

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROL L. DAVIS and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, CLEARWATER NATIONAL FOREST, Orofino, ID

*Docket No. 99-2065; Submitted on the Record;  
Issued September 8, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant contracted Lyme disease as a result of a tick bite sustained on June 26, 1990; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further review of the merits of her claim constituted an abuse of discretion.

On July 24, 1990 appellant, then a 41-year-old forestry technician, filed a claim for a tick bite in the back of the head that occurred on June 26, 1990. Appellant stated that she removed the tick but that infection of the local area continued. On January 6, 1994 appellant filed a claim for aching and pain in her joints and fatigue that she attributed to her June 26, 1990 tick bite. By letter dated April 7, 1994, the Office notified appellant that it had accepted that she sustained a tick bite in the performance of duty on June 26, 1990.

On March 2, 1995 appellant filed a claim for Lyme disease that she attributed to her June 26, 1990 tick bite. By decision dated March 8, 1996, the Office found that appellant had not established that she had a residual medical condition related to her June 26, 1990 tick bite. By letter dated January 8, 1997, appellant requested reconsideration and submitted additional evidence. By decision dated June 13, 1997, the Office found that the evidence was not sufficient to establish that appellant had a residual medical condition related to her June 26, 1990 tick bite. By letter dated June 4, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated September 18, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated December 28, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated March 24, 1999, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions.

The Board finds that the case is not in posture for a decision.

The case record contains medical opinions that appellant has Lyme disease due to her June 26, 1990 tick bite. In an October 17, 1994 report, Dr. Merle Janes, a Board-certified

physiatrist, noted that laboratory testing for Lyme disease was negative, but stated: “Multiple complaints evoke diagnosis of Lyme disease, whether or not the lab results tally or no. Remember: the lab test does not test for the presence of *Borrella* organism *antigens*; it only tests for *antibodies* made by the individual against the *Borrella*. Therefore, the person could have server Lyme infection, but have an immune system that was producing few or zero antibodies to the *Borrella* and consequently would test ‘negative’ for Lyme; a false-negative in other words.” Dr. Janes diagnosed, “Borreliosis (Lyme disease) from 1990 tick bite, an on-job injury. Organism: *Borrella burgdorferi*, a tiny spirochete.” In a report dated June 25, 1995, he further expounded on the significance of the negative laboratory tests: “[T]he current, best lab test tests for the presence of antibodies that the human manufactures after exposure to the organism. Unfortunately, the people most affected by the organism are that way precisely because their immune system does not react much to the presence of the organism (‘seronegative Lyme [d]isease’).” Dr. Janes also noted that Lyme disease had a “capability to imitate other types of illness and thus be difficult to diagnose.”

The difficulty in diagnosing appellant’s condition is seen in other medical reports. Dr. H. Graeme French, a Board-certified orthopedic surgeon, noted that appellant underwent thyroid studies and arthritis and hepatitis panels which were normal. Appellant also underwent electromyography and nerve conduction studies to test for neuropathy or radiculopathy and magnetic resonance imaging of the brain to rule out multiple sclerosis. Dr. Patrician A. Brady, a Board-certified internist, noted that appellant attributed her condition to an infectious disease from her tick bite; Dr. Brady stated, “I expressed to her at this point in time she seems to have a diagnosis that seems more consistent with a fibromyalgia chronic fatigue syndrome type picture and these diagnoses have no certain etiology that we do not yet know what causes these, whether it is a circumstance or an organism. There are times when a chronic fatigue syndrome has a start date with an event, traumatic event, viral infection, some significant stressor and in her case that would seem to be her tick bite; however, there is no distinct organism known to be responsible for these syndromes and any occurrence relating the fibromyalgia and the chronic fatigue syndrome to her tick bite would be more on a potentially epidemiologic-type consideration rather than on any factor that relates to knowing the exact etiologic cause of fibromyalgia and chronic fatigue.”

Other physicians expressed the view that appellant might have Lyme disease. Dr. French diagnosed possible *Borrella* infection. In a report dated August 13, 1996, Dr. James W. Gardner, a Board-certified family practitioner, gave an assessment of “Presumed Lyme disease though she has had negative titers in all testing in the past.”

Other physicians expressed doubt. Dr. W. Conrad Liles, who is Board-certified in infectious disease, stated in a July 10, 1995 report that he doubted appellant had Lyme disease. Dr. David R. Greeley, a Board-certified neurologist, stated in an April 11, 1995 report that he “would be very suspect of the diagnosis of Lyme disease and would not pursue this much farther.” Dr. James H. Katzel, a Board-certified family practitioner whose July 17, 1997 report indicated it came from an infectious disease service, stated, “The diagnostic criteria for tick borne diseases is scant at this point.” Dr. Katzel recommended further testing.

Dr. Don Greggain, a family practitioner who worked with Dr. Katzel in trying to ascertain the nature of appellant’s condition, unequivocally concluded in an August 22, 1996

report that appellant “contracted Lyme disease in 1990 and is still having significant disabling symptoms as a result of this disease. Sequelae of the disease has also led to fibromyalgia and chronic fatigue syndrome, directly as a result of this disease.” In a report dated May 24, 1998, Dr. Greggain enclosed the findings of serologic testing for Lyme disease done on September 16, 1997; appellant’s Lyme urine antigen test result was 116 ng/ml, with over 45 ng/ml being considered highly positive. He stated, “This is the most accurate serologic test for Lyme disease and definitively proves that [appellant] does have Lyme disease.” Dr. Katzel, however, expressed reservations about the reliability of such testing: “[T]hat test really needs to be considered experimental at this time since a number of false positives and false negatives have been reported with this test and until it is standardized or recognized properly I do n[o]t think that it has a place in testing for this patient’s condition, since it probably would not influence how we would treat her no matter what the outcome.”

Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>1</sup> Drs. Greggain and Janes concluded that appellant had Lyme disease as a result of her June 26, 1990 tick bite. Drs. Brady, Greeley and Liles expressed doubt that appellant had Lyme disease. What the case record lacks is a comprehensive evaluation, definitive diagnosis and reasoned medical opinion on causal relation from a specialist in infectious diseases. The case will be remanded to the Office for it to obtain such a report, to be followed by a *de novo* decision on the issue of whether appellant contracted Lyme disease as a result of a tick bite sustained on June 26, 1990.

The decisions of the Office of Workers’ Compensation Programs dated March 24, 1999 and September 18, 1998 are set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, D.C.  
September 8, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member

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<sup>1</sup> *Isidore J. Gennino*, 35 ECAB 442 (1983).