U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHYRAL D. BUSH and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, LA

Docket No. 97-2887; Submitted on the Record;
Issued October 26, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that her March 23, 1993 loss of wage-earning capacity determination should be modified.

The Office of Worker's Compensation Programs has accepted that appellant sustained a right shoulder strain while throwing mail on March 14, 1990. On March 23, 1993 the Office determined appellant's loss of wage-earning capacity based upon her actual earnings in a six hour per day, light-duty position. This is the second appeal of this case. By decision dated April 4, 1996, the Board remanded the case to the Office for further proceedings to determine whether the evidence of record established that there was a material change in the nature and extent of the injury-related condition such that the loss of wage-earning capacity determination should be modified.[1] The Board noted that appellant had requested modification of the loss of wage-earning capacity based upon her physician's recommendation that she only work four hours a day, as of March 22, 1993, due to fibromyalgia. However, the Board noted that the Office had not obtained a report, which it had requested, from the Office's second opinion physician, Dr. Phillip Osborne, as to whether appellant had fibromyalgia causally related to the accepted employment injury, which had reduced her ability to work the limited-duty position. The Board therefore remanded to the Office for issuance of a new decision regarding the issue of modification of the loss of wage-earning capacity, after receipt of Dr. Osborne's report. The Office thereafter denied modification of the loss of wage-earning capacity determination on May 30, 1996 and June 11, 1997.

Once loss of wage-earning capacity is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the

[1] Docket No. 94-1399, issued April 4, 1996.

original determination was, in fact, erroneous. The burden of proof is on the party attempting to show the award should be modified.[2]

In the present case, appellant is not alleging that the original loss of wage-earning capacity rating was erroneous or that the accepted condition of shoulder strain has worsened, such that the loss of wage-earning capacity should be modified. Appellant is alleging that she has fibromyalgia, which was also caused by the accepted employment injury of 1990, and that her fibromyalgia condition worsened such that she could no longer perform her light-duty position for six hours a day.

Following the last appeal of this case, the Office did receive a copy of Dr. Osborne's reports dated February 21 and March 1994. In his last report, Dr. Osborne explained that while appellant had been diagnosed with fibromyalgia, on examination she did not have the classic trigger points for fibromyalgia. He stated that fibromyalgia was pain with muscle movement and that to try to identify this for appellant, she was assessed with the progressive lifting technique. He explained that this protocal monitiored appellant's heart rate, which was expected to increase with pain, but that appellant's heart rate slowed during the exercise indicating anxiety before the start of the test. He concluded that there were no objective findings for the diagnosis of fibromyalgia. Regarding appellant's ability to work, Dr. Osborne stated that appellant did have an impingement in her shoulder and therefore she could not work at shoulder level or above her head with any frequency. He noted that there was no reason appellant could not return to a normal eight-hour workday in a light-duty job. Dr. Osborne's report, therefore concluded that appellant did not have fibromyalgia, that she could continue to perform her light-duty work and that she had no further loss of wage-earning capacity. Dr. Osborne's report does not support appellant's request for modification of the loss of wage-earning capacity.

In support of modification of the wage-earning capacity determination, appellant did submit further medical reports from her treating physician, Dr. Miguel A. Garcia. In his numerous reports Dr. Garcia stated appellant's diagnosis as fibromyalgia and noted that during "flares" appellant could only work four hours a day. In a narrative report dated February 10, 1997, Dr. Garcia explained that he had been appellant's physician since 1992, at which time she presented with a history of inability to sleep secondary to pain, with pain all over her body. He stated that the rest of appellant's symptomatology were classical symptoms of fibromyalgia. Dr. Garcia further indicated that appellant could not work more than four hours a day because her fibromyalgia was not controlled.

Dr. Garcia's report is of limited probative value because he did not substantiate his diagnosis with any objective findings and even if his diagnosis of fibromyalgia is accepted and it is determined that this condition limits appellant's ability to work more than four hours a day, his report still does not establish that this condition is causally related to the accepted employment injury. Regarding the issue of causal relationship, Dr. Garcia stated "there is most probably than not a direct relationship between the accident and the fibromyalgia." This opinion is conclusory in nature and does not provide any medical explanation necessary to establish that the diagnosed condition of fibromyalgia was caused by the accepted employment injury. Dr. Garcia did not

[2] *James D. Champlain*, 44 ECAB 438 (1993).

explain how appellant's employment injury of March 14, 1990, as a result of which she strained her shoulder while throwing mail, would have also caused the fibromyalgia syndrome which he diagnosed in 1992.

The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.[3] To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value.

As appellant has not submitted the necessary medical evidence to establish that she has fibromyalgia which is causally related to her accepted employment injury, she has not met her burden of proof to establish that her employment-related condition has worsened such that the loss of wage-earning capacity determination should be modified.

The decision of the Office of Workers' Compensation Programs dated June 11, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 26, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[3] *See Michael Stockert*, 39 ECAB 1186 (1988).