

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

JULIA A. NORRIS, Appellant)
and) Docket No. 06-504
OFFICE OF PERSONNEL MANAGEMENT,) Issued: April 19, 2006
Annandale, VA, Employer)

)

Appearances: Case Submitted on the Record
Julia A. Norris, pro se
Office of the Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On December 29, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 29, 2005 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her claimed fibromyalgia, clinical depression and anxiety conditions were causally related to her employment.

FACTUAL HISTORY

On August 14, 2003 appellant, a 35-year-old investigator, filed a Form CA-2 claim for benefits based on occupational disease. She stated that she had been involved in a work-related automobile accident on July 18, 1994. Appellant alleged that, as a result of injuries sustained in this accident, she developed lupus, fibromyalgia and clinical depression. In a supplemental statement to the CA-2, appellant explained that following the automobile accident: "I have

difficulty putting in a full day of work, whether it be conducting investigations or doing clerical work in the office. Between 1994 and 1996, the long hours and stress of my position as an investigator exacerbated my conditions to the point where I became fully disabled....”

By letter dated April 28, 2004, the Office advised appellant that she needed to submit additional information in support of her claim. The Office asked her to provide a comprehensive medical report from a physician which described her medical history, the history of employment exposure to infectious disease and a description of her symptoms. The Office requested her to identify the location where she was exposed to the infection, to what she was exposed and the manner in which the exposure occurred. The Office asked appellant to submit the requested information within 30 days.

By decision dated June 1, 2004, the Office denied appellant’s claim, finding that she failed to submit medical evidence sufficient to establish that she sustained the claimed conditions in the performance of duty.

On June 2, 2004 appellant requested reconsideration of the June 1, 2004 decision.

In a report dated January 27, 1998, Dr. Russell Rothenberg, Board-certified in internal medicine, related appellant’s history of illness since her 1994 work injury and agreed with prior medical opinion that her major medical disability caused by the 1994 injury has been fibromyalgia, clinical depression and an anxiety disorder. He emphasized that she had shown evidence of lupus because he had been treating her since 1994 and had observed both clinical and laboratory evidence of systemic lupus over that period of time. Dr. Rothenberg stated that since July 1994 appellant had significantly deteriorated emotionally and physically. She had developed chest pains related to pleurisy caused by lupus, severe fatigue and abdominal and joint pains. Dr. Rothenberg stated:

“[Appellant] probably had clinical evidence of fibromyalgia syndrome at the time of her July 18, 1994 accident or shortly thereafter, but it was definite by her January 24, 1995 visit. Her fibromyalgia syndrome then became severe and represented her major disability along with depression since then. [Appellant] also currently has restless leg syndrome which is disturbing her sleep and aggravating her fibromyalgia syndrome.

“As the treating physician, I observed the chronic stress that [appellant] experienced at work was increasing and it was an important etiologic factor in her emotional and physical deterioration which led to her complete inability to work due to her medical problems by July 1996. I had recommended that [she] be placed on light duty and a 40-hours work week until her medical condition improved and this was not done. The failure of [appellant’s] work to accommodate her medical needs by continuing to insist that she do field work as an investigator which caused her to travel excessively for a woman with fibromyalgia, lift objects heavier than she should, be in an uncontrolled environment in regards to heat and humidity and sit in chairs that were not orthopedically correct and not get enough sleep on a regular basis all significantly contributed to the worsening of her fibromyalgia.

“Currently, [appellant] can only work 25 hours per week, she continues to have chronic pain and fatigue due to her fibromyalgia syndrome and her need to get adequate rest as a treatment for her fibromyalgia syndrome. She cannot work in even a moderately stressful environment due to her emotional and fibromyalgia problem and she continues to require light duty.”

By decision dated September 29, 2005, the Office denied modification of the June 1, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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.⁴

The claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed fibromyalgia, clinical depression and anxiety conditions and her federal employment. This burden includes providing medical

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board notes that, while appellant attributed her medical conditions to her 1994 automobile accident and the stress of continuing to perform her employment as an investigator following the accident, she actually did not provide any detailed description of the alleged factors of her employment.

The Board finds that appellant has failed to submit sufficient medical evidence providing a rationalized, probative report which relates her claimed fibromyalgia, clinical depression and anxiety conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

Appellant submitted the July 27, 1998 report from Dr. Rothenberg, but this report did not adequately address how the claimed fibromyalgia, clinical depression and anxiety conditions were causally related to employment factors. He stated that she had developed fibromyalgia, clinical depression and an anxiety disorder as a result of the 1994 work injury. Dr. Rothenberg advised that appellant's condition had deteriorated since that time and that she had developed a restless leg syndrome which disturbed her sleep and aggravated her fibromyalgia syndrome. He felt that chronic stress at work had aggravated her condition and had exacerbated her emotional and physical deterioration. Dr. Rothenberg opined that the employing establishment had worsened this deterioration by insisting that she continue to do field work as an investigator and travel excessively. He felt this was deleterious for a woman with fibromyalgia. In addition, Dr. Rothenberg advised that she was exacerbating appellant's fibromyalgia condition by lifting heavy objects, working in an area which exposed her to excessive heat and humidity, sitting in chairs which were not orthopedically correct and not getting enough sleep on a regular basis all significantly contributed to the worsening of her fibromyalgia condition.

Dr. Rothenberg's report, however, did not explain how the alleged employment factors actually caused or aggravated these conditions. His report, which was written in 1998, does not provide any current depiction of appellant's condition and is of limited probative value in that he did not provide adequate medical rationale in support of his stated conclusions.⁷ He did not

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Id.*

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

describe how factors of her employment would have been competent to cause the claimed fibromyalgia, clinical depression and anxiety conditions. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Rothenberg failed to submit an opinion which sufficiently described the medical process through which appellant's employment would have been competent to cause the claimed conditions. The Office, therefore, properly found that she did not sustain fibromyalgia, clinical depression and anxiety conditions in the performance of duty.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, she has not met her burden of proof in establishing that her claimed fibromyalgia, clinical depression and anxiety conditions were causally related to her employment. The Board, therefore, affirms the Office's September 29, 2005 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed fibromyalgia, clinical depression and anxiety conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 19, 2006
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

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).