

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERINE E. SCOTT and DEPARTMENT OF THE INTERIOR,  
INDIANA DUNES NATIONAL LAKESHORE, Porter, IN

*Docket No. 99-85; Submitted on the Record;  
Issued November 8, 2000*

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DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on February 19, 1997 causally related to her January 28, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that she sustained a recurrence of disability on February 19, 1997 causally related to her January 28, 1994 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>1</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.<sup>2</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>3</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>4</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>5</sup>

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>2</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

<sup>4</sup> *Edward E. Olson*, 35 ECAB 1099 (1984).

<sup>5</sup> *Joseph T. Gulla*, *supra* note 3.

On January 28, 1994 appellant, then a 40-year-old fire program clerk, sustained a fractured tooth, acute cervical spasms and a left shoulder sprain and left shoulder bursitis in the performance of duty when she slipped on ice and fell. She returned to full-time regular duty on February 14, 1994 but sustained a recurrence of disability on August 15, 1995. On March 3, 1997 appellant filed a claim for a recurrence of disability commencing on February 19, 1997 which she attributed to her January 28, 1994 employment injury. By decision dated June 6, 1997, the Office denied appellant's claim for a recurrence of disability. By letter dated June 4, 1998, through her attorney, appellant requested reconsideration and submitted additional evidence. By decision dated July 6, 1998, the Office denied modification of its June 6, 1997 decision.<sup>6</sup>

In a form report dated April 1, 1997, Dr. Thomas J. Sweeney, a physician specializing in rheumatology, diagnosed fibromyalgia, depression, and hypothyroidism and indicated that these conditions were not causally related to appellant's January 28, 1994 employment injury. In a second form report dated April 1, 1997, he left blank the form question which asked whether the diagnosed conditions were causally related to the employment injury. As Dr. Sweeney did not opine that these conditions were causally related to appellant's January 28, 1994 employment injury, these reports do not establish that she sustained an employment-related recurrence of disability on February 19, 1997.

In a report dated May 13, 1997, Dr. Michael H. Ellman, a Board-certified internist of professorial rank specializing in rheumatology, provided a history of appellant's condition, noting that appellant's complaints of diffuse discomfort began at the time of the January 1994 employment injury. He did not make a diagnosis pending further testing. Additionally, he indicated that appellant had a sister and several nieces who had fibromyalgia which suggests a possible genetic connection. As Dr. Ellman did not make a definite diagnosis and did not provide a rationalized medical opinion explaining how appellant's pain complaints were causally related to her January 28, 1994 employment injury, this report is not sufficient to discharge her burden of proof.

In a report dated May 27, 1997,<sup>7</sup> Dr. John G. Milton, a Board-certified neurologist and psychiatrist of professor rank, stated his opinion that appellant did not have epilepsy or attention deficit disorder or that she had suffered significant damage to her nervous system as a result of trauma. He stated that a neurological examination had been conducted by himself and two other neurologists and that there were no abnormalities in a magnetic resonance imaging (MRI) scan of the brain or in an EEG (electroencephalogram). Dr. Milton stated, "[Appellant] does have a muscle contraction syndrome (myofascial syndrome, cervicalgia, etc. are all terms for essentially the same thing). Her neurophysiological studies were compatible with a chronic pain syndrome with associated anxiety and depression. [Appellant] does have a significant history of abuse as a

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<sup>6</sup> The Board notes that appellant submitted additional evidence subsequent to issuance of the Office's July 6, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>7</sup> There appears to be a page missing from this report.

child and an abusive marriage. This likely contributes to her chronic pain syndrome and as mentioned above may be at least part of the etiology for her seizure-like events.”

As Dr. Milton did not attribute appellant’s condition to her January 28, 1994 employment injury, his report does not establish that she sustained a recurrence of disability on February 19, 1997 causally related to her 1994 employment injury.

In a report dated September 10, 1997, Dr. Robert S. Katz, a Board-certified internist specializing in rheumatology, provided a history of appellant’s condition and findings on examination and related that her widespread musculoskeletal pain began following the January 1994 employment injury. He diagnosed fibromyalgia but did not provide an opinion as to the cause of this condition. Therefore this report is not sufficient to discharge appellant’s burden of proof.

In a report dated November 6, 1997, Dr. Katz related that appellant was complaining of diffuse pain, especially pain in her back and neck. He stated:

“[Appellant] has fibromyalgia. As far as I am able to ascertain, her fibromyalgia began after an injury when she slipped and fell. She hit her coccyx and hip but then later developed widespread pain.

“[Appellant] has fibromyalgia based on the subjective symptoms of widespread pain and the finding of tender points over the characteristic locations for that diagnosis. [Appellant] did have those findings. No test confirms the diagnosis of fibromyalgia, so that x-rays, imaging scans, and that sort of thing will be normal or virtually normal. The link between injuries and fibromyalgia is one that has been described many times in the medical literature, but the reason why that is so is absolutely unclear. Some look at fibromyalgia as a possible neurotransmitter imbalance, involving such biochemical substances as serotonin, substance P, dopamine, norepinephrine and others.

“Clearly, there is no evidence that fibromyalgia is a psychiatric or psychological condition. It is not reversible with psychiatric medicines, though these medicines at lower dosages do sometimes play a role in ameliorating symptoms. There is no evidence that it is a form of malingering or is due to some type of psychological stress or conflict. Because [appellant], on a subjective basis, has such intense pain ... and because she feels that she is unable to sit for any length of time or walk or really function at work, I believe she is disabled with regard to her secretarial job at the [employing establishment].”

However, Dr. Katz provided insufficient medical rationale explaining how appellant’s fibromyalgia was causally related to her January 28, 1994 employment injury. He based his opinion on causal relationship on the fact that appellant began complaining of pain after the 1994 employment injury. This lack of medical rationale on the issue of causal relationship is particularly important in light of the fact that appellant’s claimed recurrence of disability occurred three years after the 1994 employment injury. Therefore, this report is not sufficient to

establish that appellant sustained a recurrence of disability on February 19, 1997 causally related to her January 28, 1994 employment injury.

In a report dated June 3, 1998, Dr. Katz diagnosed fibromyalgia. He stated:

“Based on a reasonable degree of medical certainty, I believe [appellant’s] fibromyalgia began after injury when she slipped and fell. She immediately had pain in her coccyx and hip and soon after that developed widespread musculoskeletal pain. This was in 1994. As a result of the fibromyalgia, she remains disabled from working at her prior job. Again, this opinion is that she has fibromyalgia and that it began after her 1994 injury [is] based on a reasonable medical certainty.

“Fibromyalgia may be related to trauma. I am sending a copy of an editorial that I wrote which makes a comment about that association. There are several articles in the medical literature regarding fibromyalgia after trauma, including one on so called reactive fibromyalgia.”

Dr. Katz failed to provide sufficient medical rationale explaining why he believed that appellant’s fibromyalgia was causally related to her January 28, 1994 employment injury. Therefore his report does not establish that appellant sustained a recurrence of disability on February 19, 1997 causally related to her January 28, 1994 employment injury.

The decision of the Office of Workers’ Compensation Programs dated July 6, 1998 is hereby affirmed.

Dated, Washington, DC  
November 8, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member