

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

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**YVETTE D. JEAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Anchorage, AK, Employer**

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**Docket No. 05-1233  
Issued: November 7, 2005**

*Appearances:*  
*Yvette D. Jean, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 16, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated February 9, 2005, which denied modification of an August 31, 2004 decision denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on and after May 7, 2002 due to her accepted April 19, 1979 employment injury.

**FACTUAL HISTORY**

This case is on appeal to the Board for the third time. On May 17, 1979 appellant, then a 26-year-old clerk, filed a traumatic injury claim alleging that she injured her neck and arm on April 19, 1979 while in the performance of duty.<sup>1</sup> The Office accepted the claim for cervical

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<sup>1</sup> Appellant's name was Yvette D. Bragg at the time of injury. By letter dated May 28, 1991, she informed the Office that she had legally changed her name to Yvette D. Jean.

strain and bilateral thoracic outlet syndrome.<sup>2</sup> In the first appeal, the Board affirmed a February 22, 1988 schedule award for an eight percent permanent loss of use of each arm.<sup>3</sup> In the second appeal, the Board affirmed the Office's October 23 and June 29, 1995 decisions which denied modification of a January 3, 1995 hearing representative's decision.<sup>4</sup> The hearing representative denied appellant's claim for a recurrence of disability and terminated her compensation for medical benefits. The Board found that the Office did not meet its burden of proof to terminate appellant's medical benefits compensation. The facts and the history contained in the prior appeals are incorporated by reference.

Appellant filed a claim for a recurrence of disability on May 7, 2002 due to her accepted April 19, 1979 employment injury. She indicated that her problem was "more continual and worsening than just recurring."

In a report dated June 25, 2002, Drs. Harry H. Kretzler, Jr., a second opinion Board-certified orthopedic surgeon, and Dr. James Crowley, a second opinion Board-certified neurological surgeon, diagnosed appellant's condition as degenerative cervical spine changes and postoperative thoracic outlet surgery. Both physicians concluded that neither the degenerative cervical spine changes nor the postoperative thoracic outlet surgery was caused or aggravated by the accepted April 19, 1979 employment injury.

In a report dated November 11, 2002, Dr. Harry S. Reese, a treating Board-certified orthopedic surgeon, opined that appellant had myofascial pain syndrome due to her accepted employment injury. In support of his opinion, the physician attributed the condition to appellant's poor posture which was due to "sequelae of surgical intervention." He concluded that appellant's "pain generators are the irritable foci within her neck, upper back and shoulder muscles" which are permanent and due to the April 19, 1979 employment injury "on a more probable than not bases (sic)."

On April 13, 2004 the Office referred appellant to Dr. Mary E. Reif, a Board-certified neurologist, selected as the impartial medical specialist to resolve the conflict in the medical opinion evidence regarding the diagnosis of myofascial pain syndrome and its relationship to her accepted April 19, 1979 employment injury.

In a report dated April 27, 2004, Dr. Reif, based upon a review of the medical evidence, statement of accepted facts and physical examination, diagnosed fibromyalgia and cervical degenerative disc disease at multiple levels, which were not employment related. She noted that due to "the presence of a diffuse disorder like fibromyalgia, a diagnosis of localized myofascial pain syndrome could not be made on [appellant]." A physical examination revealed a normal

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<sup>2</sup> Appellant resigned from her position on November 16, 1979.

<sup>3</sup> Docket No. 88-806 (issued June 28, 1988).

<sup>4</sup> Docket No. 96-695 (issued July 14, 1998).

gait 45 degrees forward flexion, 30 degrees extension, 50 degrees right rotation and 45 degrees left rotation. With regards to the bilateral rib resection approved by the Office, Dr. Reif noted:

“Retrospectively, given all the negative electrodiagnostic testing, these procedures were probably not indicated. It is not clear that there has been any detriment from having performed these operations (other than these ‘second rib fractures’ that they appeared shortly after the surgery and these have no residual disability). It simply has not helped her pain because the nature of her pain is not likely related to a thoracic outlet syndrome.”

By decision dated August 31, 2004, the Office denied appellant’s claim for a recurrence of disability. The Office found the opinion of Dr. Reif, the impartial medical examiner, established that appellant did not sustain a recurrence of disability due to her accepted April 19, 1979 employment injury and constituted the special weight of the medical evidence.

On November 8, 2004 the Office received a report dated October 13, 2004 by Dr. Reese.

By decision dated February 9, 2005, the Office denied modification of the August 31, 2004 decision.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office’s regulations provides, in pertinent part:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>5</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.<sup>7</sup> Moreover, the physician’s conclusion must be supported by sound medical reasoning.<sup>8</sup>

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician’s opinion with medical reasons regarding the causal relationship between the employee’s condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

<sup>8</sup> *Robert H. St. Onge*, *supra* note 6.

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.<sup>9</sup> The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.<sup>10</sup>

### ANALYSIS

In the present case, appellant claimed that she sustained a recurrence of disability on May 7, 2002 due to her April 19, 1979 employment injury, which the Office had accepted for cervical strain and bilateral thoracic outlet syndrome. The Office properly determined that a conflict existed in the medical evidence which required referral to an impartial medical specialist. In a report dated November 11, 2002, Dr. Reese, a treating Board-certified orthopedic surgeon diagnosed myofascial pain syndrome which he attributed to appellant's accepted employment injury. Dr. Kretzler, Jr., a second opinion Board-certified orthopedic surgeon, and Dr. Crowley, a second opinion Board-certified neurological surgeon, concluded that neither the degenerative cervical spine changes nor the postoperative thoracic outlet surgery was caused or aggravated by the accepted April 19, 1979 employment injury.

The Office referred appellant to Dr. Reif, a Board-certified-neurologist, to resolve the conflict in the medical opinion evidence between the physicians regarding the diagnosis of myofascial pain syndrome and whether there is a relationship to her accepted April 19, 1979 employment injury. In situations where there exist 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 upon a proper factual background, must be given special weight.<sup>11</sup>

The Board finds that the Office properly relied on the well-rationalized opinion of Dr. Reif in determining that appellant did not establish that she sustained a recurrence of total disability on and after May 7, 2002 due to her April 19, 1989 employment injury. The Board has carefully reviewed the opinion of Dr. Reif and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Reif's opinion is based on a proper factual and medical history in that she had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>12</sup>

In an April 27, 2004 report, Dr. Reif diagnosed fibromyalgia and cervical degenerative disc disease at multiple levels, which were not employment related. She noted that, due to "the presence of a diffuse disorder like fibromyalgia, a diagnosis of localized myofascial pain

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<sup>9</sup> *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

<sup>10</sup> *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

<sup>11</sup> *John E. Cannon*, 55 ECAB \_\_\_\_ (Docket No. 03-347, issued June 24, 2004); *Jack R. Smith*, 41 ECAB 691 (1990).

<sup>12</sup> *See Melvina Jackson*, 38 ECAB 443 (1987); *Naomi Lilly*, 10 ECAB 560 (1957).

syndrome could not be made on [appellant].” With regards to the bilateral rib resection approved by the Office, Dr. Reif explained her opinion by noting that the physical findings did not show any continuing cervical or back problems.

Dr. Reif’s referee opinion negated a finding of any disability, specifically the diagnosis of myofascial syndrome, due to her accepted April 19, 1979 employment injury. Accordingly, the Board finds that Dr. Reif’s opinion constituted the weight of the medical evidence to support the Office’s February 9, 2005 decision that appellant did not sustain a recurrence of disability for work as of May 7, 2002 causally related to her accepted April 19, 1979 cervical and arm injuries consisting of cervical strain and bilateral thoracic outlet syndrome. Appellant has therefore failed to discharge her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injuries.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on and after May 7, 2002 due to her accepted April 19, 1979 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers’ Compensation Programs dated February 9, 2005 and August 31, 2004 are affirmed.

Issued: November 7, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

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