

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARVAY SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, Ill.

*Docket No. 96-2288; Submitted on the Record;  
Issued March 29, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant had any disability after April 9, 1981 causally related to either her January 30, 1975 or October 6, 1977 accepted employment injuries; and (2) whether appellant sustained a disabling medical condition as a result of a November 4, 1986 employment incident.

This is the third appeal in this case. In the first appeal, the Board, by a May 31, 1988 decision,<sup>1</sup> affirmed the April 1 and September 18, 1986 decisions of Office of Workers' Compensation Programs, finding that the weight of the medical opinion evidence established that appellant's intermittent disability for work on or after April 9, 1981 was not causally related to her employment injuries of January 30, 1975 and October 6, 1977. In a separate decision also issued May 31, 1988,<sup>2</sup> the Board affirmed the May 19, 1987 decision of the Office, finding that appellant did not sustain a disabling medical condition as a result of a November 4, 1986 employment incident.<sup>3</sup>

The facts and history surrounding the appeal to the Board are set forth in the earlier decisions and are hereby incorporated by reference.

Subsequent to the Board's May 31, 1988 decisions, appellant requested reconsideration on August 14, 1989, January 18, 1991, March 12 and April 2, 1992. By decisions dated January 24, 1990, March 11 and April 2, 1991, the Office found the evidence submitted with the 1989 and 1990 requests for reconsideration were insufficient to warrant modification of its prior

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<sup>1</sup> Docket No. 87-676 (issued May 31, 1988).

<sup>2</sup> Docket No. 87-1627 (issued May 31, 1988).

<sup>3</sup> Although the Board specifically found that appellant failed to establish that she sustained a recurrence of total disability causally related to a November 4, 1986 employment injury, a review of the record reflects that the Office never accepted that appellant sustained an employment-related injury as a result of the November 4, 1986 incident.

decisions. In decisions dated March 24 and April 20, 1992, the Office denied appellant's 1992 reconsideration requests without reviewing the merits of the claim, on the grounds that insufficient evidence was submitted. On June 22, 1992 appellant filed an application with the Board for review of the March 24 and April 20, 1992 decisions. Appellant asserted that as both of the Office's 1991 decisions were sent to an incorrect address, her appeal rights were compromised and thus the Office's April 20 and March 24, 1992 decisions denying merit review were in error. By order dated August 12, 1993, the Board set aside the April 20 and March 24, 1992 decisions of the Office and remanded the case for the Office to issue a merit reconsideration decision on all issues. In a decision dated January 25, 1994, the Office found the medical evidence submitted in support of appellant's requests for reconsideration to be insufficient to warrant modification of its prior decisions. Appellant again requested reconsideration of the Office's prior decisions and submitted additional medical evidence in support of her request. In a merit decision dated April 15, 1996, the Office found the medical evidence insufficient to warrant modification of its prior decisions.

The Board finds that appellant failed to establish that she was disabled from work after April 9, 1981 as a result of her January 30, 1975 or October 6, 1977 accepted employment injuries, or that she sustained a disabling medical condition as a result of a November 4, 1986 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> As part of appellant's burden of proof, she must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her federal employment. The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.<sup>6</sup>

The relevant medical evidence of file consists of that which was developed and submitted by appellant subsequent to the Board's May 31, 1988 decisions in this case. In a report dated August 17, 1988, Dr. William C. Davison, a Board-certified neurologist and one of appellant's treating physicians, discussed appellant's 1975 and 1977 work injuries, and the 1986 employment incident, listed his findings on examination and concluded: "I believe this patient suffers from multiple chronic radiculopathies and musculoskeletal pain. She has a left cervical

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>6</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

radiculopathy and a left lumbar radiculopathy. I believe the cervical radiculopathy is related to her accident on November 4, 1986 and her lumbar radiculopathy is related to her accident on January 30, 1975.”

Dr. Robert Fink, a Board-certified orthopedic surgeon and a treating physician, in his April 26, 1989 report, also discussed appellant’s medical and employment history and diagnosed “chronic cervical and lumbosacral radiculopathy related to her job injuries of January 30, 1975, October 6, 1977 and November 4, 1986.” Neither Dr. Davidson nor Dr. Fink, however, offered any rationalized explanation for why they believe her continuing medical condition is causally related to her employment.<sup>7</sup>

Appellant also submitted a June 29, 1989 report from Dr. Richard N. Rovner, a Board-certified neurologist. He noted the 1975, 1977 and 1986 employment incidents and discussed his treatment of appellant since 1987. Dr. Rovner concluded: “[Appellant] shows evidence of a chronic cervical and lumbosacral radiculopathy by electromyography and by history. I believe that her last injury of the cervical spine region on November 4, 1986, is causally related to her cervical radiculopathy. I believe that this probably aggravated a preexisting condition but, in addition, has caused further dulties [sic.] of neck pain and shoulder and arm pain from that time to the present. Her lower extremity and low back pain is probably secondary to injuries before 1986.”

Dr. Rovner’s opinion, however, is equivocal in nature and further does not contain a rationalized explanation for his conclusions.<sup>8</sup>

Appellant additionally submitted several medical reports from Dr. Peng Thim Fan, a Board-certified rheumatologist. In his initial report dated November 1, 1989, Dr. Fan noted that appellant presented complaining of persistent continual low back pain dating back to 1975. He discussed appellant’s injury and employment history, including the 1975 and 1977 employment

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<sup>7</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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, *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979), must be one of reasonable medical certainty, *see Morris Scanlon*, 11 ECAB 384, 385 (1960) 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, *see William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *Roger Dingess*, 47 ECAB 123 (1995).

injuries and the 1986 work incident and performed a complete physical examination. Dr. Fan's clinical impressions were as follows:

"I would tend to agree with the patient's self-diagnosis of fibromyalgia. She does have active trigger points in the lumbar spine and around the sacroiliac joints as well as the hip girdle. This is superimposed upon severe tightness of the hip girdle as well as some tightness in the neck. I do not find any neurological deficit nor are her symptoms suggestive of a radiculopathy. It is my impression that she has had fibromyalgia since the onset of her symptoms in 1975 and the repeatedly negative and equivocal findings as well as the normal x-rays bear out this contention."

In his report dated November 28, 1989, Dr. Fan reiterated his earlier diagnosis, stating:

"It is my final conclusion that your symptoms are totally compatible with fibromyalgia and that you do not have an underlying connective tissue disease or inflammatory arthritis. I am satisfied from my review of your records and your history that the symptoms of fibromyalgia have been predominant ever since the onset of your musculoskeletal complaints from your work-related injury in 1975."

In his final report of record, Dr. Fan again stated that his diagnosis was fibromyalgia, as confirmed by the unequivocal presence of symmetrically displayed tender points and further asserted that fibromyalgia itself is an accepted clinical condition. With respect to the causal relationship between appellant's diagnosed fibromyalgia and her employment, Dr. Fan stated:

"I do not feel competent commenting on whether the fibromyalgia that [appellant] has is work related since she first became injured in 1975, 14 years prior to my examining her."

The most recent report submitted by appellant is the December 28, 1994 report of Dr. Frank R. Schmid, a Board-certified internist. He noted that appellant was referred to him for an evaluation of the diagnosis of fibromyalgia made in 1989 by Dr. Fan. Dr. Schmid confirmed the diagnosis of fibromyalgia, present since 1975. He further stated, however, that while appellant is "inclined to blame it on a fall that occurred around that time" he was "not in any position to make a comment on that claim."

While appellant submitted medical evidence to the Office subsequent to the May 31, 1988 decisions of the Board, none of this medical evidence is sufficiently rationalized or supportive to establish that she had any disability after April 9, 1981 causally related to either her January 30, 1975 or October 6, 1977 accepted employment injuries, or that she sustained a disabling medical condition as a result of a November 4, 1986 employment incident. Consequently, appellant failed to submit evidence to meet her burden of proof.

The April 15, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
March 29, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member