

U.S. Department of Labor  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of Rhonda Lugo, claimant; employed by the U.S. Postal Service, Savannah, Georgia. Case No.: A06-0742117. Hearing was held in Jacksonville, Florida, on February 15, 2001.

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The issue for determination is whether the claimant sustained an occupational disease injury, as alleged.

Rhonda Lugo, born June 10, 1963, was employed as a Distribution Clerk by the Postal Service in Savannah, Georgia. On December 6, 1999, she filed a Notice of Occupational Disease indicating she was suffering from chronic joint and muscle pain, degenerative joint disease, chronic fatigue and irritable bowel syndrome. On her notice of injury, she attributed the development of her symptoms to her employment requirements. By formal rejection Order dated June 7, 2000, the Office rejected Ms. Lugo's claim. In an accompanying memorandum, she was advised that the evidence failed to demonstrate that she sustained an "injury," as defined in the Act. She disagreed with that decision and requested a hearing before an Office Hearing Representative.

Pursuant to the claimant's request, a hearing was held in Jacksonville, Florida, on February 15, 2001. The claimant appeared at the scheduled proceedings, where she was represented by attorney Paul Felser. At the outset of the hearing, Ms. Lugo was asked to describe the specific work activities that she felt led to the development of her conditions. She described having to unload dollies, carts, and picking up mail in order to place the bundles by each Letter Carrier's case. To do so, she testified that she was required to stand on her feet all day and "never got to sit down."<sup>1</sup>

When asked to describe the onset of her fibromyalgia, the claimant responded that she had been diagnosed with the condition since the early 1990s. She recalled that her problems began with her hands and wrists, gradually progressing into her shoulders and to her current overall state. Soon thereafter, Mr. Felser discussed the medical evidence contained in the case file, as well as the evidence he introduced into the record at the

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<sup>1</sup> See Hearing Transcript, page 7, lines 16-17.

hearing. He produced a report dated October 31, 2000, authored by Dr. Keith Kirby, wherein the claimant's diagnosis of fibromyalgia was documented. After he concluded his presentation, the hearing was adjourned.

As required by Office procedures, a copy of the hearing transcript was forwarded to the employing agency to afford them the opportunity to comment on the claimant's testimony. No such comments have been received and this matter is now in posture for decision.

In the case at hand, the district office appropriately rejected Ms. Lugo's claim because the medical evidence was insufficient to demonstrate the existence of a medical condition that was caused, aggravated or precipitated by her employment requirements. At the hearing, claimant's counsel submitted Dr. Kirby's October 31, 2000 report, wherein the physical demands of the claimant's work requirements were adequately described. Dr. Kirby indicated that the repetitive nature of her job demands aggravated Ms. Lugo's underlying condition of fibromyalgia.

As the record has been supplemented with a medical report containing the requirements to demonstrate a relationship between the claimant's work duties and the worsening of her underlying fibromyalgia, I find that this claim can be accepted. The decision of the district office dated June 7, 2000 is therefore REVERSED and the claim accepted for an aggravation of underlying fibromyalgia. The case is being returned to the district office for routine handling, to include development of whether the claimant's aggravation was temporary or permanent. Development of that issue is left to the discretion of the district office.

DATED: JUN 13 2001  
WASHINGTON, D.C.



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Rachel Leiton  
Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs

U.S. Department of Labor

Employment Standards Administration  
Office of Workers' Compensation Programs  
Division of Federal Employees' Compensation  
Washington, D.C. 20210



File Number

JUN 13 2001

(202) 693-0045

File Number: 06-0742117  
Employee: RHONDA J. LUGO

RHONDA J. LUGO  
110 STEPHEN DR  
RINCON, GA. 31326

Dear Ms. LUGO:

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 02/15/2001. Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs, 214 North Hogan Street, Suite 1006, Jacksonville, FL 32202.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Leiton".

RACHEL LEITON  
Hearing Representative ext 31017

US POSTAL SERVICE  
SAVANNAH MGT SECT CNTR  
2 NORTH FAHN STREET  
SAVANNAH GA 31402

PAUL H. FELSER ESQ  
PO BOX 9087 31 MONTGOMERY ST  
SAVANNAH, GA. 31412

CXJ

HR12

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
214 N HOGAN ST SUITE 1001  
JACKSONVILLE FL 32202  
Phone: (904) 357-4777

June 7, 2000

File Number: 060742117  
Date of Injury: 11/16/1999  
Employee: Rhonda Lugo

Rhonda J. Lugo  
110 Stephen Dr  
Rincon, GA 31326

Dear Ms. Lugo:

#### NOTICE OF DECISION

Please note that under this case number, our office is only considering your claim that repetitive motion at your job caused physical conditions. On the CA-2 Notice of Occupational Disease and in one of your statements you mentioned emotional stress and resultant physical and emotional conditions. Although you have attempted to claim both repetitive motion and emotional stress under this case number, combining different conditions that have different causes in this way is not allowed under our program. Therefore, if you feel you have a condition based on emotional stress, you will have to pursue this by filing a separate CA-2 claim for Occupational Disease

Your claim for compensation has been denied as the evidence was not sufficient to meet the guidelines for establishing that you sustained an injury due to the claimed employment factor, as required by the Federal Employees' Compensation Act. To establish "fact of injury" the evidence must establish a condition has been diagnosed in connection with the claimed accident, event, or employment factor.

The initial evidence of file supported that you actually experienced the claimed employment factor. However, the evidence did not establish that a secure diagnosis has been made in connection with this. Therefore, an injury within the meaning of the Federal Employees' Compensation Act (FECA) was not demonstrated.

You were advised of this by letter dated December 17, 1999, and afforded the opportunity to provide supportive evidence.

Evidence received consisted of two statements from you and various medical reports. This was not sufficient because the medical evidence failed to provide a secure diagnosis. Some of the reports provide an impression of fibromyalgia. Fibromyalgia is a very controversial diagnosis. Some physicians do not believe the condition exists and many other physicians frequently misdiagnosis the condition, using this term to describe a collection of symptoms which has no apparent cause. Therefore, the medical community has come up with diagnostic criteria which confirm whether a person actually does experience this condition.

In order for our office to accept fibromyalgia as a secure diagnosis the medical reports would have to support this diagnosis by showing how you meet the diagnostic criteria. Without this, we must assume that your physician is using a catch-all phrase to indicate that the cause of your symptoms is unknown. In a report dated December 8, 1999, Dr. Philip Schwartz stated that physical and laboratory findings are minimal, but that his impression is fibromyalgia. This suggests that this is not a secure diagnosis based on the diagnostic criteria.


Although you have claimed that other conditions were caused by repetitive motion at work (including degenerative disc disease, insomnia, and irritable bowel syndrome), none of the medical information you submitted links any of these to your work.

Therefore, based on these findings, your claim is denied as you have not met the requirements for establishing that you sustained an injury as alleged. Medical treatment at OWCP's expense is not authorized and prior authorization, if any, is hereby terminated.

**NOTE TO EMPLOYER:** Our office records indicate that a CA-7 claim for compensation was submitted by Ms. Lugo. This claim can not be located please submit a copy of the claim for our case file.

If you disagree with this decision you may pursue one of the courses of action listed on the enclosed sheet. Please be aware that there are time frames associated with exercising your appeal rights.

Sincerely,



Mark Stewart  
Senior Claims Examiner  
TMW

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US POSTAL SERVICE  
SAVANNAH MGT SECT CNTR  
INJURY COMPENSATION SUPV  
2 NORTH FAHM STREET  
SAVANNAH, GA 31402

Enclosure: Appeal Rights