

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGIANA DIRSA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, Mass.

*Docket No. 96-435; Submitted on the Record;
Issued January 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant had a recurrence of disability after March 23, 1992 causally related to her June 18, 1988 employment injury.

On June 18, 1988 appellant, then a 28-year-old mail processor, was attempting to pull open a drawer on a postal machine that was stuck when she developed pain in the right side of her neck and back. She stopped working that day and returned to work on June 20, 1988. The Office of Workers' Compensation Programs accepted appellant's claim for muscle strains of the right upper back and right shoulder. On June 30, 1988 she filed a claim for a recurrence of disability. On September 27, 1988 appellant moved a small plastic tray and developed pain in the right side of her neck and back. On October 19, 1988 appellant was again moving a tray when she developed pain in her right arm and shoulder and on the right side of her neck. In a January 21, 1989 letter, the Office informed appellant that it accepted her claim for a back strain on September 27, 1988. In a February 15, 1989 decision, the Office rejected appellant's claim for an October 19, 1988 employment injury on the grounds that she had not submitted the necessary evidence to establish her burden of proof. In decisions dated May 12, 1989 and October 3, 1989 the Office denied appellant's requests for modification of the February 15, 1989 decision. On March 29, 1989 appellant filed a claim for a recurrence of disability. On April 27, 1991 appellant stopped working and returned to work on May 13, 1991. She filed a claim for a recurrence of disability. In a May 1, 1992 decision, the Office denied appellant's claim for a recurrence of disability on April 27, 1991 on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed disability. Appellant stopped working on March 23, 1992 and filed a claim for a recurrence of disability. In a March 16, 1993 decision, the Office rejected appellant's claim for a recurrence of disability beginning March 23, 1992 on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the claimed condition or disability. In a March 21, 1994 decision, an Office hearing representative found that appellant had not met her burden of proof because the medical evidence of record was insufficient to establish a causal relationship between appellant's employment factors and her subsequent diagnosed conditions.

In a November 2, 1995 merit decision the Office denied appellant's request for modification of the March 21, 1994 decision of the Office hearing representative.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the filing of an appeal with the Board.¹ As appellant's appeal was filed on November 2, 1995, the Board has jurisdiction to consider only the Office's November 2, 1995 decision which addressed appellant's claim for a recurrence of disability after March 23, 1992.

The Board finds that appellant has not met her burden of proof in establishing that her disability after March 23, 1992 was causally related to her June 18, 1992 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.²

In a June 18, 1988 duty status report, Dr. Reid Thompson, a neurosurgeon, indicated that appellant had pain in the back, neck and shoulder and diagnosed muscle sprain. In a July 14, 1988 report Dr. Francis E. Smith indicated that x-rays of the neck showed mild narrowing of the foramina at C3-C4. He did not discuss whether this condition was casually related to appellant's employment injury. After appellant's September 27, 1988 employment injury, Dr. Smith, in an October 5, 1988 form report, diagnosed an acute back strain. In a December 12, 1989 office note Dr. Robert Miegel, a Board-certified orthopedic surgeon, stated that a computerized axial tomography (CAT) scan showed mild to moderate diffuse disc bulging at L4-L5 and mild diffuse disc bulging with a superimposed moderate left-sided disc herniation in contact with the left S1 nerve root, mildly displacing the S1 nerve root. In a February 28, 1991 report, Dr. Harvey Levine, a Board-certified radiologist, stated that an magnetic resonance imaging (MRI) scan showed degenerative changes in the L4-L5 disc with a tiny central disc herniation which mildly indented the anterior aspect of the dural sac but no compromise of the spinal canal or neural foramina. Dr. Levine indicated that at the L5-S1 level, appellant had degenerative changes with a tiny focal central disc herniation with no compromise of the spinal canal or neural foramina. Neither Dr. Miegel nor Dr. Levine discussed whether the findings from the CAT or MRI scans were causally related to appellant's employment injury.

In a November 12, 1991 report, Dr. Frederick L. Mansfield, who was performing a fitness-for-duty examination at the request of the employing establishment, stated that appellant had a chronic pain syndrome which might possibly fall into the fibromyalgia category. He indicated that, from the material sent by the employing establishment, appellant had no objective evidence of bone lesion or disc herniation. He related that appellant told him that on September 4, 1991 the employing establishment laid off all of the light-duty employees, sending them either to their former positions or into retirement. Appellant indicated that she asked her treating physician, Dr. Miegel to lift her work restrictions which had been five pounds lifting,

¹ 20 C.F.R. § 501.3(d).

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

and minimal bending, lifting, squatting, kneeling, twisting, pulling and pushing. He noted that Dr. Miegel allowed appellant to lift up to 45 pounds but stated that she should rest 4 to 6 times a day. Dr. Mansfield stated that, based on appellant's frequent absences from work and her light-duty work from 1988 to 1991, she could not tolerate even fairly heavily restricted bending, lifting, twisting, pulling and pushing. He suggested that the restrictions he would suggest would be closer to the ones originally suggested by Dr. Miegel with a lifting restriction of five pounds. He stated that this was based on appellant's recurrent back pain with reaggravation at even light duty. He noted that the difficulty came in not being able to give appellant a diagnosis which would explain the cause of her pain. He commented that chronic pain syndrome or fibromyalgia came closest to the diagnoses that she had received in the past to explain her condition.

When appellant filed her claim for the recurrence of disability beginning March 23, 1992, she stated that on March 19, 1993 she had felt a pulling in her neck while she was feeding mail into a machine. She indicated that she did not report this injury because she was afraid she would be fired. Appellant's supervisor indicated that appellant was cleared to return to work by the medical unit of the employing establishment on March 16, 1992. He related that appellant came to work on March 22, 1992 but subsequently told the supervisor that she "might have overdone it." He noted that on March 23, 1992 appellant was assigned to a machine which involved both feeding mail to the machine and sweeping mail from it. He indicated that appellant, after a while, asked if she could only be assigned to sweep rather than alternate between the two tasks. He replied that such an assignment would be difficult for the other person who would only be feeding the mail. She then asked permission to go to the medical unit to have her restrictions changed to allow her to only sweep the machines. He indicated that he let appellant go to the medical unit and she returned with such a restriction. The supervisor stated that the superintendent at the employing establishment stated that appellant was unable to do her job as a mail processor so the supervisor wrote appellant a letter stating that there was no work for her at the employing establishment as a mail processor. He indicated that she then went home.

In a November 16, 1992 report, Dr. Miegel discussed appellant's medical history and his treatment of appellant. He noted that appellant had a history of pain in the lower back, neck and left leg since the time of the June 18, 1988 employment injury. He reported that appellant was involved in motor vehicle accidents in August 1989 and in July 1991 which resulted in exacerbations of her symptoms. He indicated that in a February 7, 1992 examination appellant had consistent pain in her lower back. He reported that straight leg raising was negative and motor, sensory and reflex examinations were normal. He stated that his assessment at that time was appellant had a chronic pain syndrome with some lumbar degenerative changes and possibly fibromyalgia or fibrositis. He recommended light duty with no repetitive bending or lifting and no heavy lifting. He stated that when he saw appellant on April 3, 1992 she had returned to her regular duty, moderately heavy duty job and was having recurrent neck and back pain. He indicated appellant had a mildly limited range of motion in the neck and back. He reported that appellant had a normal neuromotor examination and a negative straight leg raising test. He diagnosed recurrent lumbar and cervical strain and advised her to return to a light-duty job after her acute symptoms had resolved. Dr. Miegel noted that in appellant's examinations on June 19 and September 18, 1992, she continued to have intermittent pain in her back radiating into her left leg with occasional numbness of the entire left side. Her tests continued to be negative. He

diagnosed a bulging lumbosacral degenerative disc with a small central disc herniation with significant psychogenic overlay. He stated, in conclusion, that appellant had a long-standing problem with pain in the back and left leg. He noted that the onset of appellant's symptoms correlated initially with an apparent injury at work on June 18, 1988. He indicated appellant continued to experience significant pain and disability related to her symptoms. He stated that appellant was disabled from her usual work for the employing establishment because of her problem. He reported that appellant had abnormalities in her CAT scan and MRI scan. He concluded that appellant's back pain and symptoms of left leg pain were causally related to her June 18, 1988 employment injury although they had been exacerbated by injuries suffered on automobile accidents since that time.

Dr. Miegel's report is insufficient to meet appellant's burden of proof. He stated that appellant's symptoms started at the same time as her employment injury. The statement that symptoms coincided with an employment injury is not, in itself, sufficient to establish causal relationship.³ Dr. Miegel noted the findings from appellant's MRI and CAT scans but did not give any opinion on whether these findings were caused by her employment injury and, if so, an explanation on how the employment injury caused the conditions found on the scans. He did not discuss how the symptoms from a diagnosed muscle strain in June 1988 would cause a recurrence of symptoms four years later. He did not discuss whether appellant's work restrictions were caused by the residuals of appellant's employment injury or give an explanation on how the employment injury would cause appellant's work restrictions four years later. His report therefore is lacking in probative value and is insufficient to satisfy appellant's burden of proof.

In a November 12, 1992 report, Dr. Anne F. St. Goar, an internist, indicated that appellant returned to work on March 17, 1992 and on March 19, 1992 reportedly felt something pop in her neck leading to left arm and left leg numbness. Dr. St. Goar reported that appellant had no objective physical findings at that time. She stated that appellant's symptoms appeared to be work related. This report is equivocal and speculative and therefore lacking in probative value. It also is insufficient to meet appellant's burden of proof.

Dr. St. Goar submitted an October 31, 1993 report, from Dr. Jeffery R. Wohlgethan, a Board-certified rheumatologist, who stated that from a rheumatologic point of view the salient finding on physical examination was that appellant had marked tenderness at multiple specific sites throughout the body which was diagnostic of fibromyalgia. He indicated that it was widely recognized that the fibromyalgia syndrome can be triggered by emotional or physical trauma. He commented that it was clear that appellant's 1988 work injury was the precipitating event with further aggravation by appellant's later motor vehicle accidents. He indicated that while fibromyalgia can often be successfully treated, it tended to be a chronic condition that would not remit. He stated that appellant's case was typical in that she continued to suffer from chronic incapacitating musculoskeletal pain. This report is insufficient to meet appellant's burden of proof because Dr. Wohlgethan only stated that appellant's employment injury caused fibromyalgia. He did not explain the physiological mechanism by which the employment injury caused fibromyalgia or how appellant's symptoms would continue for four-years after the

³ *Kimper Lee*, 45 ECAB 565 (1994).

employment injury. His report therefore has diminished probative value. Appellant has not submitted sufficient medical evidence to establish that her recurrence of disability after March 23, 1992 was causally related to the June 18, 1988 employment injury.

The decision of the Office of Workers' Compensation Programs, dated November 2, 1995, is hereby affirmed.

Dated, Washington, D.C.
January 21, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member