

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARYANN WHITE and U.S. POSTAL SERVICE,  
POST OFFICE, Columbus, OH

*Docket No. 01-2269; Submitted on the Record;  
Issued August 21, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she had any disability beginning November 29, 1999 to February 25, 2000 causally related to the accepted injuries.

On October 6, 1999 appellant, then a 55-year-old mailhandler, injured her low back and hip when she slipped on a skid which was placed on the wet floor. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain, right elbow strain, right shoulder strain and right hip strain.<sup>1</sup> She did not stop work but returned to limited duty.

Accompanying appellant's claim was a report from Dr. Peter Yeldell, a Board-certified emergency medicine doctor, dated October 6, 1999 and a report from Dr. Peter Hoy, an osteopath, dated November 12, 1999. The report from Dr. Yeldell noted a history of appellant's injury at work in October 1999. He noted her complaints of pain in the low back, right elbow, hip and shoulder. Dr. Yeldell diagnosed appellant with lumbosacral strain, muscle strain of the right elbow, right hip and right shoulder. He noted that the results of the lumbosacral spine x-ray were negative for fracture or subluxation. The report from Dr. Hoy dated November 12, 1999 noted a history of appellant's work-related injury October 6, 1999. He diagnosed appellant with fibromyalgia.

Thereafter, appellant submitted an attending physician's report from Dr. Yeldell dated October 6, 1999; treatment notes from Dr. Jeff Hatfield, a chiropractor, dated October 12, 1999 to March 20, 2000; a report from Dr. Timothy Coss, an osteopath, dated December 14, 1999; treatment notes from Dr. Hoy dated January 27 to April 18, 2000; and a narrative statement dated March 11, 2000. The attending physician's report from Dr. Yeldell dated October 6, 1999

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<sup>1</sup> The record indicates that appellant filed a previous claim for a back injury sustained on October 6, 1997, claim No. A9-434776. The Office accepted appellant's claim and paid appropriate compensation. The Office doubled claim No. A9-434776 and the current claim No. A9-458642.

diagnosed appellant with a lumbar strain; right shoulder sprain and elbow sprain. He noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Yeldell noted that appellant would be disabled from October 6 to October 8, 1999. The treatment notes from Dr. Hatfield dated October 12, 1999 to March 20, 2000 noted a history of appellant's injury. He indicated that she would be temporarily disabled from October 8 to October 22, 1999. Dr. Hatfield's note of October 13, 1999 diagnosed appellant with lumbar, thoracic and cervical sprain. He indicated that x-rays were performed which revealed moderate kyphosis of the cervical spine, moderate degenerative changes, osteophyte formation and a left lateral thoracic curvature. Dr. Hatfield noted that appellant was suffering from moderately severe symptomatology directly related to the fall of October 6, 1999. The report from Dr. Coss dated December 14, 1999 noted that, he had been treating appellant for multiple back problems since August 11, 1998. He noted a history of appellant's October 6, 1999 injury and her present complaints of neck, back and leg pain, which radiated to her hip. Appellant indicated that she could not return to her job of lifting, twisting or carrying skids. Dr. Coss noted that appellant's physical examination was essentially normal with negative straight leg raises and intact deep tendon reflexes. The treatment notes from Dr. Hoy dated January 27, 2000 noted appellant's complaints of pain in the lower back into her right leg. He noted that appellant last worked on October 7, 1999. Dr. Hoy diagnosed appellant with fibromyalgia. On a separate occupational health center form, he indicated with an "x" that appellant was unable to return to work and provided an estimated return on February 28, 2000. Dr. Hoy's February 25, 2000 report noted that appellant's complaints of pain in her shoulders radiating to her back. He diagnosed appellant with fibromyalgia and indicated she could return to work with restrictions. Dr. Hoy's March 20, 2000 note indicated appellant returned to work on February 28, 2000 on restricted duty. He diagnosed appellant with fibromyalgia. Dr. Hoy noted that appellant could continue working full time with restrictions. His April 18, 2000 note diagnosed appellant with fibromyalgia. Dr. Hoy noted that appellant could not return to work for a period of two months. Appellant's narrative statement dated March 11, 2000 noted she returned to work on February 28, 2000 with restrictions, however, was performing the same job as before. She was requesting the back compensation pay she believed was due to her.

On October 7, 1999 the employing establishment made a permanent limited-duty assignment offer to appellant. The job was to begin immediately and was subject to various restrictions to suit appellant's medical condition and to conform to his treating physician's restrictions.

On May 2, 2000 appellant filed a CA-7 form, requesting wage-loss compensation for disability for the period of November 29, 1999 to February 25, 2000.

By letter dated May 17, 2000, the Office requested additional factual evidence from appellant.

Subsequently, appellant submitted emergency room notes from April 17, 2000 and treatment notes from Dr. Hoy dated April 20 to June 20, 2000. The emergency room notes indicated appellant was being treated for an exacerbation of her lower back pain. The physical examination was normal and Dr. Hoy noted appellant was in no apparent distress. His April 20, 2000 attending physician's report diagnosed appellant with fibromyalgia. Dr. Hoy noted that the magnetic resonance imaging (MRI) scan of her back, lumbar films and electromyogram (EMG)

were found to be normal. He indicated with a question mark “?” regarding whether appellant’s condition was caused or aggravated by an employment activity. Dr. Hoy noted that appellant was totally disabled from April 18 to June 18, 2000 and indicated that appellant could not return to work at this time because of the severity of her symptoms. Dr. Hoy’s May 16, 2000 note diagnosed appellant with fibromyalgia and noted appellant was unable to work until July 1, 2000. His attending physician’s report dated May 25, 2000 diagnosed appellant with lumbar strain and fibromyalgia. Dr. Hoy noted with a check mark “yes” that appellant’s condition was caused or aggravated by her employment duties. He noted that appellant was totally disabled from April 18 to July 1, 2000. Dr. Hoy indicated that appellant attempted to return to work but experienced pain which prevented her from continuing to work. His June 20, 2000 letter indicated that he first treated appellant on November 12, 1999. Dr. Hoy noted that appellant was injured on October 6, 1999 after falling on her back. He noted appellant’s complaints of diffuse pain from her neck to her lower extremities. Dr. Hoy diagnosed appellant with fibromyalgia and noted that appellant’s contusion and strain symptomology have long passed and that she was symptomatic from her fibromyalgia as a direct result of this injury.

In a decision dated June 27, 2000, the Office denied appellant’s claim, finding that the evidence was not sufficient to establish that the claimed period of disability beginning November 29, 1999 to February 25, 2000 was causally related to appellant’s accepted injury of October 6, 1999.

By letter dated July 21, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on November 17, 2000. Appellant testified that she returned to her position on October 7, 1999, however, she was not performing light duty as recommended by her treating physician. Appellant indicated that she stopped work on November 29, 1999 on the recommendation of her treating chiropractor, Dr. Hatfield. She returned to work in February 2000. Appellant noted that she had a previous back injury in 1990. She indicated that she has had continuous back problems since she started working for the employing establishment in 1988.

Appellant submitted duplicative treatment notes from Dr. Hatfield dated October 13, 1999; treatment notes from Dr. Hoy dated July 20 to December 12, 2000; and several off work notices from Dr. Coss. Dr. Hoy’s July 20, 2000 note indicated that appellant’s fibromyalgia was precipitated by her injury on October 6, 1999 while performing her duties as a postal worker. His August 15, 2000 note and August 17, 2000 attending physician’s report indicated that he sustained an injury at work on November 6, 1999. Dr. Hoy diagnosed appellant with lumbar, shoulder and hip strain. He indicated with a check mark “yes” that appellant’s condition was caused or aggravated by employment duties noting that she developed post-traumatic fibromyalgia. Dr. Hoy noted that appellant was totally disabled from April 17 to August 15, 2000. His October 12, 2000 note again diagnosed appellant with fibromyalgia. Dr. Hoy’s December 6, 2000 letter noted that on November 12, 1999 he recommended appellant continue to work on restricted duty. He indicated seeing appellant on January 27, 2000 where he determined that she should not return to work because of her symptomology and clinical findings and was released to work on February 28, 2000 with restrictions. Dr. Hoy noted that appellant was taken off work on April 18, 2000 to the present because the employing establishment was unable to meet her work restrictions. He noted that appellant had not improved and could not return to her previous employment. Dr. Hoy’s December 12, 2000 report noted that appellant

was being treated for fibromyalgia and indicated that she would not be able to return to work until March 12, 2001. The back to work notices prepared by Dr. Coss, notes that appellant was off work indefinitely from January 3, 2000.

In a decision dated February 5, 2001, the hearing representative affirmed the decision of the Office dated June 27, 2000, on the grounds that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant's accepted injuries of October 6, 1999.

Appellant requested reconsideration and submitted duplicative notes from Dr. Hoy dated June 20 and July 20 and December 6, 2000 and additional new evidence including treatment notes from Dr. Hoy dated January 10, 15, 23 and January 26, 2001, February 5 and March 6, 2001; and two statements from appellant dated January 8 and March 7, 2001. The treatment notes from Dr. Hoy dated January 10, 2001 indicated that appellant developed incapacitating fibromyalgia. He noted that appellant had remained off work since April 18, 2000 because of the incapacitation of her fibromyalgia and would remain off work. The January 15 and 26, 2001 attending physicians reports diagnosed appellant with lumbosacral, shoulder and hip strain. Dr. Hoy noted with a check mark "yes" that appellant's condition was caused or aggravated by her work activities and indicated that she developed post-traumatic fibromyalgia. He noted appellant would be totally disabled from October 12, 2000 to January 23, 2001. Dr. Hoy's January 23, 2001 note indicated that appellant's condition was unchanged. He diagnosed appellant with fibromyalgia and noted that she could not return to work until June 23, 2001. Dr. Hoy's February 5, 2001 note indicated that appellant's lumbosacral, hip and shoulder strain had resolved and she has reached maximum medical improvement. He noted that appellant's fibromyalgia was disabling. Dr. Hoy noted that appellant could not return to work at this time. His March 6, 2001 attending physicians report and treatment note diagnosed appellant with lumbosacral, shoulder and hip strain. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by her work activities and indicated that appellant developed post-traumatic fibromyalgia. Dr. Hoy noted that appellant would be totally disabled from March 12 to June 12, 2001.

In a decision dated March 27, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence of file is insufficient to warrant modification of the prior decisions.

In a letter dated May 10, 2001, appellant requested reconsideration of the decision dated March 27, 2001 and submitted additional medical evidence. She submitted treatment notes from Dr. Hoy from April 17 to May 24, 2001; a workers compensation questionnaire prepared by Dr. Hoy dated April 17, 2001; and two attending physicians reports prepared by Dr. Hoy dated April 28 and May 30, 2001. The treatment notes from Dr. Hoy dated April 17, 2001 noted no change in appellant's condition and indicated that she still experienced daily pain. He diagnosed appellant with fibromyalgia. Dr. Hoy's treatment notes from May 24, 2001 noted that appellant was no better and no worse. He indicated that the functional capacity evaluation (FCE) was received and appellant was able to do sedentary work only. Dr. Hoy diagnosed appellant with fibromyalgia. The workers compensation questionnaire prepared by him noted a history of appellant's injury indicating that she sustained multiple episodes of strains and sprains reportedly from work during the 1990's. He noted tenderness along the spine with many trigger points.

Dr. Hoy indicated with a check mark “yes” that appellant’s injury was a result of the work-related injury and that she was disabled. The attending physicians reports prepared by Dr. Hoy dated April 28 and May 30, 2001 indicated that appellant sustained a fall at work on October 6, 1999. He diagnosed appellant with a shoulder and hip strain and fibromyalgia. Dr. Hoy indicated with a check mark “yes” that the condition was caused or aggravated by an employment activity noting that appellant had post-traumatic fibromyalgia. He indicated that appellant was totally disabled from March 12 to June 12, 2001. Dr. Hoy recommended a PCE.

In a decision dated July 26, 2001, the Office denied appellant’s request for reconsideration on the grounds that the evidence of file is insufficient to warrant modification of the prior decisions.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of October 6, 1999.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused by or adversely affected the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.<sup>2</sup>

The Office accepted appellant’s claim’s for lumbosacral strain, right elbow strain, right shoulder strain and right hip strain. However, the medical evidence submitted in support of the wage-loss compensation claim for disability, for the period beginning November 29, 1999 to February 25, 2000 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury. The medical records most contemporaneous with the claimed period of disability fail to state that appellant was disabled from work during this period. The report from Dr. Yeldell dated October 6, 1999 diagnosed appellant with lumbosacral strain, muscle strain of the right elbow, right hip and right shoulder. He noted that, the results of the lumbosacral spine x-ray was negative for fracture or subluxation. Dr. Yeldell noted that appellant would be disabled from October 6 to 8, 1999, a period prior to the time claimed by appellant. The reports from Dr. Hoy dated November 12, 1999, January 27 and February 25, 2000 noted a history of appellant’s work-related injury of October 6, 1999 and diagnosed her with fibromyalgia, a condition not accepted by the Office. The report from Dr. Coss dated December 14, 1999 noted a history of appellant’s October 6, 1999 injury and her present complaints of neck, back and leg pain which radiated to her hip. Even though these physicians noted that appellant was still experiencing symptoms of her back condition, the physicians did not specifically address whether appellant had employment-related disability beginning November 29, 1999 to February 25, 2000. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>3</sup> Additionally, Dr. Hoy, in an occupational health center form indicated with an “x” that appellant was unable to return to work and provided an estimated return on February 28, 2000. He also

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<sup>2</sup> See *Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>3</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

prepared two attending physicians reports dated April 28 and May 30, 2001 indicating with a check mark “yes” that appellant’s condition was caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship, which consists only of a physician checking a medical form report question is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>4</sup>

Other reports from Dr. Hoy dated March 20, 2000 to May 24, 2001 did not specifically address whether appellant’s October 6, 1999 injury caused or aggravated disability during the claimed period at issue, November 29, 1999 to February 25, 2000. He diagnosed appellant with fibromyalgia, however, the Board notes that this was not an accepted condition. The Office never accepted that appellant developed fibromyalgia as a result of her October 6, 1999 work injury and there is no medical rationalized evidence to support such a conclusion.<sup>5</sup> The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>6</sup>

Dr. Hoy’s reports dated June 20 and July 20, 2000 diagnosed appellant with fibromyalgia and noted that appellant’s contusion and strain symptomatology had long passed, however, noted appellant was symptomatic with fibromyalgia, a condition which he believed developed as a direct result of her October 6, 1999 injury. Although, his opinion somewhat supports causal relationship in a conclusory statement he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>7</sup> Additionally, Dr. Hoy did not specifically address whether appellant had employment-related disability beginning November 29, 1999 to February 25, 2000. Therefore, these reports are insufficient to meet appellant’s burden of proof.

The reports from Dr. Hatfield dated October 13, 1999 to March 20, 2000 diagnosed appellant with lumbar strain, thoracic strain and cervical strain; however, he is not a physician as he did not diagnose a spinal subluxation based on x-rays. Section 8101(2) of the Federal Employees’ Compensation Act provides that chiropractors are considered physicians “only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.”<sup>8</sup>

Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a “physician” and his or her

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<sup>4</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>5</sup> For conditions not accepted by the Office as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office’s burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB \_\_\_ (Docket No. 98-2423, issued August 29, 2000).

<sup>6</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 8101(2).

reports cannot be considered as competent medical evidence under the Act.<sup>9</sup> Thus, as the underlying issue in this case is medical in nature, Dr. Hatfield's reports, are of no relevance as he is not a physician under the Act.

Additionally the employing establishment offered appellant a permanent light-duty assignment beginning October 7, 1999, which complied with appellant's medical restrictions. There is no credible evidence that appellant was denied appropriate light-duty work during periods in which the medical evidence showed that he could perform light duty.<sup>10</sup>

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of October 6, 1999. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant's employment injury.

The decisions of the Office of Workers' Compensation Programs dated July 26, March 27 and February 5, 2001 are hereby affirmed.

Dated, Washington, DC  
August 21, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Susan M. Herman*, 35 ECAB 669 (1984).

<sup>10</sup> See *Terry R. Hedman*, 38 ECAB 222 (1986).