

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA S. KINCAID and U.S. POSTAL SERVICE,  
POST OFFICE, Columbus, OH

*Docket No. 02-2231; Submitted on the Record;  
Issued February 27, 2003*

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DECISION and ORDER

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

The issue is whether appellant was disabled intermittently during the periods July 5, 1997 through March 20, 1998, April 25 through December 5, 2000 and February 6 through March 5, 2001, causally related to her accepted employment injuries.

The Office of Workers' Compensation Programs accepted that on June 16, 1994 appellant, then a 47-year-old distribution clerk, sustained cervical and thoracic strains when a stack of mail tubs fell on her. On July 6, 1996 appellant became aware that she had sustained cervical, thoracic and lumbar strain and on February 6, 1998 she filed an occupational disease claim alleging back and neck problems due to ongoing employment factors. On March 12, 1998 the Office accepted that appellant sustained cervical, thoracic and lumbar strains. Thereafter, the Office expanded appellant's claim to include fibromyalgia. The cases were doubled on March 16, 1998.

A claim for recurrence of disability on June 16, 1999 was initially rejected on August 31, 1999 but following a hearing, that decision was reversed and appellant received appropriate compensation benefits. On February 8, 2000 the employing establishment offered appellant a modified distribution clerk position which was accepted on February 9, 2000.<sup>1</sup>

Appellant submitted three CA-7 forms, claims for compensation, alleging total disability intermittently during the periods July 5, 1997 through March 20, 1998, April 25 through December 5, 2000 and February 6 through March 5, 2001, causally related to her accepted employment injuries.<sup>2</sup>

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<sup>1</sup> Appellant's restrictions included no lifting over eight pounds, no repetitive lifting, no lifting over the shoulder and no stooping.

<sup>2</sup> A previously filed Form CA-7 claim for compensation for leave buy-back for absences during the period July 6, 1996 through March 23, 1998 was approved for 264 hours.

A July 7, 1997 treatment note indicated that appellant returned to work on July 23, 1997 but did not address why she was disabled prior to returning to work.

A July 21, 1997 treatment note indicated that appellant was terrified of returning to work stating that she could not stand the pain anymore. Disability was not discussed.

A July 22, 1997 medical report from Dr. Patrick B. Ball, an osteopathic family practitioner, indicated appellant's work activity restrictions. These were reiterated in several 1998 CA-17 forms and OWCP-5c reports.

Treatment notes dated August 11 and 29, September 12 and 26, October 14 and November 5, 1997 diagnosed lumbar and thoracic strain and fibromyalgia but did not discuss disability. Likewise, notes dated January 14, February 13 and March 13, 1998 discussed appellant's current symptoms, diagnosed cervical, thoracic and lumbar strain and fibromyalgia, but did not discuss disability. On March 13, 1998 Dr. Ball also noted that appellant was having trouble concentrating and was worried over her job and her disability, but he did not indicate that she was disabled or discuss causal relationship.

In a February 8, 2000 narrative report, Dr. Ball stated: "I believe [appellant] was off work in June 1999 because of the combined effects of her cervical, thoracic and lumbar sprains along with fibromyalgia."<sup>3</sup>

An April 24, 2000 office indicated that appellant was treated for bronchospasm, which was not an accepted condition. An April 25, 2000 note indicated that appellant needed an excuse to be off work for that date as she went home due to dust and wheezing. A May 4, 2000 note indicated that appellant was treated for asthma and that she could return to work on May 11, 2000. A May 10, 2000 office note indicated that appellant was treated for asthma and allergies.

A November 13, 2000 note diagnosed lumbar strain and fibromyalgia and a December 6, 2000 note diagnosed lumbar strain.

A January 15, 2001 note diagnosed fibromyalgia but did not discuss causation.

A note dated February 23, 2001 indicated that appellant could return to work on February 26, 2001 but provided no explanation as to why she was totally disabled for that period.

A Form CA-20, attending physician's report, from Dr. Ball diagnosed lumbar strain and bronchospasm and indicated that appellant was totally disabled for the periods April 25 through 27, May 4, June 7 and October 31 through December 15, 2000. Dr. Ball opined that appellant's bronchospasm was not caused or aggravated by her work but that the cough associated with the bronchospasm aggravated her low back pain.

A March 3, 2001 Form CA-20 diagnosed lumbar strain and fibromyalgia and indicated that appellant was off work from February 28 to March 5, 2001. Dr. Ball checked "yes" to the

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<sup>3</sup> Unfortunately this was not a period of disability claimed by appellant.

question regarding whether the conditions found were caused or aggravated by an employment activity, but offered no further elucidation.

An April 9, 2001 note indicated that appellant was off work through May 20, 2001 but it did not legibly clarify what condition was implicated in her disability.

By decision dated October 15, 2001, the Office denied appellant's claims finding that the medical evidence of record failed to support that appellant was disabled for intermittent dates during the periods in question. The Office found that the medical evidence of record did not establish that appellant was totally disabled for work for the dates claimed.

Appellant disagreed with this decision and requested an oral hearing before an Office hearing representative. A hearing was held on April 30, 2002 at which appellant testified.

Appellant testified that when she returned to work she was in a limited-duty job performing sedentary office duties. She claimed that when she ceased work on July 5, 1997 it was a very stressful period and her fibromyalgia reacted adversely to the stress. Appellant noted that she was off intermittently from July 5, 1997 until March 20, 1998 because the activities of working on the blue books was very stressful and would cause her fibromyalgia to accelerate, thereby disabling her for intermittent dates. She missed a total of 306 hours during the applicable period. Appellant claimed that each time she was off she brought in documentation from her physician, Dr. Ball, which supported disability due to a flare-up in her fibromyalgia.

During the period April 25 through December 5, 2000 appellant intermittently missed approximately 291 hours. She testified that these absences were due to flare-ups of her fibromyalgia, but she indicated that this was complicated by bronchitis associated with the fibromyalgia. Appellant claimed that the coughing and sneezing accompanying the bronchitis caused the pain from her fibromyalgia to increase and incapacitate her. However, she indicated that it was the stress associated with reconstructing blue books that triggered her fibromyalgia to a great extent.

During the period February 6 through March 5, 2001 appellant intermittently missed approximately 59 hours. She stated that she was diagnosed with asthma in February 2001 and, again, there was extreme pressure from working on the carrier blue books. Appellant claimed that there was a lot of dust at the workplace, which caused her to cough and wheeze a lot which aggravated her fibromyalgia.

By decision dated July 23, 2002, the hearing representative affirmed the October 15, 2001 decision finding that appellant failed to provide sufficient medical documentation to support total disability for the dates in the periods claimed.

The Board finds that appellant has failed to establish that she was disabled for the periods July 5, 1997 through March 20, 1998, April 25, through December 5, 2000 and February 6, through March 5, 2001, causally related to her accepted employment injuries.

Whether a particular injury or condition causes an employee disability for employment on certain dates or during certain periods is a medical question that must be resolved by competent medical evidence.<sup>4</sup>

In this case, appellant has failed to submit sufficient medical evidence to establish her disability for employment for the periods in question. None of the reports or treatment notes from Dr. Ball identify any specific dates of disability for appellant's light-duty work or provide any medical rationale linking specific dates or periods of disability to her accepted employment injuries or conditions. Dr. Ball merely indicated appellant's complaints at the time and to diagnose cervical, thoracic and lumbar strain and fibromyalgia. No specific dates or periods of disability were identified and no discussion concerning any disability was provided. He did not provide medical rationale relating these periods of disability to appellant's accepted employment injuries.<sup>5</sup> Therefore, these reports and treatment notes are insufficient to establish intermittent dates of disability for the periods July 5, 1997 through March 20, 1998, April 25 through December 5, 2000 and February 6 through March 5, 2001, causally related to her accepted employment injuries.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 23, 2002 is affirmed.

Dated, Washington, DC  
February 27, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> See *Donald E. Ewals*, 51 ECAB 428 (2000); *Patrick H. Hall*, 48 ECAB 514 (1997).

<sup>5</sup> Further, no bridging symptomatology linking any disability to the original injuries is indicated.