

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of POLLY A. SPECHT (RAMIAH) and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, WHITE RIVER NATIONAL FOREST, Glenwood Springs, Colo.

*Docket No. 96-1205; Submitted on the Record;  
Issued July 6, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on February 4, 1994 causally related to her February 10, 1988 employment injury.

On February 10, 1988 appellant, then a 39-year-old clerk/typist, sustained a dorsal muscle strain in the performance of duty when she was involved in a motor vehicle accident while attending a work training session. The Office of Workers' Compensation Programs subsequently accepted that appellant sustained a recurrence of disability on August 24, 1990.

On February 4, 1994 appellant filed a notice of recurrence of disability indicating that she continued to have pain in the thoracic area which she attributed to her February 1988 employment injury.

By decision dated March 22, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish a causal relationship between her claimed recurrence of disability on February 4, 1994 and her February 10, 1988 employment injury.

By letter dated May 21, 1995, appellant requested an oral hearing before an Office hearing representative.

By decision dated June 24 1995, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that her request was untimely as it had not been filed within 30 days of the March 22, 1995 decision and on the grounds that the issue of causal relationship could be equally well resolved through the submission of additional evidence and a request for reconsideration.

By letter dated September 25, 1995, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In an undated report received by the Office on October 31, 1994, Dr. Kenneth H. Koenig, a chiropractor, diagnosed vertebral segmental dysfunctions of the cervical and thoracic regions accompanied by myalgia in the shoulders and paraspinal muscles in the thoracic regions. He opined that this condition was causally related to the 1988 employment injury.

In a report dated May 25, 1995, Dr. John J. Aschberger, a Board-certified physiatrist, related that he had examined appellant for complaints of a chronic back condition which she attributed to her February 1988 employment injury. He provided findings on examination and diagnosed chronic thoracic strain with mechanical dysfunction. Dr. Aschberger stated:

“Historically, the current symptomatology is related to the motor vehicle accident of [February 1988]. [Appellant] denied any intervening injuries or auto accidents and has not been performing heavy work to cause re-irritation or exacerbation of her symptoms.”

By letter dated November 22, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical record, to Dr. Sidney C. Walker, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she had any residual disability or medical condition causally related to her February 1988 employment injury.

In a narrative report dated December 6, 1995, Dr. Walker provided a history of appellant’s condition and a review of the case record. He stated that an x-ray of appellant’s thoracic spine revealed no significant abnormality. Dr. Walker provided findings on examination and diagnosed initial thoracic spine strain associated with the February 1988 employment injury and secondary chronic myofascial pain syndrome developing in the thoracic spine. In answer to the question as to whether there were any residuals of appellant’s accepted condition, dorsal muscle strain, he stated:

“The residual of the accepted condition of dorsal muscle strain is the second diagnosis of chronic myofascial pain syndrome. In other words this syndrome sets in as a result of the initial dorsal muscle strain. Indeed, the initial strain does heal relatively soon after the incident. The problem, of course, is that the term strain is often totally informative as to what actually happens at the time of the injury. Strain, of course means an excessive stretching or micro tearing of muscle fibers. This often is not the whole picture. We quite frequently get some traction injury to the nerve roots involved which then ultimately causes undue and improper firing of impulses into the muscle areas for some period of time. Then ultimately the muscles become chronically irritated even after the initial straining complex has healed. The muscle then continue with this myofascial pain syndrome for often an extended period of time.”

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“[T]he initial work injury of [February 10, 1988] which was an automobile accident, produced the initial trauma to muscle and nerve roots and ligaments and so forth and then in spite of the fact that these heal ultimately, the muscles which were initially involved with muscle spasm and irritability because of the initial

trauma to the nerves, then take over and then become painful in themselves. This pathology is represented by the diagnosis of myofascial pain syndrome. One cannot initially diagnose myofascial pain syndrome because it does not initially exist. It is only a follow-up complication of the initial trauma.”

In answer to the question as to whether appellant’s continuing complaints of pain and limitation were supported by objective findings, Dr. Walker stated:

“The problem here is[,] of course[,] that myofascial pain syndrome is primarily a subjective problem and shows little objective evidence of pathology. As stated above, the only objective findings here are that of tenderness in the areas mentioned.

“The bottom line here is that [appellant] has, for all practical purposes, reached maximum medical care and her symptoms are not going to be modified on a permanent basis by any sort of continuing treatment program other than what she has been instructed to do on her own. In other words, this myofascial pain syndrome is ultimately self-limiting and should be in her case in that she has a rather upbeat approach to life and a positive response to improvement. She should continue with her vigorous rehabilitative exercise program and take the mild anti-inflammatory and pain medications that she is using and go on about her life, including her employment as a real estate agent, and this will gradually improve. It is a mistake for such a patient to sit around and wait for the pain to disappear because oftentimes it is prolonged and disappears on a gradual basis.”

By decision dated January 3, 1996, the Office denied modification of its March 22, 1995 decision.

The Board finds that the evidence of record does not establish that appellant had any residual disability causally related to her February 10, 1988 employment injury but that her myofascial pain syndrome condition was causally related to the employment injury and she is therefore entitled to medical benefits for this condition.

In this case, appellant sustained a dorsal muscle strain on February 10, 1988 in the performance of duty and a recurrence of disability on August 24, 1990. She subsequently claimed a recurrence of disability on February 4, 1994.

In an undated report received by the Office on October 31, 1994, Dr. Koenig, a chiropractor, diagnosed vertebral segmental dysfunctions of the cervical and thoracic regions accompanied by myalgia in the shoulders and paraspinal muscles in the thoracic regions and he attributed this condition to the February 10, 1988 employment injury. However, under section 8101(2) of the Federal Employees’ Compensation Act,<sup>1</sup> chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal

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<sup>1</sup> 5 U.S.C. §§ 8101-93.

subluxations as demonstrated by x-ray to exist.<sup>2</sup> Dr. Koenig did not diagnosis a subluxation and therefore his report is of no probative value in this case.

In a report dated May 25, 1995, Dr. Aschberger, a Board-certified physiatrist, related that he had examined appellant for complaints of a chronic back condition which he attributed to her February 1988 employment injury. He provided findings on examination, diagnosed chronic thoracic strain with mechanical dysfunction and opined that this condition was causally related to the February 10, 1988 employment injury. Dr. Aschberger stated:

“Historically, the current symptomatology is related to the motor vehicle accident of [February 1988]. [Appellant] denied any intervening injuries or auto accidents and has not been performing heavy work to cause re-irritation or exacerbation of her symptoms.”

The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>3</sup> Neither the fact that the condition became apparent during a period of employment nor appellant’s belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>4</sup> As Dr. Aschberger has provided insufficient medical rationale explaining how this condition is causally related to the 1988 employment injury, this report is insufficient to support appellant’s claim of a recurrence of disability.

In a narrative report dated December 6, 1995, Dr. Walker, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant’s condition and a review of the case record. He stated that an x-ray of appellant’s thoracic spine revealed no evidence of significant abnormality. Dr. Walker provided findings on examination and diagnosed initial thoracic spine strain associated with the February 1988 employment injury and secondary chronic myofascial pain syndrome developing in the thoracic spine. In answer to the question as to whether there were any residuals of appellant’s accepted condition, dorsal muscle strain, Dr. Walker provided a thorough and well-rationalized explanation as to how the myofascial pain syndrome was causally related to the February 10, 1988 employment injury. He indicated that appellant needed to continue her exercise program and her anti-inflammatory and pain medication. However, he found that appellant had no disability for work as a result of this medical condition.

The January 3, 1996 decision of the Office of Workers’ Compensation Programs is affirmed as to the finding that appellant had no disability on or after February 4, 1994 causally related to her February 10, 1988 employment injury which would entitle her to compensation benefits for lost wages but is modified to reflect that appellant’s myofascial pain syndrome condition is causally related to the 1988 employment injury. Upon return of the case record, the

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<sup>2</sup> 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

<sup>3</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>4</sup> *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991).

Office should determine the cost of appellant's medical expenses related to this condition and reimburse her for any expenses she has incurred.

Dated, Washington, D.C.  
July 6, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member