

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TINA L. SATTERWHITE and U.S. POSTAL SERVICE,  
POST OFFICE, Coppel, TX

*Docket No. 00-1062; Submitted on the Record;  
Issued April 30, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability beginning June 29, 1998 due to her September 27, 1994 employment injury.

In this case, the Office of Workers' Compensation Programs accepted that appellant's September 27, 1994 employment injury, sustained by handling mail, resulted in a thoracic strain. Appellant was a 28-year-old letter carrier at the time of injury. She received continuation of pay from September 27, 1994 until she returned to part-time limited duty on April 24, 1995. Appellant eventually resumed full-time limited-duty work on July 1, 1995. By decision dated September 17, 1996, the Office determined that appellant's employment as a limited-duty city carrier from July 1, 1995 fairly and reasonably represented her wage-earning capacity.

On June 29, 1998 appellant again stopped work. On July 7, 1998 she filed a claim for a recurrence of disability beginning June 29, 1998 due to her September 27, 1994 employment injury. By decision dated November 3, 1998, the Office found that the evidence failed to establish that appellant's claimed recurrence of disability was causally related to her September 27, 1994 employment injury. By decisions dated September 20 and November 24, 1999, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was insufficient to modify its prior decision.

The medical reports of record in appellant's claim are as follows: In a report dated October 21, 1998, Dr. James W. McKinley, a Board-certified family practitioner, summarized the history of appellant's treatment since her September 1994 injury. He noted that appellant's pain fluctuates and her recent exacerbation was in July 1998. Dr. McKinley stated that this clearly was an exacerbation of her previous injury as the pain was similar, in the same location and there was no other explanation of this recurrence of pain other than an exacerbation of her prior injury. He stated that appellant seemed to have a myofascial pain syndrome which, at times, aggravates into a facet syndrome. Dr. McKinley further stated that it has also been felt that appellant has thoracic intrinsic disc pain and/or thoracic radiculitis. He noted that the

July 14, 1998 magnetic resonance imaging (MRI) scan of her thoracic spine did not reveal any abnormalities; the November 4, 1994 thoracic spine x-rays were normal; the November 1994, computerized tomography (CT) scan of the thoracic spine revealed no definitive abnormality; and her bone scan was reportedly normal from Dr. Laurence Rosenfield, a pain management anesthesiologist. Dr. McKinley noted that although a specific diagnosis has been elusive, appellant has features of thoracic facet syndrome, myofascial pain syndrome in the thoracic area and possible discogenic pain.

An October 15, 1998 work slip from Dr. Rosenfield's report indicating that appellant was off work until September 25, 1998 due to diagnoses enumerated as 739.2, 739.3 and 739.8, but failed to indicate whether appellant's disability was related to her September 27, 1994 employment injury. In a September 25, 1998 report, he offered a history of injury in which a September 1994 strain is cited and summarized the type of treatment appellant has undergone. He noted that the MRI scan of appellant's thoracic spine from July 14, 1998 was normal as were all the other objective tests appellant underwent. Dr. Rosenfield noted that standing, bending, twisting, lifting and sitting aggravate appellant's pain, but there were no neurological findings. He opined that appellant's intractable thoracic back pain of obscure etiology was mechanical in nature, aggravated primarily by thoracolumbar torsion and extension. Dr. Rosenfield stated that with a normal MRI scan, appellant may have thoracic discogenic pain and thoracic facet pain, but he believed myofascial pain was most likely related to the serratus posterior inferior musculature. Trigger point injections were recommended. Reports concerning appellant's progress were submitted. In a report dated November 16, 1998, Dr. Rosenfield stated that appellant's flare-up on July 1, 1995 was from her original injury. He stated that it is certainly unclear as to the exact pain generating tissues, but he believed it was related to the myofascial tissues judging by appellant's response to the trigger point injections. In a December 18, 1998 report, Dr. Rosenfield recommended a comprehensive multidisciplinary approach and advised appellant that she should be off work for the duration of the program.

In a March 2, 1999 report, Dr. Stephen K. Martin, a Board-certified clinical neuropsychologist, noted a history of injury and stated that a number of psychological and behavioral factors appeared to be contributing to the maintenance of appellant's pain condition. After listing six factors, he diagnosed pain disorder, associated with both psychological factors and a general medical condition, an adjustment disorder with depressed mood, back pain and moderate occupational problems, economic problems and other psychosocial/environmental problems. Recommendations into the pain management program was provided by the interdisciplinary team along with Dr. Martin's recommendation that appellant should be off work for three weeks during the duration of the outpatient pain management program. No discussion regarding the causal relationship between appellant's diagnoses to her work injury of 1994 was provided.

In an April 15, 1999 report, Dr. James F. Holleman, an osteopath specializing in pain management, noted a history of injury along with appellant's medical treatment. Results of the physical and neurological examination provided were essentially normal. A diagnosis of chronic sprain of the supraspinous and interspinous ligaments from T3-12, mild bilateral sacroiliitis and mild bilateral sprain of the iliolumbar and posterior sacral ligaments were provided. No discussion regarding causal relationship was provided.

In a May 17, 1999 report, Dr. B.T. Daniel, a Board-certified neurologist and Office referral physician, noted a history of the employment injury along with treatment provided to appellant, a review of the medical record and his findings on neurological examination. Dr. Daniel opined that appellant had tension headache with component into the thoracic spine area with muscle spasms, depressive disorder and panic disorder. He suggested that appellant stop all manipulation, or injections into her back and try to resolve this work-related injury and go on with her life. Aerobic exercise along with a more sedating antidepressant was recommended. Dr. Daniel opined that appellant should be released to work at full duty and recommended against further testing. He advised that appellant likely did have a mild muscle strain and she has had muscle contraction, kind of tension type symptoms ever since, but stated that a strain usually lasts for a couple of months and usually is resolved in less than four and a half years. Dr. Daniel stated that, he doubted the recommended pain program would give her any help and advised against it.

In an October 17, 1999 report, Dr. Holleman provided a review of the medical reports. He opined that appellant's September 27, 1994 injury was a myofascial problem from the onset, which has continued through the present. Dr. Holleman's tentative diagnosis of the condition was myofascial pain syndrome specifically involving the supraspinous and interspinous ligaments from T2-12 involving the associated thoracic musculature and fascia. He opined that Dr. Daniel, the second opinion physician for the Office, was out of his field of expertise in trying to evaluate appellant's musculoskeletal complaints and problems and had no knowledge of myofascial pain syndrome. Dr. Holleman stated that, although he agreed with Dr. Daniel in that, a mild muscle strain should have resolved in less than four and a half years, appellant's condition was never diagnosed as a mild muscle strain and she was related to have a myofascial problem. Dr. Holleman released appellant to work, on a trial basis from four to six hours per day to six to eight hours per day.

Work slips excusing and/or limiting appellant from work and progress report diagnosing thoracic strain were also provided.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>1</sup> As part of this burden, appellant must furnish rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

disability and an accepted employment injury.<sup>2</sup> Causal relation and disability are medical issues that must be resolved by competent medical evidence.<sup>3</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>4</sup>

In this case, the Office referred appellant to Dr. B.T. Daniel, a Board-certified neurologist, for a second opinion examination. In his May 17, 1999 report, he opined that appellant had tension headache with component into the thoracic spine area with muscle spasms, depressive disorder and panic disorder. He opined that appellant could resume full-duty work and that all treatments to her back should be discontinued and advised against the recommended pain program. Dr. Daniel stated that, although it was likely that appellant had a mild muscle strain and she has had muscle contraction, kind of tension type symptoms ever since, he reasoned that a strain usually lasts for a couple of months and usually resolves in less than four and a half years.

Dr. Holleman, an osteopath specializing in pain management, reviewed the medical reports of record in his report of October 17, 1999 and stated that appellant's September 27, 1994 injury was a myofascial problem from the onset, which has continued through the present. He opined that, Dr. Daniel, the second opinion physician for the Office, was out of his field of expertise in trying to evaluate appellant's musculoskeletal complaints and problems and had no knowledge of myofascial pain syndrome. Dr. Holleman stated that, although he agreed with Dr. Daniel in that a mild muscle strain should have resolved in less than four and a half years, appellant's condition was never diagnosed as a mild muscle strain and she was related to have a myofascial problem. Dr. Holleman released appellant to work on a trial basis, from four to six hours per day to six to eight hours per day.

In view of the discrepancies between the opinions of Drs. Daniel and Holleman, the Board finds that there is a conflict in the medical opinion evidence as to the exact nature of appellant's musculoskeletal complaints and problems and whether she can work a full-duty job eight hours a day; therefore, the case will be remanded. On remand, the Office should prepare a statement of accepted facts and refer it, together with appellant and the case record, to an impartial Board-certified specialist in the appropriate field of medicine, to resolve the conflict as to whether appellant's musculoskeletal complaints and problems are an exacerbation of her prior employment injury pursuant to 5 U.S.C. § 8123(a). Following this and such further development as the Office deems necessary, a *de novo* decision should be issued.

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<sup>2</sup> *Armando Colon*, 41 ECAB 563 (1990).

<sup>3</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>4</sup> 5 U.S.C. § 8123(a); *see also Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

The November 24 and September 20, 1999 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case is remanded to the Office for further development consistent with this decision of the Board.

Dated, Washington, DC  
April 30, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member