

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH J. SCHMITZ and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Iowa City, IA

*Docket No. 98-590; Submitted on the Record;  
Issued October 26, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant continued to suffer residuals of her November 25, 1991 employment injury after March 31, 1994.

On the prior appeal of this case,<sup>1</sup> the Board noted that the Office of Workers' Compensation Programs accepted appellant's claim for subluxation at the C5-6 and C7 levels and for cervical sprain. Appellant submitted claims for continuing compensation and received compensation for periods of wage loss. A magnetic resonance imaging (MRI) scan on January 2, 1992 showed that the cervical discs were well maintained and that the position and alignment of the vertebral bodies was normal. Although appellant's chiropractor reported on July 23, 1993 that appellant was still exhibiting signs and symptoms consistent with her initial work-related injuries, he did not explain whether these signs and symptoms were a result of the November 25, 1991 employment injury. Appellant was involved in an automobile accident on July 17, 1993 in which she rear-ended another vehicle and experienced increased pain in the neck and shoulders the following morning. Appellant's attending neurologist provided no firm diagnosis to account for appellant's complaints and provided no medical explanation of how a cervical sprain in November 1991 continued to produce complaints years later. The Board found that without a well-reasoned medical opinion addressing the nature of appellant's cervical condition, the reason this condition has not responded to treatment, and how this condition resulted from turning a patient in 1991, the record failed to establish that appellant continued to suffer residuals of her November 25, 1991 employment injury after March 31, 1994. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant requested reconsideration and submitted a July 10, 1997 report from Dr. Winthrop S. Risk, her attending neurologist. Dr. Risk related appellant's history of injury. He reported that at the time of injury on November 25, 1991 appellant was attempting to lift a patient in her capacity as a nurse. The patient weighed about 250 pounds, was in delirium tremens and had a tracheostomy. He would slide down from a sitting position into a lying

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<sup>1</sup> Docket No. 94-2369 (issued October 18, 1996).

position on his bed and in the course of sliding down would develop a cardiac arrhythmia. Consequently, appellant and another nurse would grab the patient under his arms and pull him back up to a sitting position. Appellant was doing this every 30 to 60 minutes on 12-hour shifts for 3 days. Dr. Risk stated that ever since then appellant had complaints of pain and paresthesias involving the neck, shoulders and the back of her head. Addressing the Board's prior decision, he reported that the diagnosis of myofascial pain syndrome was appropriate:

"The nature of myofascial pain in this situation is a result of stretch injuries of the soft tissues of the neck and shoulder girth and upper limb musculature that occurred as a result of the excessive weight lifting demands on the patient during the [three] days of her attendance to the V[eterans] A[dministration] hospital patient in her charge.

"Soft tissue injuries of this kind are notoriously difficult to treat because they have limited ability to recover spontaneously as a result of relative reduced blood supply to the relevant soft tissues compared to blood supply of other tissues in the body. The stretch injuries of these tissues, which themselves are elastic, do not show up on diagnostic test which explains the lack of objective evidence supporting the patient's clinical complaint.

"Therefore, in conclusion the condition resulted from turning a patient in 1991 because of the excessive weight lifting demands required by the patient's job and the reason this condition has not responded to treatment is the fact that these are soft tissue injuries with disruption of the microvascular circulation to the issues involved and consequent posttraumatic hypoperfusion and corresponding failure of reparative processes.

"With regard to the search for alternative explanation to the patient's symptoms being negative, it is noteworthy that the patient never had any similar symptoms before the days of her work injury, that the symptoms developed immediately after the injury and that no other intervening activities created new symptoms which the patient had not previously had and about which she currently complains.

"The role of the motor vehicle accident [in July 1993] was to exacerbate/reactivate a preexisting work-related condition."

Appellant submitted a substantially similar report from her attending chiropractor, Dr. Douglas Dvorak. Dr. Dvorak related appellant's history of injury and complaints. He noted that prior to the employment incident appellant had never had any similar symptoms. Dr. Dvorak also explained in detail the nature of soft-tissue injury and the nature of the reparative process. Additional evidence accompanying appellant's request for reconsideration included a November 17, 1994 report from Dr. Risk, who related appellant's history of injury, his findings on physical examination and results of diagnostic testing. Appellant also submitted follow-up reports and evidence already of record.

In a decision dated November 12, 1997, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

The Board finds that the medical evidence of record fails to establish that appellant continued to suffer residuals of her November 25, 1991 employment injury after March 31, 1994.

As the Board explained in its prior decision, a claimant seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>3</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>4</sup>

The Office accepted that appellant sustained an injury in the performance of duty on November 25, 1991. It remains for appellant, therefore, to establish that any period of disability for which she seeks compensation is causally related to her employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition or disability is related to the injury.<sup>5</sup>

In an attempt to cure the defects found in the medical opinion evidence of record, appellant submitted additional reports from her attending neurologist, Dr. Risk, and her attending chiropractor, Dr. Dvorak. The Office correctly indicated in its November 12, 1997 decision that Dr. Dvorak, as a chiropractor, is not competent under the Federal Employees' Compensation Act to render an opinion on conditions other than subluxation of the spine. Section 8101(2) of the Act<sup>6</sup> provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary."<sup>7</sup> Chiropractors are considered physicians under the Act only under the limited

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>6</sup> 5 U.S.C. § 8101(2).

<sup>7</sup> See 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

circumstances described in section 8101(2).<sup>8</sup> Their opinions on conditions other than subluxation of the spine, as demonstrated by x-ray to exist, are of no probative value.

In his July 10, 1997 report, appellant's attending neurologist, Dr. Risk, related a specific and consistent history of injury on or about November 25, 1991. He explained from a medical perspective how appellant's employment activity caused appellant's diagnosed myofascial pain syndrome, the symptoms of which, he reported, appellant continued to suffer. The Office correctly noted in its November 12, 1997 decision, however, that the past history upon which Dr. Risk relied is not consistent with the evidence of record. Dr. Risk reported as follows: "With regard to the search for alternative explanation to the patient's symptoms being negative, it is noteworthy that the patient never had any similar symptoms before the days of her work injury." Dr. Dvorak also reported that prior to the employment incident appellant had never had any similar symptoms. The record indicates, to the contrary, that appellant was involved in a motor vehicle accident on March 21, 1988, from which, by her own admission, she experienced similar disability or symptoms. Appellant also indicated that Dr. Risk treated her for this injury from April to July 1988. The Board has held that medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>9</sup> Because Dr. Risk failed to account for appellant's motor vehicle accident on March 21, 1988, his opinion on continuing residuals of the November 25, 1991 employment injury is of diminished probative value and is insufficient to discharge appellant's burden of proof.

The November 12, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

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

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *Theresa K. McKenna*, 30 ECAB 702, 705 (1979) (holding that a chiropractor's opinion on the claimant's condition of chronic lumbosacral radiculitis with sciatica did not constitute competent medical evidence to support a claim of compensation).

<sup>9</sup> See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); see generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).