

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VELINDA M. NORTON and DEPARTMENT OF THE ARMY,  
BLANCHFIELD ARMY COMMUNITY HOSPITAL, Fort Campbell, KY

*Docket No. 00-2105; Submitted on the Record;  
Issued August 30, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability on or about April 10, 1997 as a result of her September 13, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied authorization for a hot tub.

On September 13, 1994 appellant, then a 38-year-old file clerk, sustained a back injury while pushing and pulling heavy file shelves. Dr. Joe Morman, a family practitioner, examined appellant the following day and reported findings consistent with lumbar strain "or more probably a bulging disc." He diagnosed "ALBP -- probable disc." With an affirmative mark he indicated that this condition was caused or aggravated by the employment activity described because "repetitive bending or pushing can cause the above." He noted that appellant was moving medical records the day the pain began. On September 23, 1994 Dr. Morman diagnosed low back strain versus herniated disc. On October 18, 1994 a computerized tomography (CT) scan of the lumbosacral spine showed no radiographic evidence of a herniated nucleus pulposus (HNP) but did show mild diffuse bony degenerative change and a mild bulging of the disc annulus fibrosis at L4-5.

On September 30, 1994 Dr. Steven G. McLaughlin, appellant's attending orthopedist, diagnosed thoracolumbar strain. On October 28, 1994 he reported that he had reviewed the CT scan, which showed an L4-5 central disc bulge. He diagnosed lumbar strain, probable annular tear.

On October 18, 1994 the Office notified appellant that it had accepted her claim for low back strain. Appellant received compensation for periods of temporary total disability.

On December 15, 1994 a magnetic resonance imaging (MRI) scan of the lumbar spine showed the following: No radiographic evidence of HNP; small central disc protrusion at L4-5 but no radiographic evidence of HNP; and mild bulging of the disc annulus fibrosis at L5-S1 with no significant mass effect.

On June 6, 1995 a myelogram CT scan was obtained. The plain film images from the myelogram demonstrated mild extradural defect at L5-S1 with no definite evidence of HNP. The CT scan showed mild degenerative change throughout the lumbosacral spine including osteophytes. There was very mild bulging of the annulus fibroses at L4-5 and L5-S1 with no radiographic evidence of HNP. There was a mild amount of ligamentum flavum hypertrophy and a small amount of atherosclerotic calcification of the common iliac arteries with no evidence of aneurysm formation. The findings were reported to show no significant interval change since the prior CT and MRI examinations.

On October 30, 1995 appellant filed a claim asserting that she sustained a recurrence of disability on or about October 13, 1995 as a result of her September 13, 1994 employment injury. The Office accepted appellant's claim of recurrence and paid benefits.

On April 24, 1997 an MRI of the thoracic spine showed no significant abnormality. On July 10, 1997 Dr. Blaise E. Ferraraccio, a neurologist, examined appellant and reported, "I seriously doubt any neurologic disease." On July 23, 1997 Dr. Ferraraccio obtained electromyogram studies. Nerve conduction studies were normal and he could find no abnormalities. Based on these results, Dr. Ferraraccio advised appellant that he saw no evidence of neurologic disease. On July 28, 1997 Dr. Kevin J. Myers, a rheumatologist, reported that appellant presented for evaluation of chronic pain, which she felt began with her low back injury in 1994. Dr. Myers reported that his findings represented a chronic pain syndrome, as the severity of appellant's tenderness as well as her marked functional limitation was far in excess of anything that could be accounted for by organic illness. He suggested that she consider participating in a support group for individuals with fibromyalgia.

On March 3, 1998 Dr. Karla Montague-Brown diagnosed chronic pain syndrome, degenerative joint disease of the lumbar spine and possible fibromyalgia. On March 19, 1998 appellant was seen at a pain clinic, where Dr. Benjamin W. Johnson diagnosed myofascial pain syndrome, sleep disturbance, disability issues and substance issue.

On April 25, 1998 appellant filed a claim asserting that she sustained recurrence of disability on or about October 13, 1997 as a result of her September 13, 1994 employment injury. The Office accepted appellant's claim of recurrence and paid benefits. The Office expanded the approved conditions for the accepted employment injury to include myofascitis of the low back.

On April 8, 1999 Dr. David S. Knapp, a rheumatologist, reported that appellant had exquisitely tender trigger points in classic locations for fibromyalgia across the posterior neck, upper and lower back, shoulders, elbows and greater trochanters. He agreed with the diagnosis of fibromyalgia. On June 7, 1999 Dr. Knapp responded to the medical manager of appellant's claim for compensation and indicated that the accepted conditions of low back strain and myofascitis had not resolved. Objective findings included tender points and the prognosis was guarded. Dr. Knapp indicated that the usual recovery period for the accepted conditions was unpredictable.

On June 17, 1999 Dr. E. Dale Schoonover, a family practitioner and appellant's primary treating physician, reported that appellant suffered from fibromyalgia: "The patient had a back

injury at work in 1994 and has had some back problems related to that but her primary problem for which she is applying for disability is the fibromyalgia. It is my opinion that the back injury has nothing to do with the development of fibromyalgia and it is not related to her current limitations.”

On August 13, 1999 Dr. Schoonover reported that appellant suffered from fibromyalgia: “It is certainly possible that this is related to a work injury she suffered in approximately 1994 and may very well represent a post-traumatic fibromyalgia.” He reported that appellant had been through multiple modes of therapy but continued to be significantly symptomatic. Dr. Schoonover advised the Office as follows:

“The patient has found that use of a hot tub or sitting in hot water is very beneficial to her pain condition. Sometimes she will draw a hot tub of water several times a day to help relieve her pain. It follows that it is very likely that she would enjoy significant symptomatic relief from a therapeutic hot tub type device.

“I recommend that the patient be afforded, if at all possible, a hot tub for symptomatic relief of her pain associated with her fibromyalgia. If I can be of further assistance or provide additional information, please feel free to contact me.”

On December 27, 1999 appellant filed a claim asserting that she sustained a recurrence of disability on or about April 10, 1997 as a result of her September 13, 1994 employment injury. On February 11, 2000 the Office requested that appellant submit additional information to support her claim, including a reasoned medical opinion as to the relationship between the original work injury and her current condition or disability.

On January 27, 2000 Dr. Schoonover reported that appellant suffered from chronic fibromyalgia and chronic low back pain. He noted that appellant had benefited from taking hot baths and took approximately five hot baths per day for symptom alleviation. Appellant reported that she received good alleviation of symptoms from hot baths. Dr. Schoonover added:

“I have recommended and prescribed to her the use of a hot tub for therapeutic reasons. Therapeutic benefits include pain relief and a definite decrease in the amount of analgesia and narcotics required to control her back pain and fibromyalgia pain. Since the patient has had significant relief with hot baths, it is anticipated that this would be therapeutically important in the treatment of her problems and hopefully avoid chronic overuse of narcotic medications.”

In a decision dated March 28, 2000, the Office denied appellant’s claim of a recurrence on or about April 10, 1997. The Office noted that appellant submitted no medical opinion to support the claimed recurrence.

In a decision dated May 8, 2000, the Office denied authorization for a hot tub. The Office found that the medical evidence was not sufficient to establish that the requested equipment was medically necessary in relation to appellant’s employment-related injury.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or about April 10, 1997 as a result of her September 13, 1994 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>1</sup>

Because appellant failed to submit any medical opinion relating her disability for work on or about April 10, 1997 to her September 13, 1994 employment injury, much less any reasoned medical opinion on the matter, the Board finds that she has not met her burden of proof.

The Board further finds that the Office acted within its discretion in denying authorization for a hot tub.

Section 8103 of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."<sup>2</sup>

The Office found that the medical evidence was insufficient to establish that the requested equipment was medically necessary in relation to appellant's employment-related injury. The Office accepted appellant's claim for low back strain and, later, for myofascitis of the low back. Dr. Schoonover, appellant's attending family practitioner, recommended and prescribed the use of a hot tub for therapeutic reasons, but in doing so he did not report that the equipment was medically necessary for the treatment of appellant's work-related low back strain or myofascitis of the low back. He instead diagnosed fibromyalgia, a condition that the Office has not accepted as being related to the employment incident of September 13, 1994. In his June 17, 1999 report, Dr. Schoonover noted that appellant had a back injury at work in 1994 "and has had some back problems related to that but her primary problem for which she is applying for disability is the fibromyalgia." He reported that it was his opinion that the back injury in 1994 "has nothing to do with the development of fibromyalgia and it is not related to her current limitations." Less than two months later, when Dr. Schoonover recommended a hot tub, he changed his opinion. On August 13, 1999 he reported that it was certainly possible that appellant's fibromyalgia was related to the 1994 work injury she suffered in approximately 1994 "and may very well represent a post-traumatic fibromyalgia." Dr. Schoonover offered no medical rationale to support this opinion and gave no explanation for his change of mind on the issue of causal relationship. His opinion is of little probative value<sup>3</sup> and is insufficient to

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<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>2</sup> 5 U.S.C. § 8103(a); *see* 20 C.F.R. § 10.401(a); *Linda Holbrook*, 38 ECAB 229 (1986).

<sup>3</sup> The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

establish that a hot tub is medically necessary for the treatment of appellant's injury-related conditions.<sup>4</sup> The Office therefore acted within its discretion in denying authorization for a hot tub.

The May 8 and March 28, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
August 30, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> Dr. Schoonover also failed to explain the reason appellant's practice of drawing a bath of hot water several times a day was no longer sufficient to help relieve her pain. Neither did he explain how a hot tub was any more therapeutic than a simple bathtub.