

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD A. DARCY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Castle Point, N.Y.

*Docket No. 97-2337; Submitted on the Record;
Issued May 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after July 16, 1996 causally related to the March 24, 1995 employment injury.

The Board has duly reviewed the case record and concludes that this case is not in posture for a decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² Causal relationship is a medical issue³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The facts in this case indicate that the Office of Workers' Compensation Programs accepted that on or about March 25, 1995 appellant, then a 44-year-old medical administrative officer, sustained depression, single episode, causally related to factors of his federal employment. He stopped work on March 27, 1995 and returned to regular duty on July 14, 1995. During a period of restructuring at the employing establishment, on January 20, 1996 he assumed the position of patient advocate in consumer and medical relations. On August 13, 1996 appellant filed a claim, alleging that he sustained a recurrence of disability on July 15, 1996. He returned to regular duty on July 23, 1996 and on August 16, 1996 filed a claim, stating that he sustained a recurrence of disability on August 9, 1996. He stopped work on August 12, 1996 and has not worked since. By letter dated August 27, 1996, the Office informed appellant of the type of evidence needed to support his claims. By decision dated January 14, 1997, the Office denied that appellant sustained recurrences of disability on July 16 or August 12, 1996 on the grounds that the medical evidence was insufficient to establish entitlement. Appellant requested reconsideration, and submitted additional evidence. In an April 22, 1997 decision, the Office denied modification of its prior decision. The instant appeal follows.

The relevant medical evidence includes an October 5, 1995 second opinion evaluation in which Dr. Robert Conciatori, a psychiatrist, diagnosed major depression, single episode partially resolved, that was causally related to job stress. He advised that appellant's prognosis was fair provided treatment was ongoing, stating that it was difficult to say how much longer his condition would exist. Dr. Conciatori recommended that appellant be reexamined in four months to determine if he still had signs or symptoms of depression.

Appellant's treating Board-certified psychiatrist, Dr. Robert Kammerman, provided treatment notes dating from appellant's initial visit on March 31, 1995 through November 5, 1996. In a treatment note dated July 22, 1996, Dr. Kammerman stated:

"[Appellant] is seen for an urgent visit today. Last week, he became overwhelmed with anxiety and I had to put him out on sick leave in reaction to a renewed round of stress at work.... He is taking the maximum we can give him in terms of antianxiety medicine ... and despite all of this medication, [he] was still so overwhelmed, anxious and almost irrational last week, that I felt that he could not safely function at work. He will return to work tomorrow."

In an August 16, 1996 treatment note, Dr. Kammerman stated:

"[Appellant] has once again decompensated. The stress at work is enormous.... The large dose of antidepressant and antianxiety medicines that [he] is taking are of significant help at modifying the symptoms and even with the stress he is under they have helped him try to function. We had him out on disability for a week last month. He returned but he is decompensating now, crying in the office and is clearly unable despite heroic effort to continue with his job. After struggling with this for an entire year after his return to work from the first four[-]month disability, I have concluded that [appellant] cannot in the near future return to that situation. I consider that he is disabled for the next six months."

Dr. Kammerman provided an undated report in which he summarized his clinical impressions of appellant.⁵ He noted that he began treating appellant on March 31, 1995 and advised that his “persistent, often disabling, major depression ... was and is clearly reactive to a set of stresses connected with his work.” He continued:

“It is my clinical opinion that his symptoms of guilt, low self-esteem, suicidal ideation and massive anxiety were directly caused by a pattern of inconsistency and unfairness on the part of his managers.... The illness that I continue to treat up to the present time is the same illness I started treating in March 1995. We are using high doses of both antidepressants and antianxiety medication and have been consistently since the beginning. Even with this medicine [appellant] remains very depressed, unable to concentrate and crippled with anxiety and suicidal ideation.... While he would occasionally improve, he would always regress with a new round of work stress.... I believe his symptoms continuously [from March 1995] to now are directly related in a causative manner to the aggravations from his work life.”

In the present case, the medical evidence of record suggests that appellant’s accepted condition of depression, single episode, may not have resolved at the time he returned to work in July 1995 or when he claimed recurrences of disability. In this regard, Dr. Conciatori reported on October 5, 1995 that appellant’s condition was partially resolved and advised that it was difficult to say how much longer his condition would exist. Dr. Kammerman, maintained that appellant’s condition in 1996 was causally related to the 1995 employment injury.⁶

While these reports lack detailed medical rationale sufficient to discharge appellant’s burden of proof to establish by the weight of reliable, substantial and probative evidence that he sustained a recurrence of disability on or after July 16, 1996, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.⁷ Under such circumstances, the reports are sufficient to require further development of the record.⁸ It is well established that proceedings under the Federal Employees’ Compensation Act⁹ are not adversarial in nature¹⁰ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹¹ Only in

⁵ Although this report was not stamped received by the Office, it would appear that it was submitted along with a March 3, 1997 letter from appellant, received by the Office on March 11, 1997.

⁶ Dr. Kammerman also implicated additional factors encountered after appellant’s return to work.

⁷ See *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁸ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant’s claim and further notes that, following appellant’s recurrence claims, the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹¹ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development.¹² The Board finds that in this case the medical evidence taken as a whole is sufficiently supportive of appellant's claim to warrant further development of the evidence.¹³ After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated April 22 and January 4, 1997 are hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
May 10, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.800.5c (April 1993).

¹³ See *John J. Carlone, supra* note 7; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5b (September 1993); see also at Chapter 2.810.8a (April 1993).