

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**FAY JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baton Rouge, LA, Employer**

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**Docket No. 04-1358  
Issued: September 30, 2004**

*Appearances:*  
*Fay Johnson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On April 26, 2004 appellant filed a timely appeal from the May 9, 2003 and February 19, 2004 merit decisions of the Office of Workers' Compensation Programs, which denied modification of an earlier decision to terminate her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision to terminate benefits.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate compensation benefits for the cervical strain, lumbar strain and chronic pain syndrome, that appellant sustained in the performance of duty on June 17, 1996; and (2) whether appellant has met her burden of proof to establish that the incident on June 17, 1996 caused the condition of fibromyalgia and related depression.

## **FACTUAL HISTORY**

On June 17, 1996 appellant, then a 41-year-old rural carrier, sustained an injury in the performance of duty when a motor vehicle struck the rear of her mail truck. The Office accepted her claim for cervical and lumbar strain and paid compensation. On February 6, 1997 appellant returned to work in a modified position. The Office reduced her compensation to reflect her capacity to earn wages in that position and placed her on the periodic rolls.

In a report dated October 17, 1997, Dr. Stephen Lindsey, appellant's attending rheumatologist, explained that the cervical and lumbar strains related to the June 17, 1996 work injury had probably ceased: "Those type[s] of strained ligaments usually heal within six months to a year. The possibility of her being left with a subluxation syndrome related to prior ligamentous injuries cannot be completely excluded." Dr. Lindsey added the following:

"The patient presently has limitations because of her ongoing pain syndrome. I understand that the Post Office wants to determine how she went from a lumbar strain to fibromyalgia. This is a very typical situation where a person is injured in some type of wreck or a fall and sets up a chronic pain syndrome, which leads to fibromyalgia. Fibromyalgia is defined as a generalized pain syndrome with multiple tender points, nonrestorative sleep and frequently anxiety and depression."

The Office thereafter accepted appellant's claim for the condition of chronic pain syndrome. On May 15, 2000 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Jack F. Loupe, a Board-certified orthopedic surgeon, for an opinion on whether residuals of the June 17, 1996 employment injury had ceased.

In a report dated June 5, 2000, Dr. Loupe related appellant's history of injury and indicated that he reviewed the medical records submitted, including the opinion of Dr. Lindsey. He did not, however, examine appellant. Dr. Loupe advised the Office as follows:

"At this time I was not sure if you would like for me to do another evaluation of her cervical, thoracic and lumbar spine. From the history and from what records I have reviewed, it appears that she has recovered from any injury that she may have suffered to her cervical, thoracic and/or lumbar spine but has persistent complaint of diffuse pain in multiple areas of the upper back, left upper torso, hips and to some extent the upper and lower extremities.

"I defer to Dr. Lindsey and Dr. John Clark [appellant's physiatrist] as to the diagnosis and treatment of these multiple areas of pain which have been attributed to fibromyalgia. I also defer to their opinion in regards to her physical limitations. I understand that she is working five days a week at a sedentary or clerical capacity. It appears to me from the patient's history and review of records that her primary problem is that of pain in various areas of her back, neck and extremities unrelated to her spine and that this has been diagnosed by Drs. Lindsey and Clark as fibromyalgia.

“If you still wish for me to evaluate her spine and extremities from an orthopedic standpoint, I would be happy to do so. However, I am not able to render an expert opinion regarding fibromyalgia. Another rheumatologist would be qualified to render an opinion in this regard. Please let me know if I can be of further assistance.”

In a periodic medical report dated September 5, 2000, Dr. Lindsey informed the Office that appellant had objective findings of pain on palpation of various muscle groups, particularly in the upper back, neck, shoulders and lower back. Those findings, he stated, were related to her fibromyalgia. Dr. Lindsey reported that appellant “certainly” no longer had any injury of her spine or neck related to any work injury, but the fibromyalgia was still present and was precipitated by the injury. He stated that her diagnosis seemed apparent with no severe residual injuries but more of the chronic pain syndrome: “This type of chronic pain syndrome frequently produces stress, anxiety and difficulty coping.”

On November 15, 2000 the Office provided Dr. Lindsey with a copy of Dr. Loupe’s report: “Based on his examination, Dr. Loupe has provided a report of his examination. If you disagree with any part of his report, please indicate specifically what part you disagree with and why; please also provide the objective findings on which you base your opinion.”

On February 6, 2001 the Office issued a notice of proposed termination of compensation and medical benefits. The Office found that the June 5, 2000 report of Dr. Loupe represented the weight of the medical evidence and established that appellant was no longer disabled as a result of the June 17, 1996 injury. The Office also found that Dr. Lindsey’s report lacked objective findings: “with respect to your current disability with your work-related condition.” The Office noted that his diagnosis of fibromyalgia was not an accepted condition and had nothing to do with appellant’s work injury.

In a decision dated March 20, 2001, the Office terminated appellant’s compensation and medical benefits.

Appellant requested reconsideration on June 20, 2001, April 23, 2002 and March 17, 2003. She submitted, among other things, the May 9, 2001 report of Dr. Lindsey:

“We have been asked by [appellant] to reiterate her present condition. [She] has a chronic pain syndrome and fibromyalgia. We have followed her since 1997 with this condition. She had been seen regularly following a work injury in 1996 by Physical Medicine and Physical Therapy. The patient’s pain syndrome and fibromyalgia has persisted. She has marked stress and depression as well as panic attacks. We have been able to maintain her working five hours a day. If she works longer than that it seems to aggravate her chronic pain and stress and depression and panic attacks. The patient’s initial fibromyalgia and chronic pain was certainly precipitated by the work injury. That injury certainly has healed and is no longer present. The patient’s condition was not caused by the initial injury but it certainly was aggravated by it for the initial first year or two. The patient’s chronic condition will not likely change. We would recommend that she remain at a light clerical type of duty indefinitely. If the post office does not have

a place to locate this lady with these restrictions, then she may have to be medically retired. It would certainly seem more reasonable to keep this lady working in some capacity than to place her on chronic disability from either the post office or social security.”

Appellant submitted a May 22, 1998 report from Dr. T. Kurt Belgard, a psychiatrist, who diagnosed depression with chronic pain disorder. Dr. Lindsey reported that appellant was seeing Dr. Belgard for recurring stress and panic attacks “that have occurred with the stress of her condition.” On September 12, 2001 Dr. Lindsey again diagnosed fibromyalgia and chronic pain. Appellant also submitted an April 9, 2002 report from Dr. Loupe, the Office referral physician:

“[Appellant] returned to my office on April 9, 2002 for purposes of discussion with me of my report to the U.S. Department of Labor dated June 5, 2000. She told me that there had been what she considered misinterpretation of my report by representatives of the Department of Labor and/or Post Office. The statements made in papers from U.S. Postal or Department of Labor regarding interpretation of my report were in error and apparently taken out of context and/or extended far beyond what I had actually stated. The reports indicate that I had declared that her residual problems were not related to the injury of June 17, 1996. Nowhere in my report did I say or intend to say that her residual pain was not related to the injury of June 17, 1996. I deferred to the expertise of other treating physicians, Drs. Lindsey and Clark to make that determination. I am not an expert on fibromyalgia and am not knowledgeable as to the cause of this condition and its relationship to trauma. In other words, I do not know whether or not her fibromyalgia was a result of the injury of June 17, 1996 or any other injury or cause. I hope this clarifies my report of June 5, 2000.”

In a decision dated May 9, 2003, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that the record lacked medical evidence providing a statement of causation and a reasoned medical opinion, with supportive objective evidence, which discussed whether appellant’s claimed chronic pain syndrome, depression and fibromyalgia are causally related to the work injury of June 17, 1996.

Appellant again requested reconsideration. In support thereof, she submitted a September 17, 2003 report from Dr. Joseph W. Turnipseed, a specialist in pain management, and consultant to Dr. Lindsey. Dr. Turnipseed related appellant’s history and complaints and his findings on physical examination. He diagnosed the following: status post work-related injury February 17, 1996; prior diagnosis of fibromyalgia; chronic cervical pain and intermittent radiculopathy; chronic thoracic pain; chronic lumbar pain with radicular symptoms along the right lower extremity; probable facet joint dysfunction; and history of depression and anxiety. Dr. Turnipseed stated that appellant “may certainly have fibromyalgia however an [underlying] disorder of the spine cannot be ruled out at this point.” He indicated a desire to obtain repeat magnetic resonance imaging (MRI) scans.

On October 8, 2003 Dr. Turnipseed reported as follows:

“[Appellant] is a 49-year-old female who was involved in a work-related injury in June of 1996. She complains of chronic spinal pain since the accident along with cervical, thoracic and lumbar spine. She does have some radiating pain along the upper and lower extremities. Appellant has been treated for fibromyalgia in the past. She also has a history of anxiety and depression. She is status post MRI scans on October 5<sup>th</sup>. This did show disc bulging at C5-C6, C6-C7 and T4-T5. There was no stenosis or nerve impingement, at any of these levels. The lumbar MRI [scan] did reveal two disc protrusions at L3-L4 and L4-L5, which is more prominent to the left side and protruding into the foramen. She also has an annular tear at L4-L5. This certainly explains the patient’s chronic spinal complaints. She carries the diagnosis of fibromyalgia, but does have some underlying pathology along the cervical, thoracic and lumbar spine. Certainly, these spondylotic changes could cause the symptoms that she complains of. She has taken a multitude of medications throughout the years. She is now taking Celebrex and Flexeril, which offers only modest relief.”

Dr. Turnipseed diagnosed a history of fibromyalgia; cervical, thoracic and lumbar spondylosis; pain along the cervical, thoracic and lumbar spine; and cervical and lumbar radiculitis. He stated: “I feel that these underlying spondylotic changes may contribute to this patient’s chronic pain syndrome. She may certainly have fibromyalgia but may also have a component of discogenic pain, facet mediated pain and/or radiculopathy.”

In a decision dated February 19, 2004, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a cervical and lumbar strain on June 17, 1996 when a motor vehicle struck the back of her mail truck. Dr. Lindsey, her attending

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

rheumatologist, reported as early as October 17, 1997 that these strains had probably ceased. He explained that those types of strained ligaments usually heal within six months to a year. The record contains no medical opinion to the contrary. Appellant herself told Dr. Loupe on June 5, 2000 that she thought she had recovered from any injuries that she suffered to her neck and lower back, though appellant did continue to have pain in those areas. As there is no substantial question presented whether appellant continues to suffer from the cervical and lumbar strains she sustained on June 17, 1996, the Board finds that the weight of the medical evidence rests with Dr. Lindsey on this issue and establishes that those conditions have resolved. The Office met its burden of proof in this respect and the Board will affirm the Office's May 9, 2003 and February 19, 2004 decisions accordingly.

The Office, however, accepted more than a cervical and lumbar strain. As the statement of accepted facts dated May 8, 2002 shows, the Office also accepted appellant's claim for the condition of chronic pain syndrome. This is the statement of accepted facts that the Office provided to Dr. Loupe so that he could base his opinion on a complete and accurate factual background. Chronic pain syndrome also appears on the Office's nonfatal summary sheet as a condition caused by injury. The Office's acceptance of chronic pain syndrome followed Dr. Lindsey's October 17, 1997 explanation that appellant had limitations because of her ongoing pain syndrome. He stated that going from a lumbar strain to fibromyalgia was a very typical situation "where a person is injured in some type of wreck or a fall and sets up a chronic pain syndrome, which leads to fibromyalgia." Having accepted that appellant's chronic pain syndrome was a result of her June 17, 1996 employment injury, the Office bears the burden of proof to justify its termination of benefits for that condition.

The Office did not meet this burden. The Office terminated all of appellant's compensation benefits, medical benefits included, on the grounds that the June 5, 2000 report of Dr. Loupe represented the weight of the medical evidence and established that appellant was no longer disabled as a result of the June 17, 1996 injury. Dr. Loupe in fact reported no such thing. He did not examine appellant and he expressed no opinion on whether she continued to suffer residuals of the accepted chronic pain syndrome. He merely took her history and reviewed the medical reports that the Office provided him. From the history and the records that he reviewed, he stated that it appeared that appellant had recovered from any injury she might have suffered to her cervical, thoracic or lumbar spine, but he also made clear that appellant had a persistent complaint of diffuse pain in multiple areas of the upper back, left upper torso, hips and to some extent the upper and lower extremities. As to the diagnosis and treatment of these multiple areas of pain and as to her physical limitations, Dr. Loupe deferred to appellant's treating physicians, who continued to diagnose, among other things, chronic pain syndrome.

The evidence upon which the Office terminated compensation benefits for the accepted condition of chronic pain syndrome does not establish that the condition has resolved or is unrelated to the June 17, 1996 incident at work. The Board will therefore reverse the Office's May 9, 2003 and February 19, 2004 decisions accordingly.

## LEGAL PRECEDENT-- ISSUE 2

A claimant seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>4</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>5</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>6</sup>

## ANALYSIS -- ISSUE 2

The Office accepts that appellant sustained an injury in the performance of duty on June 17, 1996. The question for determination is whether this injury caused fibromyalgia and related depression, conditions for which appellant seeks compensation.

Dr. Lindsey consistently diagnosed appellant with fibromyalgia, and he stated that it was very typical for a lumbar strain to set up a chronic pain syndrome "which leads to fibromyalgia." He broadly explained that fibromyalgia was a generalized pain syndrome with multiple tender points, nonrestorative sleep and, frequently, anxiety and depression. Although Dr. Lindsey supported that appellant's fibromyalgia was causally related to the June 17, 1996 incident at work, he did not make clear how, physiologically speaking, a chronic pain syndrome "leads to fibromyalgia." He also did not make clear what specific clinical findings supported his diagnosis of fibromyalgia. This diminishes the probative or evidentiary value of his opinion.<sup>7</sup>

Further, the diagnostic testing obtained by Dr. Turnipseed and the opinion that he reported on October 8, 2003 suggest an alternative explanation for appellant's chronic spinal complaints. Dr. Turnipseed reported that MRI scans obtained on October 5, 2003 showed disc bulging at C5-7 and T4-5 as well as two disc protrusions at L3-4 and L4-5. He reported that appellant also had an annular tear at L4-5. "This," he observed, "certainly explains the patient's chronic spinal complaints." Dr. Turnipseed noted that appellant carried the diagnosis of fibromyalgia, but he

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<sup>4</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>7</sup> See *Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

did not diagnose the condition himself. He diagnosed, instead, an underlying spondylotic pathology that certainly could cause the symptoms she complained of.

Because Dr. Lindsey's opinion lacks the full medical reasoning that would establish the logic and soundness of his conclusion and because Dr. Turnipseed's findings and opinion raises a question about the nature of the condition causing appellant's chronic spinal complaints, the Board finds that appellant has not met her burden of proof to establish that the incident on June 17, 1996 caused the condition of fibromyalgia and related depression. The Board will affirm the Office's May 9, 2003 and February 19, 2004 decisions accordingly.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate compensation benefits for the accepted conditions of cervical and lumbar strain but did not meet its burden of proof to terminate compensation benefits for the accepted condition of chronic pain syndrome. Appellant remains entitled to compensation benefits for that condition. The Board also finds that appellant has not met her burden of proof to establish that the incident on June 17, 1996 caused or aggravated the condition of fibromyalgia and resulting depression.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2004 and May 9, 2003 decisions of the Office of Workers' Compensation Programs are reversed on the issue of terminating compensation benefits for chronic pain syndrome and are otherwise affirmed.

Issued: September 30, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member