

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACKIE M. CREECH and U.S. POSTAL SERVICE,  
MARYVALE STATION, Phoenix, Ariz.

*Docket No. 96-2227; Submitted on the Record;  
Issued September 1, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing she was disabled after October 3, 1994 due to her August 9, 1989 employment injury or to factors of her employment.

On August 9, 1989 appellant, then a 36-year-old rural route carrier, stepped on loose gravel and fell on a concrete block. She filed a claim for compensation for her left shoulder, left side of her body and right knee. She stopped working on August 10, 1989 and returned to light-duty work on October 17, 1989. On September 28, 1990 appellant underwent surgery for repair of a torn rotator cuff in her left shoulder. The Office of Workers' Compensation Programs accepted appellant's claim for left shoulder strain and torn rotator cuff in her left shoulder and began payment of temporary total disability compensation effective September 28, 1990. On February 2, 1992 appellant underwent surgery for chronic synovitis and partial separation of the anterior labrum of the left shoulder. Dr. Jon Whisler, a Board-certified orthopedic surgeon, performed a partial synovectomy and exploration of the subacromial space. On May 13, 1992 appellant underwent surgery for repair of a labral tear in the left shoulder.

On June 16, 1993 the employing establishment offered appellant a position as a modified clerk with varied duties such as checking to see that forwarded and no record mail was handled properly, checking carrier cases and distribution cases, separating flats and letters for outgoing operations, performing data entry, maintaining files and sorting office box mail. The employing establishment indicated that these duties would require appellant to sit three to six hours a day, walk, stand or bend intermittently one to two hours a day, lift intermittently one to three hours a day with no lifting over ten pounds, perform simple grasping four to six hours a day, fine manipulation one to two hours a day and reaching above the shoulder intermittently a half hour to one hour a day. Appellant accepted the position and returned to work on June 26, 1993.

On October 3, 1994 appellant stopped working. She filed a claim for recurrence of disability on December 1, 1994. On April 3, 1995 the Office rejected appellant's claim on the

grounds that she had not established that she had any current disability due to the August 9, 1989 employment injury.

On March 27, 1995 appellant filed a claim for an occupational injury, contending that her work after she returned to work on June 26, 1993 had aggravated her preexisting left shoulder condition. In a July 17, 1995 decision, the Office rejected appellant's claim on the grounds that she had not established that she had any current medical condition causally related to her federal employment from June 26, 1993 through October 3, 1994. In a May 17, 1996 merit decision, the Office denied appellant's request for modification of the July 17, 1995 decision.

The Board finds that appellant had not met her burden of proof in establishing that her disability after October 3, 1994 was causally related to her employment injury or to factors of her employment.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>1</sup>

In an extensive June 27, 1995 letter, appellant stated that, she was required to perform duties that were not included in the description of the position offered to her. She indicated that she was lifting up to 20 pounds intermittently and was required to perform more fine manipulation and computer data entry than the employing establishment had stated in the position description. She commented that she also went to the bank two to three times a week to pick up heavy rolls of coins to be used at the employing establishment. She claimed that the additional lifting, twisting and use of hands had caused constant pain in her left shoulder with stabbing and shooting pains in her shoulder. Appellant, therefore, claimed that her light-duty position was changed. However, she has not submitted sufficient rationalized medical evidence to show that the alleged changes in her light-duty position caused her disability after October 3, 1994.

In an April 3, 1995 fitness-for-duty report, Dr. Victor Tseng, a Board-certified orthopedic surgeon, reporting to the employing establishment, stated that the range of motion of appellant's neck and right shoulder were normal. He indicated that he was unable to perform a full range of motion examination or strength testing of appellant's left shoulder because she complained of severe pain when he asked appellant to flex and abduct the shoulder. Dr. Tseng stated that appellant had no atrophy of the left arm and had full shoulder girdle musculature. He reported that sensory examination showed a subjective complaint of decrease sensation in the entire left arm. Dr. Tseng noted that no motor loss was detectable except for a subjective complaint of inability to use the arm. He concluded that appellant's complaints of left arm pain were out of proportion to the physical findings. Dr. Tseng commented that appellant did not have evidence

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<sup>1</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

of reflex sympathetic dystrophy as no contracture or atrophy was present and her left arm was completely supple. Dr. Tseng's report shows that appellant's claim of disabling pain was not supported by the physical, objective findings of Dr. Tseng's examination.

Appellant only submitted form reports or brief medical notes in support of her claim. In a March 10, 1995 note, Dr. John R.P. Tesser, a Board-certified rheumatologist, stated that appellant had fibromyalgia and chronic shoulder and was unable to work. Dr. Tesser also submitted undated office notes, in which he noted appellant's complaints of pain in the neck, trapezius and shoulder down to the hand as well as paresthesias and marked sensitivity. He stated appellant had marked hyperesthesia throughout the entire left arm. In an August 4, 1995 report, Dr. Tesser again stated that appellant suffered from fibromyalgia and left chronic left shoulder pain. He described the condition as a chronic musculoskeletal pain syndrome associated with generalized pain, fatigue, sleep disturbance and tenderness objective determined on examination. Dr. Tesser concluded that appellant was unable to work and was completely disabled because of her ongoing symptoms and impairment. He stated that appellant was unlikely to return to work. Dr. Tesser, however, did not discuss the physiological cause of appellant's pain and did not discuss whether appellant's employment injury or her light-duty activities after her return to work caused her shoulder condition or her disability beginning October 3, 1994. In a February 16, 1996 report, Dr. Tesser specifically stated that appellant's employment injury and her subsequent shoulder surgery was the initiating cause of her fibromyalgia. He stated that the shoulder injury with the surgery and the development of chronic musculoskeletal pain were linked. Dr. Tesser diagnosed appellant's condition as post-traumatic fibromyalgia. He commented that appellant's return to work aggravated her underlying medical condition and this factor was the reason she could not perform her light-duty work. Dr. Tesser noted that the only findings expected with fibromyalgia was multiple trigger points on examination which appellant had demonstrated. This report by Dr. Tesser does contain an opinion on causal relation between the employing establishment and factors of appellant's employment on the one hand and her disability on the other. However, he only stated that the employment injury and subsequent surgery would cause fibromyalgia. He gave no physiological explanation on how the employment injury would eventually evolve into fibromyalgia. This report, therefore, is lacking in rationale and is, therefore, of little probative value. It is insufficient to meet appellant's burden of proof in showing that her disability was causally related to the employment injury or to factors of her employment.

The only other medical evidence submitted by appellant were several duty status reports from various physicians, with illegible signatures, which only had a check mark on a form to indicate that appellant could not return to work. The Board has held that such reports have little probative value where there is no explanation or rationale supporting an opinion on causal relationship between the diagnosed condition and the employment-related injury.<sup>2</sup> These reports, therefore, have little probative value and are insufficient to establish a causal relationship between appellant's disability and either her employment injury or factors of her employment.

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<sup>2</sup> See *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

The decisions of the Office of Workers' Compensation Programs, dated May 17, 1996 and July 17, 1995, are hereby affirmed.

Dated, Washington, D.C.  
September 1, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member