

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LILLIAN M. TANGUAY and SOCIAL SECURITY ADMINISTRATION,  
OFFICE OF HEARINGS & APPEALS, Manchester, NH

*Docket No. 02-1982; Submitted on the Record;  
Issued April 15, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 6, 2001 on the grounds that she had no disability after that date due to her employment injury.

In January 2000, appellant, then a 53-year-old computer assistant, filed a claim alleging that she sustained fibromyalgia and other conditions due to her employment. Appellant stopped work for various periods and worked in limited-duty positions. She last worked for the employing establishment in December 1999. By decision dated April 25, 2001, the Office accepted that appellant sustained an aggravation of fibromyalgia, but she did not have employment-related residuals after April 6, 2001. For both determinations, the Office relied on the opinion of Dr. Jeffrey D. Rind, a Board-certified neurologist, to whom the Office referred appellant.

By decision dated and finalized August 24, 2001, an Office hearing representative set aside the Office's April 25, 2001 decision and found that the opinion of Dr. Rind required additional rationale to support the determination that appellant had no employment-related residuals of her employment injury after April 6, 2001. She directed the Office to obtain a supplemental report from Dr. Rind on this matter. By decision dated November 26, 2001, the Office terminated appellant's compensation effective April 6, 2001 on the grounds that she had no disability after that date due to her employment injury. The Office determined that a supplemental report of Dr. Rind provided sufficient medical rationale to justify the termination. By decision dated and finalized June 26, 2002, an Office hearing representative affirmed the Office's November 26, 2001 decision.

The Board finds that the Office properly terminated appellant's compensation effective April 6, 2001 on the grounds that she had no disability after that date due to her employment injury.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Rind, the Board-certified neurologist who served as an Office referral physician. He properly determined that appellant had no disability due to her employment injury, aggravation of preexisting fibromyalgia, after April 6, 2001.

In a report dated April 6, 2001, Dr. Rind reported the history of appellant's symptoms which she experienced since beginning work for the employing establishment in 1984. He noted that appellant reported experiencing head, neck, shoulder, back and upper extremity pain with symptoms increasing substantially in 1997. Dr. Rind indicated that appellant reported pain and numbness upon various tests during his examination on April 6, 2001, but that there were some inconsistencies in appellant's responses. He diagnosed fibromyalgia, depression and perhaps connective tissue disorder and noted that there was no specific work-related accident that triggered appellant's symptoms. Dr. Rind indicated that it is difficult to differentiate between appellant's nonwork-related condition and her work-related condition, but noted that most of what appellant complained of was an aggravation of a preexisting injury. He indicated that there appeared to be a strong component of depression and chronic fatigue in appellant's condition.<sup>5</sup>

In a report dated April 25, 2001, addressed to an Office consultant, Dr. Rind stated, "In answer to your request for clarification, in my opinion, the patient's work duties and stress caused by work duties did aggravate the preexisting fibromyalgia. The symptoms she is experiencing now are not work related."<sup>6</sup>

In a report dated September 27, 2001, addressed to an Office consultant, Dr. Rind stated:

"You stated that the U.S. Department of Labor requests that I give my rationale for why the symptoms of fibromyalgia are no longer work related. As you are aware, I stated in my [April 25, 2001] addendum that the work duties did aggravate preexisting fibromyalgia. When I examined the patient she told me that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> In an attached form report, Dr. Rind noted that appellant could work 4 to 6 hours per week and lift up to 10 pounds.

<sup>6</sup> The Office had asked Dr. Rind to clarify his April 6, 2001 report with respect to whether appellant's condition was employment related.

she had not worked for a year. It is my opinion that at the time I performed the examination some of [appellant's] symptoms may have been related to fibromyalgia. However, since she was not working for over a year, clearly her work duties could not have exacerbated her symptoms.”<sup>7</sup>

The Board has carefully reviewed the opinion of Dr. Rind and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Rind's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>8</sup> Dr. Rind provided medical rationale for his opinion by explaining that appellant's condition would not continue to have an employment-related component as she had stopped work for well over a year and, therefore, would not have been exposed to continuing employment factors. He noted that work factors only temporarily aggravated appellant's underlying condition and that the absence of such factors would have allowed appellant's condition to return to its preexisting state. Dr. Rind noted inconsistencies in appellant's examination and indicated that her continuing problems would be due to her underlying fibromyalgia and nonwork factors such as depression and fatigue.<sup>9</sup>

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<sup>7</sup> This report was produced in response to the Office's November 26, 2001 decision which directed Dr. Rind to provide a supplemental report.

<sup>8</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>9</sup> Appellant has claimed that her fibromyalgia condition was caused by her work and that the work-related component of her condition was permanent, but her claim was accepted for a work-related aggravation of a preexisting condition and the medical evidence does not otherwise support appellant's claims. Appellant had received treatment from Dr. John C. Gorman, a Board-certified internist specializing in rheumatology. The last report of Dr. Gorman was dated September 29, 2000 and the record does not contain the report of any attending physician from around the effective date of the termination of appellant's compensation. Moreover, the reports of Dr. Gorman do not show that appellant's fibromyalgia condition was caused by her work or that the work-related component of her condition was permanent.

The June 26, 2002 and November 26, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
April 15, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member