

On July 11, 2002 the Office accepted the claim for aggravation of fibromyalgia by her nongliding work schedule ending and having to work a regular eight-hour day. Appellant returned to a gliding schedule in March 2000, which was again adjusted in April 2002.

By letter dated November 7, 2002, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Larry M. Gorman, a Board-certified orthopedic surgeon, and Dr. Reynold M. Karr, a Board-certified internist specializing in immunology, for second opinion medical examinations.

In a report dated December 11, 2002, Dr. Gorman diagnosed “multiple areas of myalgia which include the neck, left shoulder, right shoulder, right elbow, back, left hip and leg.” Objective testing revealed right thoracic and left lumbar degenerative disc disease, spinal stenosis and thoracolumbar scoliosis. As to the aggravation of her preexisting fibromyalgia, Dr. Gorman indicated that this was not his area of expertise and he could not comment on the condition.

In a report dated December 11, 2002, Dr. Karr diagnosed fibromyalgia, osteoarthritis, obesity, rheumatoid arthritis, possible asthma and episodic chronic urticaria. A review of objective studies included an unremarkable October 7, 2002 serum chemistry analysis. X-ray revealed mild degenerative changes at L2-3 and scoliosis and right sacroiliac joint arthritis with normal hip joints. A magnetic resonance imaging (MRI) scan revealed moderate upper lumbar spine levoscoliosis, disc bulges and facet joint degenerative change. A neurologic examination revealed no motor impairment or sensory deficit and equal bilateral deep tendon reflexes. A physical examination revealed that appellant was “tender in 3/18 fibromyalgia locations.” Dr. Karr stated, based upon the statement of accepted facts, that appellant’s work-related aggravation of her fibromyalgia had ceased. He noted no objective findings to support “persistence of a work-related condition” or residuals and that the accepted aggravation was temporary.

On January 28, 2003 the Office issued a proposed notice to terminate appellant’s compensation on the grounds that her accepted condition had resolved and there were no residuals. The Office relied upon the opinions of Dr. Karr to find that appellant’s accepted condition had ceased and there were no residuals.

In a February 14, 2003 letter, appellant’s counsel responded to the Office’s proposed termination and submitted medical evidence dated from 1997 to 2000,¹ which had previously been submitted. In a statement, appellant detailed her health and work conditions from February 1999 to October 2000. Appellant contended that the Office failed to accept that her rheumatoid arthritis had been aggravated by her employment.

In a decision dated April 4, 2003, the Office finalized the termination of appellant’s compensation benefits based upon the report of Dr. Karr.

¹ This included reports dated December 14, 1999 and May 2, 2000 and patient notes by Dr. Douglas R. Gwinn, a Board-certified family physician, and patient notes and reports dated February 22 and May 7, 1999 by Dr. Jon T. Stevenson, a Board-certified internist, requesting that appellant be permanently placed on a nongliding schedule.

Appellant, through counsel, requested reconsideration by letter dated May 2, 2003 and submitted additional evidence.

In an April 21, 2003 report, Dr. Stevenson indicated that he had treated appellant for a variety of auto immune diseases including fibromyalgia, seropositive rheumatoid arthritis and moderate to severe osteoarthritis. He stated that appellant's "fibromyalgia and degenerative arthropathy continues to remain somewhat overwhelming." Dr. Stevenson stated that, based on "this combination of musculoskeletal conditions," he did "not believe that [appellant] is employable in any capacity for the foreseeable future."

In an April 24, 2003 report, Dr. Gwinn diagnosed fibromyalgia, chronic fatigue syndrome, multiple joint osteoarthritis and rheumatoid arthritis. He noted that appellant demonstrated typical cognitive problems associated with fibromyalgia including memory disturbance and difficulty concentrating. Dr. Gwinn reported that her fibromyalgia symptoms tended to wax and wane, making it difficult to predict how she would be able to function and interfering with her ability to work eight-hour days on a consistent basis. He opined that appellant's condition had gradually worsened such that her symptoms had increased and her ability to function had decreased.

In an April 30, 2003 report, Dr. Stevenson diagnosed fibromyalgia, seropositive rheumatoid arthritis complicated by sicca disease and moderately severe osteoarthritis. He noted that these conditions had been established by physical and objective evidence. Dr. Stevenson opined that "[e]ach of the patient's diagnoses will be aggravated by work or home-related activities requiring use of the upper and lower extremities" and "the aggravation may be temporary, *i.e.*, (sic) days to weeks." He advised that appellant would return to her underlying level of chronic pain, fatigue and morning stiffness which, in and of themselves, were debilitating. This made it impossible for her to continue working in any capacity.

By decision dated August 1, 2003, the Office denied modification of the April 14, 2003 decision terminating her benefits.

In a letter dated June 22, 2004, appellant requested reconsideration and submitted a January 22, 2004 affidavit by Dr. Stevenson, who stated that he had treated appellant for rheumatoid arthritis which was exacerbated in 1999 and resulted in her being placed on reduced hours. She returned to an eight-hour day in January 2000. Dr. Stevenson recalled appellant attributing the exacerbation of her condition to her employment in the civil engineering orderly room. He stated:

"Having treated her since early 1999 for rheumatoid arthritis I believe the exacerbation of her [r]heumatoid [a]rthritis condition in the spring of 1999 and the subsequent treatments and time off work for stabilization of her condition was because of the working conditions and stress related to her employment in the [o]rderly [r]oom. [The employing establishment] refused her a medical accommodation for her treatment plan that was a control plan."

By decision dated August 23, 2004, the Office denied modification of the August 1, 2003 decision.

In a letter dated August 19, 2005, appellant's counsel requested reconsideration and submitted a November 12, 2004 report by Dr. Stevenson, who noted that he had treated appellant for about 8 to 10 years. Over this period of time, she gradually developed an "autoimmune syndrome which has included elements of sicca syndrome, seropositive rheumatoid factor, seropositivity, and clear-cut development of seropositive destructive rheumatoid arthritis." Appellant also had fibromyalgia which was difficult to treat and commonly seen in patients with lumbar spine osteoarthritis and sicca syndrome. Dr. Stevenson noted appellant's rheumatoid arthritis condition waxed and waned depending upon weather, stress, medications and concomitant illnesses. He stated that her conditions of fibromyalgia, rheumatoid arthritis and Sjorgren's "can clearly be aggravated by accidents or marked stress that is work related" and that usually work aggravation is temporary. However, Dr. Stevenson noted work aggravation could become permanent depending on the particular patient's degree of involvement and response to treatment. He stated:

"[A]s a consequence of the waxing and waning of her disease naturally, difficulty with response to ordinary, as well as somewhat extraordinary treatments, as well as the stress she experiences in her work environment has at this point progressed to the point that I feel she is totally disabled in any work capacity permanently on the basis of rheumatoid arthritis and associated Sjorgren's disease."

By decision dated January 9, 2006, the Office denied modification of the August 23, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to 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.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

² *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *James F. Weikel*, 54 ECAB 660 (2003).

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an aggravation of fibromyalgia due to her nongliding work schedule. Therefore, it has the burden of proof to justify the termination of compensation benefits for that condition. In this case, the Office terminated appellant's compensation and medical benefits based on the opinion of Dr. Karr, who was provided with appellant's complete medical history and record. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

By report dated December 11, 2002, Dr. Karr reviewed the history of injury and the medical records. Dr. Karr stated that a review of the objective studies included an unremarkable October 7, 2002 serum chemistry analysis and noted that x-rays revealed mild degenerative changes at L2-3 and scoliosis and right sacroiliac joint arthritis with normal hip joints. A review of an MRI scan revealed moderate upper lumbar spine levoscoliosis, disc bulges and facet joint degenerative change. A neurologic examination revealed no motor impairment or sensory deficit and equal bilateral deep tendon reflexes. A physical examination revealed that appellant was "tender in 3/18 fibromyalgia locations." Dr. Karr opined that the work-related aggravation of appellant's fibromyalgia was temporary in nature and had ceased. He stated that there were no objective findings to support residuals of the work-related condition. The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized medical opinion of Dr. Karr and establishes that the accepted aggravation of appellant's preexisting fibromyalgia ceased and there were no residuals.

In response to the January 28, 2003 proposal to terminate benefits, appellant submitted medical evidence dated 1997 to 2000, which the Office had considered when it accepted her claim. This evidence included patient notes and reports from Dr. Gwinn and Dr. Stephenson. These reports addressed appellant's care for rheumatoid arthritis, fibromyalgia, chronic fatigue syndrome and multiple joint osteoarthritis. The Board notes that this evidence is of limited probative value as to appellant's condition in 2003 as it predates the acceptance of her claim. Moreover, the physicians did not explain how her rheumatoid arthritis was aggravated or caused by her employment. Dr. Gwinn and Dr. Stephenson diagnosed a rheumatoid arthritis condition, which was not accepted by the Office. The physicians provided no rationale explaining how appellant's rheumatoid arthritis was caused or aggravated by her employment duties or the removal of her nongliding schedule. As the Board has held, appellant has the burden of proof to establish that conditions not accepted by the Office are employment related.⁶ The Board finds that these reports are insufficient to cause a conflict with the opinion of Dr. Karr.

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 4, 2003.

⁶ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. See *Alice J. Tysinger*, 51 ECAB 638 (2000).

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.⁷ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion 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 appellant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁹

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding employment-related disability after April 4, 2003, includes reports dated May 24, 2004 by Dr. Gwinn and reports dated April 21 and 30, 2003 and November 24, 2004 by Dr. Stevenson. The physicians reported their diagnoses of fibromyalgia, chronic fatigue syndrome, multiple joint osteoarthritis and rheumatoid arthritis. Dr. Gwinn stated that appellant's fibromyalgia symptoms waned and waxed, "making it very difficult to predict on any given day how she will be able function and, thereby, substantially interfering with her ability to work eight-hour days on a consistent basis." Dr. Stevenson concluded that appellant was totally disabled due to her various medical conditions. However, he did explain how appellant's disability was attributable to any work-related aggravation of her accepted condition.

Dr. Stevenson opined that "[e]ach of the patient's diagnoses will be aggravated by work or home-related activities requiring use of the upper and lower extremities." He noted that the aggravation would be temporary, lasting a few days to weeks. Dr. Stevenson stated that he recalled appellant attributing the exacerbation of her condition to her employment. He noted that appellant's rheumatoid arthritis was exacerbated in the spring of 1999 due to "the working conditions and stress related to her employment in the [o]rderly [r]oom" and the refusal of the employing establishment to grant her a medical accommodation. Dr. Stevenson stated that appellant's rheumatoid arthritis condition waxed and waned depending upon weather, stress, medications and concomitant illnesses. He indicated that any work aggravation would be

⁷ See *Joseph A. Brown, Jr.*, 55 ECAB ____ (Docket No. 04-376, issued May 11, 2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁸ *Juanita Pitts*, Docket No. 04-1527 (issued October 28, 2004).

⁹ *Bobbie F. Cowart*, 55 ECAB ____ (Docket No. 04-1416, issued September 30, 2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

temporary, but could become permanent “depending on the particular patient’s degree of involvement and response to treatment.” Dr. Stevenson found appellant totally disabled due to her rheumatoid and associated Sjorgren’s disease. He did not provide a well-rationalized explanation addressing how appellant’s disability after April 3, 2004 was due to residuals of her accepted condition. Dr. Stevenson did not provide a definitive opinion explaining whether appellant’s work permanently aggravated her conditions. He first noted that a work-related aggravation would be temporary but stated it would also be made permanent depending on the response to treatment. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁰ The Office has not accepted that appellant’s employment caused or aggravated her preexisting rheumatoid arthritis or associated Sjorgren’s disease. Neither Dr. Stevenson nor Dr. Gwinn provided sufficient medical rationale explaining how the rheumatoid arthritis condition with associated Sjorgren’s disease was caused or aggravated by her employment. As the Board has held, appellant has the burden of proof to establish that conditions not accepted by the Office are employment related.¹¹ Neither physician has provided an opinion supported by medical rationale explaining how appellant’s preexisting rheumatoid arthritis was aggravated or caused by the accepted employment factor of being taken off a nongliding schedule.

As appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her employment-related conditions, she has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant’s compensation effective April 4, 2003 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related lower aggravation of fibromyalgia. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after April 4, 2003.

¹⁰ *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006); *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

¹¹ For conditions not accepted by the Office as being employment related, it is the employee’s burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office’s burden to disprove such relationship. See *Alice J. Tysinger*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2006 is affirmed.

Issued: November 17, 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