

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEEVONIA TOWNES and U.S. POSTAL SERVICE,  
POST OFFICE, Hyde Park, MA

*Docket No. 02-1076; Submitted on the Record;  
Issued January 10, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant established that she sustained a recurrence of disability on November 22, 1993 causally related to her August 10, 1990 work injury.

On August 10, 1990 appellant, then a 37-year-old letter carrier, was injured in the performance of duty when she was knocked down by two dogs, causing her to fall and hit the back of her head. The Office of Workers' Compensation Programs accepted her claim for a back strain, cervical strain and postconcussion syndrome. Appellant began treatment with Dr. David E. Rosenberg, a chiropractor, on September 14, 1990. She was placed on a regiment of spinal manipulation, heat, ice and exercise therapy. Compensation for wage-loss disability was paid from the date of the injury until appellant returned to light duty on October 1, 1990, with restrictions on lifting over 10 pounds, no heavy lifting, no repeated bending, twisting or stooping and no mail carrying.

The employing establishment sent appellant for a fitness-for-duty evaluation with Dr. George B. McManama, Jr., a Board-certified orthopedic surgeon, on January 6, 1992. He found that appellant had no discogenic pathology in her lumbar spine. Dr. McManama opined that she could resume her regular duties as a letter carrier without restrictions.

In a report dated October 16, 1992, Dr. Charles W. Lowney, an osteopath, described appellant's medical history, complaints of pain and treatment from May through September 1992. He noted normal results with respect to a January 4, 1992 magnetic resonance imaging (MRI) scan and a June 25, 1992 nerve conduction study that showed no evidence of neuropathy or radiculopathy of the right arm. Dr. Lowney diagnosed cervical, dorsal and lumbar somatic dysfunction of the left and right leg with sacroiliac pain, right arm neuropathy, headaches and myofascitis. He attributed appellant's conditions to the work injury, noting that appellant was still in discomfort.

Appellant filed a claim for a recurrence of disability beginning November 22, 1993. She stated that she had experienced headaches, continuous neck pain and shoulder pain, back pain with a burning sensation down the right leg, chronic fatigue and depression.

In a December 1, 1993 letter, Dr. Feresteh Soumekh, a family practitioner, stated that appellant was currently involved in an outpatient pain program at Spaulding Rehabilitation Hospital, which would require four weeks of daily maintenance.

The Office referred appellant for a second opinion examination with Dr. John Duff, an orthopedic surgeon. In a December 8, 1993 report, Dr. Duff found that appellant's cervical and lumbar strain had resolved. He listed physical findings and diagnosed mild tendinitis and bursitis of the right shoulder. Dr. Duff opined that there were no objective findings to support any continuing disability with regard to appellant's accepted work injury. He concluded that appellant was capable of returning to full duty.

In a March 15, 1994 decision, the Office denied appellant's claim for a recurrence of disability.

Appellant requested reconsideration and submitted additional evidence.

In a report dated April 6, 1994, Dr. Lowney described several dozen office visits by appellant from 1993 to 1994, during which time appellant complained of low back, neck, right shoulder, leg, ankle and hip pain. He indicated that appellant's pain was worse during weather changes and while working near an air condition. Appellant related to Dr. Lowney that her shoulder had been hurting her since the August 10, 1992 work injury. He injected appellant's right shoulder for treatment of bursitis. The diagnosis was listed as cervical, dorsal and lumbar somatic dysfunction, fibromyalgia secondary to trauma, bursitis and tendinitis of the right shoulder with a probable rotator cuff tear of the right shoulder. Dr. Lowney opined that appellant was in real pain and was not a malingerer. He concluded that appellant had become depressed from her long-term pain and disability secondary to her work injury.

In a September 27, 1994 decision, the Office denied modification of the March 15, 1994 decision.

In a May 9, 1997 decision, the Board determined that a conflict of medical opinion existed between appellant's treating physicians and the Office referral physician as to whether appellant had any continuing disability due to her work injury. The Board set aside the Office's decisions and remanded the case for an impartial medication evaluation.<sup>1</sup>

The Office referred appellant along with a statement of accepted facts and a copy of the medical record to Dr. Richard Greenberg, a Board-certified orthopedist, for an impartial medical examination. In a report dated August 25, 1997, Dr. Greenberg noted appellant's history of injury and medical treatment to date. A physical examination was performed and physical findings were provided. Dr. Greenberg opined that appellant's work-related conditions of a back strain, neck strain and postconcussion syndrome had long since resolved. He indicated that

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<sup>1</sup> *Leevonia Townes*, Docket No. 95-911 (May 9, 1997).

appellant had classic findings of fibromyalgia, including psychosomatic complaints, depression, coldness and body aching. He also found complaints associated with chronic fatigue syndrome, including generalized fatigue and feelings of weakness. Dr. Greenberg stated:

“Unfortunately, these last two diseases are diseases of exclusion present by their clinical symptoms but not by any laboratory findings. Their duration is far longer than a simple sprain, strain or contusion. It is my opinion that [appellant’s] fibromyalgia and her myofascial disease at this time, along with her chronic fatigue syndrome, which I also believe she has, are not related to her original fall at work and she has long since recovered from that and she now has an unassociated chronic fatigue syndrome and fibromyalgia. It is those things which are giving her symptoms right now and not any disc injury or injury to the muscles that were sustained at the time of her original injury.”

Dr. Greenberg concluded that there were no objective findings to prevent appellant from returning to work in her former job.

The Office asked for clarification from Dr. Greenberg as to whether appellant’s work stoppage on November 22, 1993, was a result of her accepted 1990 work injury.

In a September 22, 1997 letter, Dr. Greenberg stated:

“Regarding your question on [appellant], please be advised that it is my opinion that her fibromyalgia, chronic depression and chronic fatigue syndrome is not related to her original injury at work and that her stoppage of work at that time within a reasonable degree of medical certainty three years after her injury is more likely due to her fibromyalgia and chronic fatigue syndrome and depression than her original injury although it is often very hard to separate out one from the other. By virtue of the nature of her original injury, she should have recovered by three years afterwards and the fact that she was working in light duty status for three years and then became out of work because of worsening of her symptoms due to her fibromyalgia and depression suggests that they are not related to the original injury.”

In an October 1, 1997 decision, the Office denied compensation for a recurrence of disability based on the opinion of Dr. Greenberg, the impartial medical specialist.

On April 16, 1998 an Office hearing representative affirmed the Office’s October 1, 1997 decision.

In a decision dated July 12, 2000, the Board adopted the findings of the Office hearing representative and affirmed the Office’s October 1, 1997 decision.<sup>2</sup>

In a letter dated July 12, 2001, appellant by counsel requested reconsideration, contending that the Board’s decision was in error as medical opinions were rendered by Board-

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<sup>2</sup> *Leevonia Townes*, Docket No. 98-2352 (July 12, 2000).

certified orthopedists who were not qualified to diagnose or understand the nature of fibromyalgia.

Appellant also submitted reports dated June 7 and April 16, 2001 from Dr. Mahoob Rahman, a Board-certified physician in internal medicine specializing in rheumatology, who discussed the medical record and diagnosed appellant as suffering from fibromyalgia related to the August 10, 1990 work injury. Although Dr. Rahman indicated that the exact cause of fibromyalgia was unknown, he disagreed with Dr. Greenberg's conclusion that appellant's fibromyalgia was not work related. He stated:

“From exhaustive review of her extensive medical records it is evident that before the accident of August 10, 1990, [appellant] had no sign or symptoms suggestive of Fibromyalgia. She was fully functional and healthy except for diabetes and occasional episodes of mild depression. Although it is impossible to determine now but given the history of mild depression she could have had a personality trait prone to develop fibromyalgia. The accident provided the trigger for the development of fibromyalgia and post-traumatic stress disorder. [Appellant] had symptoms within a few days after the accident and gradually progressed over the subsequent three years to disabling proportions. Given her medical records, my evaluation and current understanding of fibromyalgia, she is suffering from fibromyalgia and I can conclude with reasonable degree of medical certainty that it was triggered by her accident on August 10, 1990.”

In a decision dated December 8, 2001, the Office denied modification of its prior decisions.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on November 22, 1993 causally related to her August 10, 1990 work injury.

As used in the Federal Employees' Compensation Act,<sup>3</sup> the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>5</sup> This burden includes the necessity of 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

supports that conclusion with sound medical reasoning.<sup>6</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relationship.<sup>7</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>8</sup>

In this case, appellant sustained a back strain, cervical strain and postconcussion syndrome when she was knocked down by two dogs while attempting to deliver the mail on August 10, 1990. She returned to limited duty on October 1, 1990 and worked until November 22, 1993 when she filed a claim for a recurrence of disability. Appellant submitted a report from her treating physician, Dr. Lowney, indicating that she suffered from bursitis and tendinitis of the right shoulder, cervical and lumbar dysfunction and fibromyalgia secondary to the August 10, 1990 work injury. Appellant was also examined by an Office referral physician, Dr. Duff, with respect to her claim for recurrence of disability. Dr. Duff opined that appellant's mild tendinitis and bursitis of the right shoulder was not due to the accepted work injury. He found that appellant's accepted conditions had resolved and opined that she could return to full regular duties.

Because a conflict existed in the record, appellant was referred to a Board-certified orthopedist for an impartial medical evaluation. Dr. Greenberg examined appellant on August 25, 1997. He found that appellant's accepted conditions of cervical and a lumbar strain, and postconcussion syndrome had long since resolved. He agreed with Dr. Lowney that appellant had classic symptoms of fibromyalgia with associated depression, chronic fatigue syndrome and feelings of fatigue and weakness. However, Dr. Greenberg did not find that these diagnosed conditions were causally related to the August 10, 1990 work injury. He specifically stated that appellant's work stoppage on November 22, 1993 was unrelated to her 1990 accepted work injury. Dr. Greenberg did not offer an opinion as to the etiology of appellant's chronic fatigue syndrome, depression or fibromyalgia.

In the second appeal, the Board found that Dr. Greenberg's opinion was sufficiently reasoned to entitle it to special weight on the issue of causal relationship on the issue of appellant's disability due to her accepted injury on and after November 23, 1993. Dr. Greenberg provided a reasoned opinion that appellant's lumbar and cervical strain, along with her post-concussion syndrome resolved within three years of August 10, 1990. He also found that

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<sup>6</sup> *Jose Hernandez*, 47 ECAB 288 (1996).

<sup>7</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>8</sup> *Gus N. Rodes*, 46 ECAB 518 (1995).

appellant's fibromyalgia, chronic fatigue syndrome and depression were not related to the work injury.

On reconsideration appellant submitted the report of Dr. Rahman, which challenged the impartial medical specialist's opinion on the grounds that he was unaware that appellant had been diagnosed with fibromyalgia by a qualified rheumatologist. Contrary to appellant's contention, Dr. Greenberg confirmed the diagnosis of fibromyalgia rendered by appellant's treating physician. He disagreed with Dr. Lowney's opinion that the condition was related to the August 10, 1990 work injury. Moreover, Dr. Greenberg was provided a copy of the entire medical file and a statement of accepted facts. The Board consequently finds that his opinion was based on a proper medical and factual background.

The Board further finds that the opinion of Dr. Rahman is not sufficiently reasoned to overcome the weight of the impartial medical specialist's opinion on causal relationship. Dr. Rahman opined that appellant's fibromyalgia was due to her work injury primarily because he saw no evidence of the condition prior to August 10, 1990. Although he notes that appellant had "symptoms within a few days of the accident" he fails to identify those symptoms or otherwise explain the relationship to the diagnosis of fibromyalgia at least three years subsequent to the work injury.

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>9</sup>

Furthermore, the fact that the etiology of a disease or condition is unknown or obscure does not relieve appellant of the burden of establishing a causal relationship by the weight of the evidence, including affirmative medical opinion based on the material facts with supporting rationale.<sup>10</sup> Because Dr. Rahman's opinion is not sufficiently reasoned to carry appellant's burden of proof, it fails to create a new conflict in the medical record. The Board again accords the opinion of Dr. Greenberg with special weight as he is the impartial medical specialist. Consequently, the Board concludes that appellant's claim for a recurrence of disability was properly denied and she has not established her other conditions are related to the accepted injury.

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<sup>9</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *Claudia L. Yantis*, 48 ECAB 495 (1997); *William S. Wright*, 45 ECAB 498 (1994).

<sup>10</sup> *Judith J. Montage*, 48 ECAB 292 (1997).

The decision of the Office of Workers' Compensation Programs dated December 8, 2001 is hereby affirmed.

Dated, Washington, DC  
January 10, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member