



additional claim alleging that she developed compression at the right wrist and elbow due to repetitive motion.<sup>2</sup> The Office accepted this claim for right carpal tunnel syndrome and right ulnar neuropathy. Appellant filed a third claim on June 5, 1995 alleging that on December 5, 1994 she first realized her fibromyalgia was caused or aggravated by her employment.<sup>3</sup> The Office accepted her fibromyalgia. The Office issued a February 14, 2000 decision, finalizing a December 2, 1999 notice of proposed termination of medical and compensation benefits, on the basis that appellant's injury-related medical conditions had resolved, which was affirmed by an Office hearing representative on October 5, 2000. In a decision dated April 19, 2002, the Board affirmed the Office hearing representative's October 5, 2000 decision. The Board accorded the special weight of the medical evidence to the October 25, 1999 impartial medical opinion of Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon.<sup>4</sup>

In a letter dated February 6, 2003, appellant requested reconsideration and submitted a July 17, 2001 report by Dr. Robert M. Bennett, a Board-certified internist and rheumatologist and medical literature in support of his opinion.

Dr. Bennett, based upon a review of appellant's medical records, diagnosed fibromyalgia. With regards to the cause of appellant's fibromyalgia, the physician concluded that her condition was either due to the pain syndrome caused by her employment-related lateral epicondylitis or due to "preexisting mild fibromyalgia which was aggravated by a work-related lateral epicondylitis and carpal tunnel syndrome." In concluding, Dr. Bennett stated:

"Fibromyalgia is now considered to be an abnormality of sensory processing in which sensations are amplified at the level of the spinal cord and brain. This process is referred to as central sensitization. There is now a compelling body of literature to support the concept of central sensitization as being responsible for the symptomatology of fibromyalgia patients. Although there are no investigational abnormalities found on routine testing in fibromyalgia patients, recent research has uncovered many objective abnormalities (see my enclosed review article). The common triggers for the initiation of fibromyalgia are acute trauma, repetitive strain, severe emotional stresses and infections. The records, I reviewed in this case are most supportive of the repetitive strain, caused by [appellant]'s work as a stenographer for the [employing establishment], as being the major contributory triggering factor in her development of fibromyalgia. The scientific literature supporting this opinion is provided in the attached list of references."

On August 27, 2004 the Office received a June 18, 2004 supplemental report by Dr. Bennett, which was based upon a review of medical records for the period 1989 to 1991 by Dr. Chris Mauries, a treating physician. Dr. Bennett then analyzed the medical literature

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<sup>2</sup> This was assigned claim number 12-152375. The Office combined this claim with claim number 12-145486, which had been accepted for left carpal tunnel syndrome and left lateral epicondylitis and noted December 13, 1993 as the date of injury. Claim number 12-145486 was listed as the master file number.

<sup>3</sup> This was assigned claim number 12-154625.

<sup>4</sup> Docket No. 01-717 (issued April 19, 2002).

regarding fibromyalgia with regards to appellant's medical records to support his conclusion that appellant's fibromyalgia was caused or aggravated by her employment injuries.

Subsequently, appellant submitted a January 28, 2003 deposition of Dr. Sabin, the impartial medical examiner. The examination revealed the following questions and answers in response to Dr. Sabin's October 25, 1999 report and his conclusions regarding appellant's fibromyalgia:

"Q. On your report, page 4, you note that you can[no]t state that fibromyalgia is in any likelihood related to work.

You are not familiar with fibromyalgia being caused by any specific type of work or repetitive motion disorder, correct?

"A. Correct.

"Q. And I think you indicated somewhere else that you never had someone come into your office and complain about fibromyalgia as a result of repetitive motion disorder?

"A. Correct."

Dr. Sabin was then questioned whether he was familiar with Dr. Bennett, to which he replied that he was not and was given an opportunity to review Dr. Bennett's reports. Specifically, the following questions and answers were given regarding Dr. Sabin's familiarity with fibromyalgia and the research reports Dr. Bennett submitted with his reports:

"Q. And I think that what he starts out with on page 4 is that fibromyalgia is now considered to be an abnormality of sensory processing in which sensations are amplified at the level of the spinal cord and brain, referred to as central sensitization.

And as I understand it, what this means in effect is that -- this layman's understanding, is that someone that has a chronic pain condition develops a change in their brain or spinal cord, which causes a malfunction that results in this diffuse pain syndrome we call fibromyalgia. Are you familiar with any of that--

"A. No.

"Q.-- literature, research?

"A. No. --this is all research?"

With regards to the basis of his opinion that appellant's fibromyalgia was not caused by repetitive strain injury, Dr. Sabin stated:

"That is correct. Even in this article, he starts out by stating the diagnosis of fibromyalgia in this setting is rare. So obviously, no one sees it that much, if he

says it is rare. It is an article out of Brazil, so it is kind of off the beaten path for getting an article on this. So I would assume it is very rare if one has to go to Brazil to find some evidence of this.

So I would stand by that. I have n[o]t seen it in my practice and you are exactly right I did not do a study; I did not do research on this. It is just in my opinion, in my practice that I have seen it.”

Dr. Sabin stated that the central sensitization theory was “a reasonable theory to work on and to see if that is a cause” of fibromyalgia. The question and answers also revealed:

“Q. His article on page 293, under initiation and maintenance, indicates most fibromyalgia patients causally related an acute injury, repetitive work-related pain, athletic injuries or other pain state to the onset of their problems. Would you accept that this is probably based on studies in the field?

“A. Yes. Yes. And the next sentence, I think, equally is good, too. Other stresses and infections and toxins. I think stress is a big part of it, in the people I see, in addition to what he said in the first sentence, which I think is also true.”

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“Q. Interesting. Interesting. The specialty for treatment of fibromyalgia is rheumatologists?

“A. I think they are as good as any. I don’t know if there is a specialty that is best suited for fibromyalgia patients, although rheumatology, I think, would certainly be very reasonable. There are occupational doctors, physiatrist, pain medicine doctors that will deal with this also, but I think the rheumatologists do have a number of doctors that go into that field or down that line of work.”

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“A. I don’t know how you separate that at this point. I mean, she could have just had fibromyalgia all along. I don’t know if we’ll ever know if she had repetitive motion problems. Was there someone that made that diagnosis quite clearly and unequivocally?

I mean, she had carpal tunnel surgery that didn’t work, which tells me she didn’t have carpal tunnel. Or the same thing with lateral epicondylitis. That could easily have been confused with fibromyalgia, too. So I don’t have it clear in my mind that she had two separate things going on, although what you say is certainly possible.

There could have been fibromyalgia going on from the very beginning. For what reason, I don’t know, but she says it is from work.

“Q. Dr. Bennett talks about people being predisposed to fibromyalgia, maybe because of childhood injuries and earlier problems. We know that she’s doing repetitive work at the office then at the same time that she’s got fibromyalgia. Could that be an aggravating factor?

“A. Do I believe that it is part of the repetitive motion?

“Q. Yeah. If its not the cause of it, then the question becomes, in the alternative, would it be an aggravating factor working on the computer seven hours a day, taking shorthand?

“A. I just don’t know. I don’t know the answer to that question. Like I said, I haven’t seen many patients with a history of repetitive motion being -- trying to be related to fibromyalgia, although Dr. Bennett has articles that show that. It is just in my practice that I haven’t seen it.

“Q. Would you be willing to defer to his expertise given what he’s put together from the clinical literature and the more recent studies and continuing advancements that are being made?

“A. I don’t do any research, especially with regards to fibromyalgia. So certainly his expertise is much -- having read this, it is much more than mine. So I would be willing to defer to him as to the causes of (sic) possible causes of fibromyalgia and whether it can be related to repetitive motion syndrome or repetitive motion activities, whatever, because I can only say what I’ve seen and what I know.”

By decision dated December 1, 2004, the Office found the evidence insufficient to establish that appellant had any residuals on and after February 26, 2000 due her accepted employment-related fibromyalgia.

### **LEGAL PRECEDENT**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.<sup>5</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between appellant’s diagnosed condition and the implicated employment factors.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of appellant, must be one

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<sup>5</sup> See *Joseph A. Brown, Jr.*, 55 ECAB \_\_\_\_ (Docket No. 04-376, issued May 11, 2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>6</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

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 appellant.<sup>7</sup>

### ANALYSIS

In support of her request for reconsideration filed with the Office subsequent to the Board's April 19, 2002 decision affirming the termination of compensation and medical benefits, appellant's counsel presented legal argument and additional medical evidence. The Board finds that this case is not in posture for decision as to whether appellant had any continuing disability or residuals due to her fibromyalgia as Dr. Sabin's opinion is no longer the weight of the evidence.

In a January 28, 2003 deposition, Dr. Sabin provided equivocal responses to questions posed by appellant's attorney regarding whether appellant continues to suffer from residuals of her accepted fibromyalgia. When asked whether "working on the computer seven hours a day, taking shorthand" would be an aggravating factor, the physician responded he did not know the answer. He also stated that the central sensitization theory was "a reasonable theory to work on and to see if that is a cause" of fibromyalgia. He also stated that he would be willing to defer to Dr. Bennett, regarding "the causes or possible causes of fibromyalgia and whether it can be related to repetitive motion syndrome or repetitive motion activities, whatever, because I can only say what I've seen and what I know." As to the type of medical specialist needed for the treatment of fibromyalgia, Dr. Sabin replied he was unaware of a specialist of this disease, but he thought rheumatology "would certainly be very reasonable" as would physiatrists, pain medicine doctors and occupational doctors. Subsequently, Dr. Sabin stated: "the rheumatologists do have a number of doctors that go into that field or down that line of work."

The Board finds that Dr. Sabin has provided conflicting opinions in his deposition as to whether appellant continues to suffer from residuals of her accepted fibromyalgia. He noted that his opinion that appellant's fibromyalgia was not employment related was based on that he had not seen it in his practice. However, Dr. Sabin stated that he was willing to defer to Dr. Bennett that appellant's accepted work conditions had been a trigger for her fibromyalgia. With regards to Dr. Bennett's central sensitization theory, Dr. Sabin stated that it was "a reasonable theory to work on and to see if that is a cause of" fibromyalgia. After reviewing Dr. Bennett's article on this topic, Dr. Sabin stated that the comment regarding stress and other factors was equally good. Subsequently, Dr. Sabin stated that repetitive motion could be an aggravating factor to people predisposed to fibromyalgia. With regards to working on the computer seven days per week and taking short-hand, Dr. Sabin stated that he did not have the answer to the question as to whether these activities could aggravate or cause fibromyalgia. In addition, Dr. Sabin stated that a number of rheumatology physicians specialize in fibromyalgia and it was reasonable to consider a rheumatologist as the specialist for this condition. In concluding, Dr. Sabin stated that Dr. Bennett had a greater expertise with regards to fibromyalgia than he did and "he would be willing to defer to him." Thus, the Board concludes that Dr. Sabin's opinion is not entitled to the

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<sup>7</sup> *Bobbie F. Cowart*, 55 ECAB \_\_\_\_ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

special weight normally accorded impartial medical examiners if their opinions are complete, accurate and of sufficient probative quality.<sup>8</sup> Instead, for the purposes of this case, Dr. Sabin functions as a second opinion physician.<sup>9</sup> The case will be remanded to the Office for referral to an appropriate impartial medical specialist to resolve the existing conflict. The Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician, to determine whether appellant continues to have any residuals or disability due to her accepted fibromyalgia. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision as there is an unresolved conflict as to whether appellant continues to have residuals on and after February 20, 2000 due to her employment-related fibromyalgia.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2004 is set aside and the case remanded for further development consistent with the above decision.

Issued: February 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>9</sup> *Id.*