

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES M. MICHELANGELO and U.S. POSTAL SERVICE,
Baltimore, MD

*Docket No. 01-1765; Submitted on the Record;
Issued April 18, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant compensation July 5 to 20, 2000, October 2 through 3, 2000, October 7 through 20, 2000, November 4 through 2000 and December 2 through 15, 2000 due to his April 21, 1999 employment injury.

The Board has duly reviewed the case record and concludes that the Office properly denied appellant's claim for compensation for the above-specified time periods.

The Office accepted appellant's claim for cervical, lumbar and thoracic strain. He submitted claims for compensation, CA-7 forms, dated July 14, 2000 for the period July 5 to 7, 2000, dated October 6, 2000 for the period September 23 to October 6, 2000, dated October 19, 2000 for the period October 7 to 20, 2000, dated November 3, 2000 for the period October 2 to 3, 2000, dated December 1, 2000 for the period November 4 to December 1, 2000 and dated December 22, 2000 for the period December 2 to 15, 2000.

By letters dated December 18 and October 30, 2000 and January 10, 2001, the Office informed appellant that additional medical evidence was necessary including a physician's rationalized medical opinion explaining how appellant's periods of disability resulted from the April 21, 1999 employment injury.

To establish disability due to a work-related injury, appellant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.¹

Appellant did not submit any medical evidence addressing how his disability during the relevant time periods was work related. In a report dated August 25, 2000,

¹ See Donald Leroy Ballard, 43 ECAB 876, 881 (1992).

Dr. Matthew J. Malta, a Board-certified internist, stated that he had treated appellant for “a number of years” and he suffered from an occupational injury of his cervical, thoracic and lumbar spine that he sustained on April 21, 1999. He noted that appellant was receiving chiropractic therapy from Dr. David N. Kreinbrook, a chiropractor. Dr. Malta’s opinion is not probative because he did not address whether appellant was disabled and the cause of any disability.²

In a report dated August 31, 2000, appellant’s treating physician, Dr. Mary L. Michels, a Board-certified internist, stated that she saw him on June 6 and July 10, 2000 for neck and back musculoskeletal pain and that his neck and thoracic pain resulted from a fall on April 21, 1999, which aggravated his lower back pain. She prescribed chiropractic treatment with Dr. Kreinbrook. Dr. Michels did not address whether appellant was disabled.

In a report dated July 7, 2000, Dr. Kreinbrook stated that he first saw appellant on July 5, 2000 for neck, thoracic and low back complaints and stated that the majority of appellant’s symptoms in the low back were related to a prior injury about 10 to 15 years earlier, although they might have been exaggerated by the 1999 accident. He prescribed a postural support chair and if computers were involved, that they be properly elevated. Dr. Kreinbrook is a chiropractor. Because there was no evidence of a subluxation confirmed with x-rays, he does not meet the definition of a physician within the meaning of the Federal Employees’ Compensation Act.³ Further, he did not address appellant’s disability or the cause of it.⁴

A work restriction from Dr. Michels, (name is barely legible), dated October 16, 2000 generally stated that a work injury precipitated a flare-up of pain, affecting appellant’s functional ability and appellant now had fibromyalgia and chronic pain syndrome. She opined that appellant was “currently” unable to perform light-duty work but he should be able to return to light-duty work and she would reevaluate him on October 16, 2000. Dr. Michels stated that appellant was disabled and that he had fibromyalgia and chronic pain syndrome but did not address how these conditions resulted from the April 21, 1999 employment injury.

In a report dated December 5, 2000, Dr. Thomas B. Ducker, a Board-certified neurological surgeon, stated that appellant had some right-sided foraminal stenosis at C5-6 and unusual spondylitic changes at L1-2 and L3. He stated that he was unsure whether appellant should undergo a C5-6 foraminotomy and would discuss the option at a spine conference. His opinion is not probative because he did not address disability.

In a progress note dated December 28, 2000, Dr. Malta diagnosed fibromyalgia and stated that it caused appellant’s normal function to be severely impaired. He prescribed an exercise program. Dr. Malta, however, did not address how appellant’s fibromyalgia resulted from the April 21, 1999 employment injury.

² *Dennis M. Mascarenas*, 49 ECAB 215, 218 n.9 (1997).

³ *See Carmen Gould*, 50 ECAB 504, 507 (1999).

⁴ *See Dennis M. Mascarenas*, *supra* note 2.

In a report dated January 8, 2001, Dr. Michels stated that she had treated appellant since June 2000. She stated that appellant had generalized severe fibromyalgia and myofascial pain that was post traumatic and related to the February 16, 1999 (it would appear she meant the April 21, 1999) employment injury. Dr. Michels stated that, prior to that injury, appellant had been able to function as a mechanic and subsequent to that episode he experienced progressive debility, progressive general muscular atrophy in the upper and lower body musculature and ongoing daily pain involving the thoracic, cervical and lumbar spine with associated muscle spasms that impaired his ability to work. She stated that on physical examination appellant was “extremely tender to palpation” throughout the cervical, thoracic and lumbar spine regions. Dr. Michels stated that appellant had limited lateral bending in the lumbar spine and limited cervical spine mobility and his condition was permanent. Dr. Michels, however, did not provide a rationalized medical opinion explaining how appellant’s fibromyalgia and myofascial pain resulted from the April 21, 1999 employment injury and, therefore, her opinion is not probative.⁵ She stated that appellant was asymptomatic prior to the injury and symptomatic after it, however, this, by itself, is not sufficient to establish causation.⁶ Similarly, Dr. Michels disability notes dated September 7 and October 19, 2000 in which she stated that appellant was disabled due, either to fibromyalgia or post-traumatic spinal pain or both since August 19, 2000 are not probative because they do not address causation.

None of the medical evidence appellant submitted establishes that his disability for the approximate time period from July 5 to December 15, 2000 resulted from his April 21, 1999 employment injury. Despite the Office’s informing appellant of the evidence he should submit to establish his claim, he did not submit the requisite evidence. Appellant has, therefore, failed to establish his claim.

⁵ See *Jacquelyn L. Oliver*, 48 ECAB 232, 236 (1996).

⁶ See *Thomas D. Petrylak*, 39 ECAB 276, 281 (1987).

The June 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 18, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member