray. She continued to work and did not seek medical treatment until May 18, 2000, when she sought treatment from physician's assistant, Mr. Robinson, who diagnosed neck and trapezius strain on May 18, 2000. On May 24, 2000 he diagnosed shoulder strain, trapezius/rhomboid-left and neck sprain. On both occasions Mr. Robinson indicated that appellant could return to full-duty work. In reports dated May 25 and July 19, 2000, he changed the diagnosis and noted "possible fibromyalgia." The Board notes, however, that a physician's assistant is not a "physician" within the meaning of the Federal Employees' Compensation Act<sup>5</sup> and thus, this diagnosis is of no probative value.<sup>6</sup> Even though Dr. Tentori claimed that each progress note or report from Mr. Robinson was supervised or signed by a physician, the examinations themselves were performed by the physician's assistant and most of the reports did not contain a physician's signature.

The report from Dr. Tentori, an attending osteopath, is also insufficient to establish that appellant sustained a recurrence of disability as a result of her accepted work injury. On July 19, 2000 Dr. Tentori indicated that appellant had mild tenderness in the left trapezius area and diagnosed "head/neck contusion" and "fibromyalgia;" however, he did not provide his medical opinion on the cause of appellant's condition. He also did not establish a complete factual and medical history of appellant's condition or explain the progression of her condition since the February 29, 2000 work injury, leading up to the diagnosis of fibromyalgia. Moreover, Dr. Tentori did not indicate that appellant was disabled, he actually released her to regular-duty work on the day of the examination. Dr. Tentori's report is incomplete and is of limited probative value in establishing that appellant was disabled as a result of her February 29, 2000 accepted employment injury.

Dr. Nicholson indicated in his reports that appellant continued to suffer the consequences of the head and neck contusion and neck strain and stated that he believed that her fibromyalgia was related to the February 29, 2000 injury. However, he did not provide a clear diagnosis of appellant's condition in his report. Dr. Nicholson stated that other physicians had diagnosed fibromyalgia and that appellant continued to suffer from the condition, but he did not make a

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<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>3</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>4</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *John H. Smith*, 41 ECAB 444 (1990).

clear distinction between the other physicians' diagnoses and his own independent findings. He also did not explain how the fibromyalgia was related to the February 29, 2000 work injury. Dr. Nicholson opined that there was a causal relationship, but he did not support his statement with medical rationale. Medical rationale is especially important in this case because Dr. Nicholson's report is dated almost two years after the date of appellant's original injury. An opinion that a work-related injury almost two years prior causes disability or another condition must be based on bridging evidence between the injury and the disability.<sup>7</sup> Dr. Nicholson does not explain how appellant's accepted conditions of neck and trapezius strain developed into her current condition. He did indicate that, in his experience, if traumatic injuries did not resolve within a reasonable amount of time that this could trigger the onset of fibromyalgia and chronic pain. This statement, however, is only a general statement regarding traumatic injuries and does not address appellant's specific situation.

Dr. Nicholson also stated: "I do not have any reason to suspect that [appellant] acquired this diagnosis (fibromyalgia), due to anything other than the February 29, 2000 injury." The Board has held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>8</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to her federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>9</sup> Inasmuch as Dr. Nicholson's opinion is speculative as to the relationship between the diagnosed fibromyalgia and appellant's February 29, 2000 employment injury and he failed to provide any medical rationale supportive of his opinion, it is of limited probative value.<sup>10</sup>

Because appellant has failed to submit rationalized medical evidence establishing that her current condition was causally related to her February 29, 2000 employment injury, the Board finds that she has not satisfied her burden of proof in this case.<sup>11</sup>

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<sup>7</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>8</sup> *Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>9</sup> *Phillip J. Deroo*, 39 ECAB 1294 (1988).

<sup>10</sup> *Jennifer Beville*, 33 ECAB 1970 (1982).

<sup>11</sup> The Board notes that the physicians of record did not diagnose the remaining conditions that appellant claimed were causally related to the February 29, 2000 work injury and, therefore, the reports were of no probative value and these conditions were not discussed in this decision.

The March 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 16, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member