

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

BETTY J. JACKSON-PALMER, Appellant)	
)	
and)	Docket No. 04-237
)	Issued: June 18, 2004
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA, Employer)	
)	

Appearances:
Betty J. Jackson-Palmer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 5, 2003 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated September 29, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an employment-related disability after November 7, 1999.

FACTUAL HISTORY

The case is on appeal to the Board for the second time.¹ The Office accepted appellant's injury for cervical and shoulder strains resulting from an injury at work on November 6, 1998.

¹ Docket No. 00-2014 (issued April 27, 2001). On August 28, 2001 the Board denied appellant's request for reconsideration of its April 27, 2001 decision.

Appellant worked intermittently after her injury until January 11, 1999, when she completely stopped working. She received temporary total disability benefits until the Office's termination of her compensation benefits.

In the first appeal, in a decision dated April 27, 2001, the Board affirmed the decision of the Office hearing representative dated May 22, 2000. In the decision, the Office hearing representative affirmed the Office's October 29, 1999 decision terminating appellant's compensation and medical benefits effective November 7, 1999.

Appellant submitted additional evidence including emergency room notes from Carney Hospital dated September 2, 2000 and February 27, 2002 which had diagnoses of fibromyalgia and a note from Dr. John F. Mahoney, a physician, dated May 22, 2001 stating that appellant remained under his care for "serious chronic neuromuscular disease." Appellant also submitted reports from Dr. Mahoney dated June 6, 2000 and October 16, 2001.

In the report dated June 6, 2000, Dr. Mahoney considered appellant's history of injury and noted that an electromyogram and nerve conduction study conducted a year ago and magnetic resonance imaging (MRI) scans of appellant's cervical spine and left shoulder were normal. He noted there was no evidence of a cervical disc herniation or of left shoulder impingement syndrome or a rotator cuff tear. Dr. Mahoney stated that over time it was clear that appellant was developing post-traumatic fibromyalgia/myofascial pain syndrome. He stated that she had a positive Adson's test on the left where it was negative on the right. Based on that test, Dr. Mahoney stated that he had to "question whether or not" appellant was developing a significant element of post-traumatic left thoracic outlet syndrome and he was scheduling her for another electromyogram and nerve conduction study to determine if that diagnosis was correct.

In a report dated October 16, 2001, Dr. Mahoney stated that he had been treating appellant for chronic pain syndrome "with issues in regards to fibromyalgia" which all began with the November 6, 1998 employment injury. He stated that appellant was totally, permanently disabled due to the pain condition and was experiencing some significant exacerbation of pain.

In a report dated February 19, 2002, Dr. Arthur H. Eskew, a Board-certified internist, noted that appellant had problems with pain in her shoulder joint, neck, depressive disorder and a headache.

By decision dated April 11, 2002, in a merit decision, the Office denied appellant's claim that she had employment-related disability after November 7, 1999.²

By letter dated February 13, 2002, appellant requested reconsideration of the Office's decision and submitted additional medical evidence consisting of reports from Dr. Mahoney dated January 28 and May 27, 2003. In the January 28, 2003 report, Dr. Mahoney summarized his treatment of appellant and noted that her complaints of pain began with the November 6,

² In an Order Dismissing Appeal dated October 17, 2002, the Board dismissed appellant's request for an appeal before the Board dated January 8, 2002 because more than one year had elapsed since the Office's last merit decision issued on May 19, 2000.

1998 employment injury. He stated that appellant was suffering from significant progressive post-traumatic myofascial pain syndrome specific to the left shoulder girdle region, and he was concerned that there might be an element of underlying post-traumatic thoracic outlet syndrome. Dr. Mahoney performed a physical examination and recommended that she obtain another MRI scan of her left shoulder and to see a thoracic surgeon to determine if she has thoracic outlet syndrome. Dr. Mahoney concluded that appellant was permanently, totally disabled because of the ongoing chronic pain syndrome and left shoulder girdle syndrome which was an outgrowth of trauma that occurred on November 6, 1998 at work. In the May 27, 2003 report, Dr. Mahoney noted that appellant had some increased numbness and paresthesias affecting the left arm and hand with associated weakness. He prescribed additional neurodiagnostic testing, MRI scans of the cervical spine and left shoulder, and possibly an electromyogram and nerve conduction study.

In a merit decision dated September 29, 2003, the Office denied appellant's request for modification.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or 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 evidence based on a proper factual and medical background.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.

ANALYSIS

As stated, in the April 27, 2001 decision, the Board affirmed the Office's May 22, 2000 decision terminating appellant's disability and medical benefits effective November 7, 1999. The burden then shifted to appellant to establish her continuing disability after November 7, 1999. In the June 6, 2000 report, Dr. Mahoney noted that the electromyogram, nerve conduction study and MRI scans were normal, and "it was clear" that appellant was developing post-traumatic fibromyalgia and myofascial pain syndrome. Based on a positive Adson's test, he suspected appellant was also developing a significant element of post-traumatic left thoracic outlet syndrome. In the report, Dr. Mahoney did not address the cause of appellant's post-traumatic fibromyalgia and myofascial pain syndrome and his diagnosis of post-

³ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

⁴ *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Manuel Gill*, 52 ECAB 282, 287 (2001).

traumatic left thoracic outlet syndrome was tentative. His report is therefore of limited probative value.⁶

In the reports dated October 16, 2001 and January 28, 2003, Dr. Mahoney diagnosed fibromyalgia, myofascial syndrome, chronic pain syndrome or left shoulder girdle syndrome. He opined that appellant was permanently totally disabled due to these conditions, and they “began with” or were an outgrowth of the November 6, 1998 employment injury. Dr. Mahoney, however, provided no rationalized opinion explaining how appellant’s conditions were causally related to the accepted conditions of cervical and shoulder strain and to appellant’s November 6, 1998 employment injury. Further, in his May 22, 2001 note in which he stated that he was treating appellant for serious chronic neuromuscular disease and in his May 27, 2003 report in which he noted increased numbness and paresthesias in her left arm and hand, Dr. Mahoney did not address causation. These reports and notes are therefore of diminished probative value.⁷ In his February 29, 1002 report, Dr. Eskew diagnosed, in part, depression but provided no opinion on causation. The emergency room notes from Carney Hospital dated September 2, 2000 and February 27, 2002 which diagnosed fibromyalgia also did not address causation. Appellant has failed to submit the requisite evidence to establish that she had continuing disability after November 7, 1999.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish continuing disability after November 7, 1999.

⁶ See *Jimmie H. Duckett*, 52 ECAB 332, 336-38 (2001); *Michael E. Smith*, 50 ECAB 313, 316 (1999).

⁷ See *Annie L. Billingsley*, 50 ECAB 210, 213 n.20 (1998); *Michael E. Smith*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member