

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IDIL SHEGOW and U.S. DEPARTMENT OF LABOR,  
EMPLOYMENT STANDARDS ADMINISTRATION, Chicago, IL

*Docket No. 97-2746; Submitted on the Record;  
Issued August 16, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability effective May 1, 1996 causally related to her March 9, 1993 employment injury.

On March 9, 1993 appellant, then a 35-year-old compliance officer, injured her right knee, back, neck, shoulder and left leg when her chair slid out from under her and she fell to the floor. The Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions and later included the condition of fibromyalgia. The Office accepted a June 20, 1995 recurrence of disability and paid intermittent periods of wage loss. Appellant returned to work at four hours a day on October 2, 1995 and returned to full duty as of November 13, 1995.

Appellant stopped working as of May 1, 1996 and subsequently filed a claim for recurrence of disability. In an August 13, 1996 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the March 9, 1993 injury and the recurrence of disability. In a June 16, 1997 decision, an Office hearing representative affirmed the August 13, 1996 decision.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her March 9, 1993 employment injuries.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which she claims compensation is causally related to the accepted injury.<sup>1</sup> Causal relationship is a medical issue<sup>2</sup> and the medical evidence required

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<sup>1</sup> *John E. Blount*, 30 ECAB 1374 (1979).

<sup>2</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

The only medical evidence which appellant submitted were medical reports from Dr. Andrew T. Su, an internist and appellant's treating physician, which describe appellant's subjective complaints of pain but do not include a rationalized, probative medical opinion indicating that her current condition was caused or aggravated by the accepted March 9, 1993 employment injury.<sup>4</sup>

In a May 29, 1996 medical report, Dr. Su stated that appellant experienced frequent recurrences of left-sided arm and leg pain with chronic fatigue. He opined that appellant was permanently disabled due to her chronic pain, which limits her ability to sit, drive or walk for prolonged periods exceeding 30 to 45 minutes at a time. Dr. Su found that appellant's limitations would obviously prevent her from functioning in nearly any sort of work situation. He stated, in addition to appellant's physical problems, these difficulties have resulted in a significant depression and that the pain and discomfort would impair appellant's ability to concentrate on any significant tasks. No examination findings were provided in support of Dr. Su's conclusions. Additionally, Dr. Su did not provide an explanation on how appellant's limitations disabled her from performing her specific work duties. Although he indicated that appellant's difficulties have resulted in a significant depression, which impaired her ability to work, no medical explanation was provided as to how appellant's physical condition caused her depression or whether the depression was causally related to the work injury of March 9, 1993.

In a July 18, 1996 medical report, Dr. Su stated that he had been treating appellant for several years for chronic severe fibromyalgia, which apparently arose subsequent to an injury suffered on March 9, 1993. He noted that during appellant's regular visits, she had updated him with ample evidence of persisting problems. Dr. Su stated that the fibromyalgia pain had limited her ability to perform activities of daily living. He further noted that precipitating and aggravating factors were unpredictable and opined that he was not optimistic regarding appellant's ability to continue in any form of work. Dr. Su failed to discuss appellant's job duties and has not offered a medical explanation, supported by findings, explaining how his objective findings render appellant totally disabled from her work duties. It appears that Dr. Su based his conclusion that appellant was totally disabled from work solely upon appellant's subjective complaints.

Within his July 18, 1996 report, Dr. Su referenced his reports of June 20 and July 17, 1995. Dr. Su's letter of July 17, 1995, stated that appellant's post-traumatic

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<sup>3</sup> Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, 41 ECAB 345 (1989).

<sup>4</sup> William C. Thomas, 45 ECAB 591 (1994).

fibromyalgia condition was cyclical in nature in that frequently, for no apparent reason, exacerbations occur. He stated that the unpredictable nature of her problems which sometimes were triggered by even minimal activity and sometimes by the inactivity of a sedentary position coupled with the difficulty in controlling such symptoms of left neck, shoulder and upper leg pain rendered her essentially totally disabled for employment. Dr. Su additionally noted that other stresses such as insomnia or psychological stresses may also exacerbate her physical condition. He indicated that appellant definitely had some significant depression secondary to this frustrating and persistent problem. Again, Dr. Su failed to provide any examination findings supporting his conclusion of total disability for work. Dr. Su further failed to provide a medical explanation for the probable cause of appellant's depression and whether the depression arose from the effects of the original injury.

In his June 20, 1995 report, Dr. Su stated that appellant's fibromyalgia with related unpredictable pain, fatigue, headaches and secondary depression have rendered her totally disabled from employment. No medical rationale or findings from a medical examination were included to support Dr. Su's conclusion of total disability.

To summarize Dr. Su's reports, appellant, in his opinion, had recurrent flares in her fibromyalgia symptoms by unpredictable precipitating and aggravating factors, which caused her to be disabled for work. He also noted that appellant's chronic pain and depression contributed to her continued disability. Dr. Su, however, did not provide any medical rationale to establish a causal relationship between the employment injury of March 9, 1993 and appellant's current disabling conditions three years later. He did not explain the pathophysiologic mechanism whereby any of appellant's work activities might have caused an objective change in appellant's accepted conditions. Furthermore, all of Dr. Su's medical reports reiterates appellant's complaints of pain and lack any substantial objective findings of disability.<sup>5</sup> Moreover, Dr. Su's reports are based on an inaccurate medical history as appellant stated that she experienced a fall in December 1995 and in May 1996 and Dr. Su failed to mention either incident or discuss the role and effects of those injuries on the accepted conditions. Without such rationale, his opinion on causal relationship in this case is of diminished probative value.<sup>6</sup> As none of Dr. Su's reports address and explain why the claimed condition and disability from May 1, 1996 was caused or aggravated by her March 9, 1993 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

Although Dr. Su states that appellant's continued disability is due to her chronic pain and depression, the Office has never accepted the condition of depression. Inasmuch as appellant bears the burden of establishing causal relationship for conditions not accepted by the Office and none of Dr. Su's medical reports are explained by medical rationale, they are insufficient to support a claim for the condition of depression.

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<sup>5</sup> The Board has frequently explained that subjective complaints of symptoms unsupported by objective physical findings of disability are not compensable. *John L. Clark*, 32 ECAB 1618 (1981); *Charles D. Wallace*, 21 ECAB 347 (1970).

<sup>6</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The June 16, 1995 decision of the Office of Workers' Compensation Programs is, therefore, affirmed.

Dated, Washington, D.C.  
August 16, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member