

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

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**VIVIAN J. BLAHA, Appellant**

**and**

**U.S. POSTAL SERVICE, JULIUS MELCHER  
STATION, Houston, TX, Employer**

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**Docket No. 04-1928  
Issued: November 2, 2005**

*Appearances:*

*Afton Jane Izen, Esq., for the appellant  
Jim C. Gordon, Jr., Esq., for the Director*

Oral Argument September 27, 2005

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 27, 2004 appellant filed a timely appeal of an April 30, 2004 merit decision of the Office of Workers' Compensation Programs that denied her conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome as causally related to her employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case. The Board does not have jurisdiction to review the Office's termination of appellant's compensation effective November 30, 1998, as this issue was decided by the Board on a prior appeal and has not since been adjudicated by the Office.

**ISSUE**

The issue is whether appellant's conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome are causally related to her employment.

## **FACTUAL HISTORY**

This case was before the Board on a prior appeal. By decision dated November 22, 2002, the Board found that the Office met its burden of proof in terminating appellant's compensation effective November 30, 1998, on the basis that the weight of the medical evidence established that her accepted work injuries -- right shoulder impingement and sacroiliac strain -- had resolved by that date. The Board further found that there was an unresolved conflict in the medical opinion evidence on the question of whether appellant's conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome were causally related to her employment.<sup>1</sup>

On remand, the Office referred appellant, the case record and a statement of accepted facts to Dr. Scott J. Fillmore, a Board-certified physiatrist, to resolve the conflict of medical opinion. In a May 1, 2003 report, Dr. Fillmore set forth appellant's history of "years of wearing a mail satchel over the shoulder," and reviewed the prior medical reports. His examination revealed normal upper extremity strength and tone, symmetric reflexes, intact sensation except for intermittent objective numbness in her toes and left hand, no focal atrophy, full ranges of motion of all joints tested, no paravertebral muscle spasm, no effusion or swelling of the knees, and 5/5 motor power in the upper and lower extremities. He also found spasm with trigger points of the right levator spaula, trapezius, upper rhomboid, cervicis splenius and capitis muscles; tenderness of the right posterior sacroiliac spine, a weakly positive right shoulder impingement sign, and a positive supraspinatus test of the right. Dr. Fillmore diagnosed mild right shoulder impingement, right posterior sacroiliac spine pain/sacroiliac dysfunction, and chronic pain. Dr. Fillmore stated that appellant could not perform the duties of a letter carrier but could perform the light duty offered on August 28, 2000, and recommended no further treatment. In response to the Office's question of whether her conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome were causally related to her employment, Dr. Fillmore stated:

"1. Mild right shoulder impingement and secondary to this there is a soft tissue myofascial pain component involving the right shoulder, scapular musculature, including the right trapezius, levator scapula and right upper rhomboid musculature. There has also been some involvement of the right-sided cervical paravertebral muscles which do contribute to her pain and it is this examiner's opinion that these symptoms are related to the patient's work-related injury as described above.

"2. Right sacroiliac joint dysfunction and secondary to this there is a soft tissue myofascial pain component involving the right-sided lumbosacral paravertebral area and gluteal musculature on the right.

"It is this examiner's opinion that the right sacroiliac joint dysfunction is related to the patient's work-related injury as a letter carrier in above claim.

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<sup>1</sup> Docket No. 02-800 (issued November 22, 2002).

“With respect to the cervical condition, lumbar condition, right hip condition, right knee condition, bilateral knee condition, general myofascial pain syndrome, general chronic pain syndrome and general chronic fatigue syndrome, this examiner cannot find any evidence that causally relates these conditions to this claimant’s employment as a letter carrier, as described in the statement of accepted facts.

“The findings noted on the cervical and lumbar imaging studies are related to chronic degenerative changes as well as suspected chronic degenerative changes about the right hip, right knee, left and right knee and while the above claimant may need appropriate criteria for ‘chronic fatigue syndrome’ I can see no evidence to support her work has contributed to this.”

By decision dated May 21, 2003, the Office found that the weight of the medical evidence, represented by Dr. Fillmore’s opinion, established that appellant’s conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome were not causally related to her employment.

Appellant requested a hearing, which was held before an Office hearing representative on February 5, 2004. Following the hearing, appellant submitted a March 4, 2004 report from Dr. Patricia Salvato, a Board-certified internist whose November 29, 1999 report was on one side of the conflict of medical opinion to be resolved by Dr. Fillmore. In the March 4, 2004 report, Dr. Salvato stated that appellant’s chronic pain was related to her chronic repetitive carrying of a heavy mailbag and repetitive micro trauma to her right rotator cuff and right sacroiliac joint, and that the accepted right shoulder impingement and sacroiliac joint dysfunction had not resolved. She continued that appellant’s sacroiliac joint dysfunction triggered a July 1998 fall in which she injured her knees, and that the injury to the knee joints due to the fall and the bending and flexing of the knees while weight bearing had accelerated the development of arthritis. Dr. Salvato also stated that carrying the mail sack over her right shoulder contributed to her right C5 radiculopathy and accelerated the arthritis in the cervical vertebra, that chronic unbalanced weight bearing caused pain and arthritis in her back relating to her lumbar spondylosis, that the hip strain and falls precipitated degenerative lumbar changes, and that appellant’s chronic pain syndrome resulted from the pain from her injuries.

### **LEGAL PRECEDENT**

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>2</sup>

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<sup>2</sup> James P. Roberts, 31 ECAB 1010 (1980).

## **ANALYSIS**

On the prior appeal, the Board found a conflict of medical opinion on the question of whether appellant's conditions of the cervical and lumbar spine, right hip, and knees, and her myofascial pain syndrome, chronic pain syndrome and chronic fatigue syndrome were causally related to her employment. To resolve this conflict, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>3</sup> referred appellant, the case record and a statement of accepted facts to Dr. Fillmore, a Board-certified psychiatrist.

In a May 1, 2003 report, Dr. Fillmore concluded that none of these conditions were causally related to appellant's employment. Dr. Fillmore, however, did not provide sufficient medical rationale in support of his opinion to be given special weight and constitute the weight of the medical evidence. With respect to the cervical and lumbar spine conditions, Dr. Fillmore stated that the findings on the imaging studies were related to chronic degenerative changes, but did not address whether these degenerative changes were related to appellant's employment, as appellant's attending physicians contended. The same is true of his conclusion that her conditions of the right hip and knees were "suspected chronic degenerative changes."

With respect to the remaining conditions, all Dr. Fillmore stated about causal relation was that he could not find any evidence that related these conditions to appellant's employment. This is not the well-rationalized opinion needed to resolve a conflict of medical opinion. What is required is an explanation for the physician's opinion that was related to appellant's employment. Are these conditions not established to exist? Are the employment conditions outlined in the statement of accepted facts not competent to cause such conditions? Were they caused by other, nonemployment-related factors? Without answers to these kinds of questions, the Board finds that Dr. Fillmore's report is not sufficiently rationalized to resolve the conflict of medical opinion.

## **CONCLUSION**

The report of Dr. Fillmore is not sufficient to resolve the conflict of medical opinion found on the prior appeal.

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<sup>3</sup> 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for resolution of the existing conflict of medical opinion.

Issued: November 2, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board