

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHRYN MORFORD and DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL RESEARCH SERVICE, Wapato, WA

*Docket No. 01-993; Submitted on the Record;  
Issued December 18, 2001*

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DECISION and ORDER

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

The issue is whether appellant established that her diagnosed condition of chronic fatigue syndrome (CFS) was causally related to or aggravated by factors of her federal employment.

On December 13, 1999 appellant, then a 49-year-old biological technician, filed a timely notice of occupational disease alleging that work factors had caused or aggravated her diagnosed conditions of fibromyalgia and CFS. She indicated that she first became aware of her conditions in December 1997. The portion of the CA-2 form completed by appellant's supervisor indicated that she had not stopped working.

In an attending physician's report dated December 17, 1999, Dr. Larry Lefors, an osteopath and appellant's treating physician, diagnosed CFS, fibromyalgia, multiple chronic strains and sprains and somatic dysfunction. He noted his physical findings in support of the diagnosis as being tender points consistent with fibromyalgia, poor quality of motion and limited range of motion. Dr. Lefors reported that appellant's condition was related to her employment, specifically the stress of the job and prolonged standing. He noted that appellant was disabled from work from June 1 through August 1, 1999. In the remarks section of the CA-20 form, Dr. Lefors further noted, "continued fatigue, lab showing low levels of adrenal hormone."

In a December 20, 1999 report, Dr. Lefors noted that he had been appellant's treating physician since December 1988. He stated:

"This problem began to declare itself in December of 1997 when she injured her low back closing a large gate at work. She developed low back pain and leg, hip pain. This did not respond well to conservative treatment. In August of 1998 fatigue became the major complaint. This has been progressive. She does have 16/18 tender points of fibromyalgia as discussed in the [Primer on the Rheumatic Diseases]. She also meets [the] criteria of [c]hronic [f]atigue."

Appellant also submitted copies of Dr. Lefors' office notes dating from December 1997 through November 29, 1999, documenting her treatment for fatigue and chronic pain stemming from a December 7, 1997 work injury. It is noted that appellant tried to pull a gate closed at work when it retracted and jerked her causing neck and back pain. Dr. Lefors prescribed medication and light exercise for appellant's diagnosed conditions.

In a February 22, 2000 letter, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

In a decision dated April 5, 2000, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish a causal relationship between appellant's medical condition and her federal employment.

By letter dated May 3, 2000, appellant requested reconsideration.

In support of her request, appellant submitted a detailed statement describing the specific factors of her employment she believed had impact on her condition. These factors included, but were not limited to an excessive workload with inadequate staffing and support for the position held; working long hours (often taking work home with her as well as working overtime); and assuming the duties of 1½ positions that were unfilled due to staffing shortages, including planning research, performing chemical analyses, interpreting the results, reporting the results to the team scientist and officials of the Environmental Protection Agency or Food and Drug Administration, and managing the \$330,000.00 IR-4 budget. She also indicated that she was exposed to chemicals to include: acetaldehyde, acetonitrile, calcium hydroxide, carbontetrachloride, barium hydroxide, benzene, ether (99 percent), ether, petroleum, ethyl butyl methyl-tert, ethyl acetate, glacial acetic acid, heptane, hexane, hydrochloric acid, hydrogen peroxide, hydrogen sulfate, isopropyl alcohol, methanol, methylene chloride, methyl lithium, MSTFA, pentane, phosphoric acid, propionic acid, potassium chloride, potassium permanganate, potassium pyrosulfate, sodium bicarbonate, sodium chloride, sodium hydroxide, sodium sulfate, sulfuric acid and tert-butyl methyl ether.

Appellant also submitted an April 17, 2000 report from her treating physician, Dr. Lefors, which stated:

"It is my professional opinion on a more probable than not basis [that appellant] has [CFS]. This was not caused in total by her occupation. However, because of the chemicals it was necessary for her to handle on a regular basis, the stress of her job, the injury she had and the hours her job demanded, all of these factors led to her getting fatigued to the point she has not been able to recover from. We have done testing of her adrenal stress hormones and they are low. She has done all that has been asked of her and she still has not responded. Unfortunately this is not uncommon with this illness."

The record reveals that the claims examiner was inclined to accept the case based on Dr. Lefors' opinion, but a reviewing officer thought that Dr. Lefors' April 17, 2000 report was insufficiently reasoned and therefore forwarded the case to an Office medical adviser for review.

In an August 1, 2000 report, the Office medical adviser stated:

“[Appellant] is diagnosed to have [CFS]/fibromyalgia with her treating [physician] documenting increasing fatigue over 1998 to present with tender points characteristic of fibromyalgia.

“Although she works with chemicals and pesticides, this appears to be done within appropriate laboratory environments and with appropriate ventilation and precautions and with analytical amounts not industrial amounts since 1992. There is no probable relation identified between her exposure/use of chemicals and her [CFS] ... /fibromyalgia nor do I think there is a demonstrated causal relation between her workplace and CFS. However, although her reported use of chemicals is done with appropriate methodology, her CFS has a prominent component of aching in the arm and leg muscles. A comprehensive exam[ination] by a physician knowledgeable about chemical industrial hygiene *i.e.*, an occupational medicine physician should be obtained to ensure her symptoms of fatigue and aching muscles are not likely to be related to chemical exposures in the workplace.

“The diagnosis of CFS is one of exclusion and, until an exam[ination] from an occupational medicine physician along with laboratory tests of, for example, liver enzymes and muscle enzymes reveal no other more specific diagnosis, I cannot agree that a clear diagnosis of CFS/[f]ibromyalgia has been established.

“Although CFS often occurs in a setting of increased stress, stress is not an accepted medical cause of CFS. The accepted stressors can/may have consequences to mental health and a psychiatric/psychological evaluation should be done to evaluate how the accepted stressors caused or materially impacted the IW’s health, particularly her mental health.

“The medical evidence in file is not sufficient to convincingly diagnose CFS as the cause of all other symptoms nor to relate the cause of her CFS to her employment. Further laboratory testing and physical and mental evaluations as noted above are needed.”

The Office indicated in a statement of accepted facts that appellant’s job required her to work under tight budget and time restraints, and that her staff was short by two to three key personnel due to attrition and transfers, which meant that appellant worked several hours of overtime per week, “often working on weekends and late into the evening in an effort to complete the projects in a timely manner.”<sup>1</sup>

The Office subsequently referred appellant, along with a copy of the medical record and a the statement of accepted facts to Dr. William Moore, a Board-certified occupational medicine specialist, for examination.

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<sup>1</sup> Appellant directs one of three regional pesticide laboratories that supply data with respect to pesticide residue of food products.

In a report dated November 7, 2000, Dr. Moore discussed appellant's medical history and described in detail his examination of appellant. Dr. Moore diagnosed fibromyalgia and CFS, which he considered to be unrelated to appellant's employment. He stated that appellant's chemical exposures had neither caused nor aggravated her diagnosed condition. He further stated:

"In my opinion, the exposures were at very low levels and are not a factor in evaluating this case.

"Additional laboratory studies are not indicated. All studies done by her primary physician were reviewed and clearly refute any occupational etiology for her symptoms. In my opinion, [appellant] cannot resume her regular duties at this time. It is certainly recommended that if her remission continues, she resume work on a limited basis, with a gradual increase in her daily hours as tolerated. It is highly unlikely that she will be able to assume the full responsibilities and demands of her prior position. As both of her current diagnoses are poorly understood, it is impossible to clearly define her future prognosis."

The Office also referred appellant to Dr. Michael K. Friedman, a Board-certified psychiatrist. In a report dated November 7, 2000, Dr. Friedman noted that appellant had no past psychiatric history. He described his interview with appellant and stated that she presented with a number of physical complaints that would not meet the criteria for pain disorder. Although appellant related that she had no prior history of psychological problems, the physician noted that it was his impression that she had suffered depression in the past that was in remission. Dr. Friedman concluded that appellant had no psychological or psychiatric condition at the time of her evaluation.

In a decision dated December 7, 2000, the Office denied modification of the April 5, 2000 decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Willie J. Clements, Jr.*, 43 ECAB 244 (1991); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

In this case, appellant alleges that her diagnosed conditions of fibromyalgia and CFS were caused or aggravated by being overworked due to a staff shortage and stress in her job. In support her claim, appellant has submitted treatment notes documenting that she has been under the care of Dr. Lefors for fibromyalgia and CFS. He has specifically noted that the hours appellant was required to work in her job left her fatigued. He noted additional work factors such as stress and exposure to chemicals as having contributed to her diagnosed conditions.

In contrast, Dr. Moore examined appellant at the request of the Office and found no relationship between appellant's fibromyalgia and CFS and her chemical exposure. He further noted that there was no occupational etiology for her symptoms, although he did not address whether working long hours would have contributed to or aggravated appellant's CFS.

The Board having duly considered the opinions of appellant's treating physician and the Office referral physician find a conflict in the record as to whether or not appellant's CFS or her fibromyalgia were caused or aggravated by the work factors identified by the Office in the statement of accepted facts. Section 8103 of the 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>7</sup>

To resolve the conflict in the medical opinion evidence in this case, the Office should refer appellant, along with a copy of the medical record and a statement of accepted facts to an impartial medical specialist for an opinion on the issue of causal relationship. After such

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<sup>5</sup> *Ruth Seuell*, 48 ECAB 188 (1996); *James D. Carter*, 43 ECAB 113 (1991).

<sup>6</sup> *Id.*

<sup>7</sup> *Lawrence C. Parr*, 48 ECAB 445 (1997); *Wen Ling Chang*, 48 ECAB 272 (1997).

development as the Office deems necessary, the Office shall issue a *de novo* decision on appellant's entitlement to compensation.<sup>8</sup>

The December 7 and April 5, 2000 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC  
December 18, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> The Board further notes that the Office did not indicate whether appellant filed a workers' compensation claim with regard to the alleged December 7, 1997 work injury. If the Office accepted a prior claim for a December 7, 1997 work injury, then the prior case file should be combined with this case file to ascertain whether appellant's diagnosed conditions of fibromyalgia and chronic fatigue syndrome are a consequential injury. *See generally Margarette B. Rogler*, 43 ECAB 1034 (1992) (definition of consequential injury).