

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

VALERI HENDERSON, Appellant

and

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Bensalem, PA, Employer

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**Docket No. 04-2062
Issued: March 9, 2005**

Appearances:
Valeri Henderson, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 18, 2004 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated June 14, 2004, which denied her claim for disability compensation after December 6, 1995. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she had any disability after December 6, 1995 causally related to her December 3, 1991 employment injury.

FACTUAL HISTORY

This case has been before the Board on two prior occasions. By decision dated December 10, 1998, the Board found that the Office properly terminated appellant's compensation benefits, effective April 20, 1994, based on the opinion of Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, who performed an impartial medical evaluation. The Board

also found that appellant failed to establish that she had any disability after April 20, 1994 causally related to her employment injury.¹ On December 15, 1998 appellant, through counsel, filed a petition for reconsideration with the Board. By order dated November 16, 1999, the Board denied the petition. In a decision dated April 21, 2003, the Board affirmed Office decisions dated September 10, 2001 and March 20, 2002, finding that appellant had no employment-related disability after December 6, 1995 on the grounds that the medical evidence of record did not establish that her current condition was caused by the 1991 employment injury.² The law and the facts as set forth in the previous Board decisions are incorporated herein by reference.

On March 2, 2004 appellant requested reconsideration and submitted additional medical evidence. In a report dated February 26, 2004, Dr. Daphne G. Golding, a Board-certified psychiatrist, provided a history of the December 1991 injury and noted her review of the medical record. She stated that appellant had been under her care since 2001 and diagnosed post-traumatic cephalgic and cervicogenic features, unresolved chronic cervical, thoracic, lumbosacral sprain and strain, chronic myofascial pain syndrome, post-traumatic fibromyalgia, chronic ankle pain following instability secondary to a fall, left L5-S1 and right S1 radiculopathy, lumbar disc disease, depression secondary to chronic pain syndrome, chronic post-traumatic knee pain and post-traumatic left shoulder adhesive capsulitis. She stated that “with a reasonable degree of medical certainty, it is my opinion that [appellant] has the above symptoms and diagnoses as a result of the fall sustained at work on December 3, 1991.” Dr. Golding opined that appellant had physical examination evidence to support the diagnosis of post-traumatic fibromyalgia according to the diagnostic criteria put forth by the American Rheumatology Association. She noted that, while magnetic resonance imaging (MRI) scan findings were inconsistent, “it is possible that while a herniated disc was not present initially, this does not rule [out] a ‘leaky’ disc which went undiagnosed.” She stated that injury to the myoligamentous structures producing pain was present in the literature and “may” contribute to chronic pain syndrome, noting that two functional capacity evaluations demonstrated that appellant could not perform her preinjury work.

Dr. O’Connell Miles, a psychiatrist, provided an undated report in which he noted that appellant had been treated at the Dr. Warren E. Smith Health Center since February 1993. He diagnosed major depressive disorder with psychotic feature and back/ankle pain, cervical herniated disc, hyperthyroidism and left lateral radiculopathy. He advised that appellant’s psychiatric disability could affect the work-related activities of maintaining attention and concentration for extended periods, responding appropriately to criticism from her superiors, maintaining socially appropriate behavior, getting along with coworkers and peers, maintaining regular attendance and punctuality, completing a normal workday and coping with job stress.

By decision dated June 14, 2004, the Office denied modification on the grounds that appellant failed to establish that she had any disability causally related to her December 3, 1991 employment injury.

¹ Docket No. 96-2610 (issued December 10, 1998).

² Docket No. 02-1620 (issued April 21, 2003).

LEGAL PRECEDENT

Appellant has the burden to establish that she has disability causally related to her accepted injury.³ To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

In this case, the Office accepted that appellant sustained employment-related cervical, back and left shoulder strains and contusion of the left knee when she slipped and fell on December 3, 1991. In the April 21, 2003 decision, the Board found that appellant failed to establish that she had any disability between December 6, 1995 and March 20, 2002 causally related to the employment injury.

Appellant submitted two medical reports with a reconsideration request. The February 26, 2004 report of Dr. Golding essentially reiterated the physician's conclusions as stated in her previous reports dated December 10, 1999 and December 6, 2001. In these reports, Dr. Golding noted diagnoses of chronic pain and fibromyalgia which, she opined were caused by the December 1991 employment injury. The December 6, 2001 reports, discussed the inconsistent MRI scan findings. Dr. Golding couched her report in terms of "it is possible" and "may." While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.⁷ Thus, Dr. Golding's opinion is insufficient to establish that appellant has any disability causally related to the December 1991 employment injury.

While Dr. Miles advised that appellant's psychiatric condition contributes to her inability to work, a psychiatric condition has not been accepted as employment related. As his report is

³ See *Manuel Gill*, 52 ECAB 282 (2001).

⁴ *Id.*

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001).

undated, it is impossible to tell when he reached his findings and conclusions. The Board finds that neither physician provided a rationalized explanation regarding how appellant's diagnosed conditions were caused by the 1991 employment injury or produced disability after December 6, 1995. The reports are not sufficient to meet appellant's burden of proof. Appellant has failed to present sufficient rationalized medical evidence to establish that her current condition or disability is causally related to her employment injuries.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she continued to be disabled after December 6, 1995 due to the December 3, 1991 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2004 be affirmed.

Issued: March 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member