

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANN D. HARRISON and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-1985; Submitted on the Record;
Issued September 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the basis that she no longer had residuals of her June 4, 1987 employment injury.

As found by an Office hearing representative in a June 27, 1995 decision, there was a conflict of medical opinion on the question of whether appellant continued to have residuals of her June 4, 1987 employment injury. This conflict of medical opinion was between one of appellant's attending physicians, Dr. C. Michael Neuwelt, a Board-certified rheumatologist and an Office referral physician, Dr. Harle B. Grover, a Board-certified orthopedic surgeon. In a report dated July 20, 1994, Dr. Grover concluded:

"I would feel the diagnosis of spinal sprains and strains could be accepted following the injury of June 4, 1987, but there is certainly no indication that she should not have recovered from these injuries within a matter of possibly three to four months. I feel, therefore, all of her subsequent complaints are consistent with her prior history of multiple musculoskeletal complaints....

"I, therefore, feel the patient had recovered from any residuals of this minor slip which she sustained on June 4, 1987 while working at Mare Island Naval Shipyard. I would agree, however, that she should be followed possibly by a rheumatologist for evaluation should she develop further signs and symptoms of an underlying rheumatic type of disorder. She may even go on to develop a full blown fibromyositis, but in my opinion this is not related to the injury of June 4, 1987, but is related to her long-standing history of musculoskeletal complaints dating back, as she indicated in the medical records, to approximately the age of 13."

On the other side of the conflict of medical opinion, Dr. Neuwelt concluded in a January 19, 1995 report:

“This 51-year-old, white female has a long history of musculoskeletal problems. She clearly has multiple orthopedic problems that have been well defined in her reports by prior orthopedic surgeons. I saw the patient in 1980 and felt that she had a fibromyalgia syndrome. Certainly this is a syndrome of unknown etiology which has multiple causative factors including genetics, psychological makeup and certainly can be triggered in a reactive form by trauma, surgery, or medical illness.

“In reviewing this case and reviewing the reports I feel the patient did suffer from a reactive fibromyalgia syndrome from her injury of June 4, 1987. I do not feel that this is a new problem but the injury ‘aggravated or lit up’ her previous fibromyalgia syndrome. Certainly a reactive fibromyalgia syndrome as discussed by Greenfield and colleagues in the Journal of the American College of Rheumatology is not uncommon. Approximately 23 percent of patients will have a reactive form. Patients with this type of reactive fibromyalgia become more disable than those with primary fibromyalgia without a reactive component and out of this group 70 percent suffer from a loss of employment.”

* * *

“I feel the patient does have reactive fibromyalgia, it did result from her injury, and I feel that this will be a chronic ongoing problem.”

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,¹ referred appellant, the case record and a statement of accepted facts to Dr. Neal S. Birnbaum, a Board-certified rheumatologist. In a report dated October 13, 1995, Dr. Birnbaum, after setting forth appellant’s history, complaints and findings on examination, stated:

“There is excellent information in the available records to support a prior diagnosis of chronic musculoskeletal complaints that were characterized as fibromyalgia as early as 1980. Throughout her life, this patient has seen various physicians for a variety of musculoskeletal symptoms. In general, she has had a paucity of objective abnormalities on physical examination, and a minimum of laboratory or x-ray pathology.

“This patient sustained quite minor injuries in her slip and fall of June 1987. These would be best characterized as a spinal strain with clearance of symptoms expected in three months or less. I do not believe that her ongoing chronic pain complaints are reasonably attributable to the minor injury of June 1987. In this

¹ 5 U.S.C. § 8123(a) states in pertinent part “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

regard, I must disagree with the opinions expressed by Dr. Neuwelt. Although the exact etiology of fibromyalgia remains unclear, I believe that most rheumatologists favor psychologic factors and sleep disturbance as being a far more likely causative agent than any minor physical trauma. It is notable that Dr. Neuwelt quotes a single article by Greenfield and Colleagues, in which only 23 percent of patients were able to identify some type of 'trauma' prior to the onset of their fibromyalgia syndrome. It is notable that this included not only physical trauma, but also a surgery or other medical illness. Therefore, the percentage of individuals reporting a physical trauma is actually very small. I believe that other factors, including family illness and the impending closure of the patient's place of employment, are psychologic stressors far more likely to be the cause of her musculoskeletal pain syndrome than any physical injury.

"In summary, this patient has longstanding fibromyalgia, predating her injury of June 1987. She sustained minor physical injury on that date with complete clearing expected in three months or less. Her ongoing symptoms are those of fibromyalgia, and I do not believe them to be related to the June 1987 incident. I do not believe that the events of June 1987 either caused or aggravated her underlying fibromyalgia."

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²

The Board finds that the report of Dr. Birnbaum, a Board-certified rheumatologist serving as an impartial medical specialist, must be given special weight and represents the weight of the medical evidence. Dr. Birnbaum's October 13, 1995 report, was based on a complete and accurate history and Dr. Birnbaum provided rationale for his conclusions that appellant had recovered from the spinal strain sustained on June 4, 1987 and that appellant's fibromyalgia was not related to her employment injury.

A February 28, 1996 report, from Dr. Neuwelt, submitted with appellant's March 7, 1996 request for reconsideration, essentially reiterated the conclusions in Dr. Neuwelt's January 19, 1995 report. In addition, as Dr. Neuwelt was on one side of the conflict of medical opinion that Dr. Birnbaum resolved, this additional report from Dr. Neuwelt is insufficient to overcome the special weight accorded Dr. Birnbaum's impartial medical specialist report or to create a new conflict with it.³

² *James P. Roberts*, 31 ECAB 1010 (1980).

³ *Dorothy Sidwell*, 41 ECAB 857 (1990).

The decisions of the Office of Workers' Compensation Programs dated May 14, 1996 and November 30, 1995 are affirmed.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member