United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 10-989**
	)	**Issued: December 8, 2010**
DEPARTMENT OF AGRICULTURE, FOOD & SAFETY ADMINISTRATION, Pine Bluff, AR, Employer	)	

Appearances:
Shawn G. Childs, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2010 appellant filed a timely appeal from the August 31, 2009 merit decision of the Office of Workers' Compensation Programs, which denied modification of an earlier decision rescinding acceptance of fibromyalgia. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly rescinded its acceptance of fibromyalgia.

FACTUAL HISTORY

On November 1, 2006 appellant, then a 28-year-old part-time food and safety inspector, filed a claim alleging that she sustained several medical conditions as a result of working around chemicals in the plant. Initial medical reports diagnosed "rule out asthma," otitis externa, costochondritis, "fibromyalgia -- possible" and allergic rhinitis. On March 15, 2007 the Office

accepted appellant's claim for fibromyalgia and myositis, not otherwise specified; Tietze's disease (acute costochondritis); asthma unspecified and chronic allergic rhinitis.

Dr. Tamer Alsebai, appellant's rheumatologist, noted that she was tender in all 18 fibromyalgia tender points. He diagnosed fibromyalgia characterized by poly arthralgias, myalgias, fatigue, difficulty with sleep and unrestful sleep. Dr. Lige B. Rushing, Jr., a second opinion internist specializing in rheumatology, explained that there were no objective findings in patients who have fibromyalgia: "The diagnosis of fibromyalgia is based upon what the patient tells the examiner *i.e.*, widespread diffuse pain, postexercise pain, unrestful sleep and the 18 tender points as promulgated by the American College of Rheumatology." Dr. Rushing noted that appellant had all 18 tender points of fibromyalgia based on her purely subjective responses. He explained that the cause of fibromyalgia was unknown; he could not state that it was or was not medically connected to appellant's work: "there is simply no scientific basis for me to make such a comment, one way or the other."

On May 30, 2008 the Office rescinded its acceptance of fibromyalgia. It found that it accepted the condition in error because the medical evidence initially submitted had no probative value. Further, newer evidence established no cause for the condition.

In a decision dated August 31, 2009, the Office reviewed the merits of appellant's case and denied modification of its May 30, 2008 decision. It found that rescission was proper because the medical evidence did not support that fibromyalgia was work related.

On appeal, appellant argues that her medical chart and other documents provided sufficient medical evidence of causation.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[2]

Causal relationship is a medical issue,[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete

[1] 5 U.S.C. § 8102(a).

[2] *John J. Carlone*, 41 ECAB 354 (1989).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

The Office may review an award for or against the payment of compensation at any time on its own motion or upon application.[7] The Board has upheld the Office's authority to reopen a claim at any time on its own motion and, where supported by the evidence, to set aside or modify a prior decision and issue a new decision.[8] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can be set aside only in the manner provided by the compensation statute.[9] It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.[10] In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.[11]

ANALYSIS

When the Office accepted appellant's claim for fibromyalgia, the medical record contained only one equivocal diagnosis of the condition. On November 28, 2006 a medical examination noted, among other things, muscle tenderness in the back, legs and arms. Appellant's diagnosis was, among other things, "fibromyalgia -- possible." The record contained no medical opinion, much less a well-reasoned medical opinion based on a complete factual and medical background, explaining how appellant's federal employment caused her to sustain fibromyalgia.

The Office provided a clear explanation of its rationale for rescission, an explanation the record supports. It erroneously accepted fibromyalgia because the medical evidence initially submitted had no probative value to establish the element of causal relationship. More recent evidence established no cause for the condition. As Dr. Rushing, the second opinion internist explained, the cause of fibromyalgia is simply unknown.

The issue is not whether appellant has fibromyalgia. The issue is whether her diagnosed fibromyalgia is causally related to her federal employment. The medical opinion evidence of

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] 5 U.S.C. § 8128(a).

[8] *Eli Jacobs*, 32 ECAB 1147 (1981).

[9] *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

[10] *See* 20 C.F.R. § 10.610.

[11] *Alice M. Roberts*, 42 ECAB 747 (1991).

record does not support such a relationship. The Board finds that the Office met its burden to rescind acceptance of fibromyalgia. The Board will affirm the Office's August 31, 2009 decision.

Appellant argues on appeal that her medical chart and other documents provided sufficient medical evidence of causation, but the Board has reviewed her record and can find no medical opinion addressing how her federal employment caused her to have fibromyalgia. As noted earlier, the Office erroneously accepted the condition without the necessary rationalized medical opinion evidence.

CONCLUSION

The Board finds that the Office properly rescinded its acceptance of fibromyalgia.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board