

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTHA M. MATTHEWS and DEPARTMENT OF THE ARMY,  
U.S. ARMY RESERVE PERSONNEL, St. Louis, MO

*Docket No. 03-1844; Submitted on the Record;  
Issued October 21, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she was disabled from July 6 to September 15, 2000 due to her February 9, 2000 employment injury.

In this case, after a rather protracted procedural history, the Office of Workers' Compensation Programs accepted that appellant, then a 36-year-old military personnel technician, sustained a lumbar strain and a groin strain during the performance of her duties on February 9, 2000. Appellant had sustained a previous back strain on December 17, 1998, which the Office had accepted as a lumbar strain.<sup>1</sup> Appellant's prior claim of December 17, 1998 was combined into the instant case. Appellant underwent a nonwork-related gastric bypass surgery on September 15, 2000 and required at least eight weeks to recuperate for the said surgery. Appellant returned to work on November 6, 2000. She received continuation of pay from February 9 through March 26, 2000.

On April 4, 2000 appellant filed a Form CA-7, claim for compensation, for leave without pay (LWOP) for the period March 27 to June 20, 2000. Appellant's claim for her traumatic injury of February 9, 2000 was accepted on November 7, 2001. In the Office's letter of November 7, 2001, appellant was notified that medical evidence was lacking to support total disability for the period March 27 to June 20, 2000 and was afforded 30 days to submit supportive evidence. On December 3, 2001 appellant filed a second Form CA-7 for the period June 21 to September 15, 2000.

By decision dated December 19, 2001, the Office denied appellant's claim for disability compensation for the period March 27 to September 15, 2000. The Office found that Dr. Michael Chabot, an orthopedic spine specialist and the selected impartial medical examiner, had indicated in his letter of October 1, 2001 that appellant was able to return to her previous

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<sup>1</sup> Appellant's December 17, 1998 work injury was assigned case number 110169424.

work duties on April 3, 2000. The Office further found that the medical records of file did not indicate any disability for the period March 27 to April 3, 2000.

Appellant, through her attorney of record, requested an oral hearing which took place on February 25, 2003. By decision dated May 19, 2003, an Office hearing representative found that appellant was totally disabled from March 27 to July 5, 2000 as a result of her work injuries. The Office representative, however, found that appellant was not totally disabled from July 6 through September 15, 2000 as a result of her work injuries, but rather was disabled for emotional problems and because she was awaiting her gastric bypass surgery on September 15, 2000. Accordingly, the Office hearing representative reversed in part and affirmed in part the Office's earlier decision of December 19, 2001.

The Board finds that appellant has not met her burden of proof in establishing that she was disabled from July 6 to September 15, 2000 due to her February 9, 2000 employment injury or other factors of her employment.

A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.<sup>3</sup> As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.<sup>4</sup> The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.<sup>6</sup>

Appellant has presented various notes from her doctors. As previously noted, the Office hearing representative found that appellant was not totally disabled as a result of her work injuries from July 6 to September 15, 2000. The record indicates that, on September 15 through November 5, 2000, appellant was under the care of Dr. Daniel C. Fabito, a Board-certified general and vascular surgeon, for her gastric bypass surgery and recovery. Appellant returned to work on November 6, 2000.

In a medical noted dated June 21, 2000, Dr. Mark A. Faron, a Board-certified internist and appellant's primary care physician, indicated that appellant could return to work on July 5, 2000. In a disability note dated July 3, 2000, Dr. Faron extended the period of disability for appellant's lumbar strain, chronic back pain to September 15, 2000. In a July 13, 2000 letter,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

<sup>4</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>5</sup> *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

<sup>6</sup> *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

Dr. Faron advised that he would no longer be seeing appellant for her lumbar strain. He noted that he was neither a workman's compensation nor a disability doctor.

In a July 7, 2000 medical report, Rodney B. Robinson, a psychologist, advised that appellant suffers from acute anxiety, stress, and insomnia due to chronic back pain and morbid obesity. He noted that her gastric bypass surgery scheduled on September 15, 2000 may alleviate this condition. Dr. Robinson advised that appellant was medicated, weepy, and unable to sit or stand for long periods of time and frequently needed to lie down. He opined that interpersonal relationships were not advocated at this time and opined that appellant was incapacitated for all work for the period July 8 through September 15, 2000.

In a July 17, 2000 report, Dr. Latanya C. Turnstall-Robinson<sup>7</sup> concurred with Dr. Robinson, that appellant's gastric bypass surgery scheduled on September 15, 2000 may alleviate her conditions of acute anxiety, stress and insomnia due to chronic back pain and morbid obesity and opined that it was imperative that her mental and physical health be optimum. She noted that appellant was medicated, weepy and unable to sit or stand for long periods of time and frequently needed to lie down. Dr. Robinson further noted that appellant's ability to walk beyond a few feet was also impaired. She opined that interpersonal relationships were not advocated and opined that appellant was incapacitated for any and all work through September 15, 2000.

In a medical note dated July 25, 2000, Dr. Daniel W. Whitehead, a Board-certified internist, advised that appellant has chronic back pain which was quite severe and advised that appellant could not return to work until September 15, 2000.<sup>8</sup>

Although Dr. Faron extended the period of appellant's disability until September 15, 2000, his report of July 3, 2000, absent further explanation, this report does not show that appellant was totally disabled for the period subsequent to July 5, 2000. The record reflects that, on June 21, 2000, Dr. Faron had initially advised that appellant could return to work on July 5, 2000. The record further reflects that, on June 20, 2000, Dr. Judson F. Martin, a pain management specialist, had advised Dr. Faron that appellant did not qualify for a procedural intervention for chronic pain management as there were no radicular complaint in her lower extremity or any evidence of any spinal stenosis or herniated nucleus pulposus which would warrant injection therapy. Dr. Faron further advised that, although nonsteroidal anti-inflammatory agents may be necessary for quite some time, he opined that the most beneficial aspects of appellant's health care would be a weight-loss reduction program. As Dr. Faron had originally released appellant to return to work on July 5, 2000 and as Dr. Martin did not indicate that appellant was totally disabled in his June 20, 2000 report, absent any explanation or new objective evidence to explain why appellant was totally disabled due to her back condition, Dr. Faron's subsequent disability note of July 3, 2000 extending appellant's disability until September 15, 2000 is inadequate to satisfy appellant's burden of proof.

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<sup>7</sup> Dr. Turnstall-Robinson's credentials are unknown.

<sup>8</sup> On July 15, 2000 appellant had requested the Office that Dr. Whitehead be considered her treating physician as Dr. Faron had relinquished his role. The record is devoid of any indication as to whether the Office had accepted Dr. Whitehead as appellant's new treating physician.

Although Dr. Whitehead indicated that appellant was totally disabled, he failed to provide any findings or explanation as to how the disability was related to the work injuries. As such, his disability note fails to show that appellant was totally disabled until September 15, 2000 due to her work injuries. Likewise, the reports of Dr. Robinson and Dr. Turnstall-Robinson fail to indicate that appellant's disability until September 15, 2000 is solely related to her work injuries. The reports relate appellant's disability to the effect of her various conditions due to her chronic back pain and morbid obesity and her inability to engage in interpersonal relationships while she was awaiting her scheduled gastric bypass surgery of September 15, 2000.

Appellant, therefore, has not submitted substantial, probative and reliable medical evidence that she was totally disabled from July 6 to September 15, 2000 due to her employment injury of February 9, 2000.

The decision of the Office of Workers' Compensation Programs, dated May 19, 2003, is hereby affirmed.

Dated, Washington, DC  
October 21, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member