



thoracic strain, aggravation of lumbar spondylosis, aggravation of right hip tendinitis, aggravation of right shoulder tendinitis and aggravation of depression. Appellant stopped work on January 3, 2004 and retired on June 18, 2004. Leave records accompanying the claim showed 1,926 hours of unscheduled leave from July 16, 2001 to May 12, 2004.

Appellant came under the treatment of Dr. Walter E. Afield, a Board-certified psychiatrist and neurologist, who noted treating her on February 1 and 3, 2003 for anxiety and depression. He advised that she was unable to return to work without restrictions unless placed in a different work setting, pay location and under a different supervisor. Appellant was also treated by Dr. H. Gerard Siek, Jr., a Board-certified orthopedic surgeon, who noted, in reports dated February 23 and March 22, 2004, that she was unable to perform her job as a tow operator because it involved strenuous activities. He diagnosed sprain of the cervical spine, central disc protrusion at C5-6 with mild central stenosis, disc bulge at C4-5, sprain of the thoracic spine, sprain in the lumbar spine with spondylosis and early degenerative arthritis, disc bulge at L3-4, increased anxiety and stress at her job, chronic depression, tendinitis of the right shoulder and right hip. Dr. Siek opined that appellant's job permanently aggravated all of her injuries and she could not return to work.

In a statement dated August 24, 2004, appellant noted that her condition developed over a period of time and that she still experienced residual pain. A magnetic resonance imaging (MRI) scan of the lumbar spine dated February 14, 2001 revealed mild to moderate dorsal spine without evidence of disc bulges or herniations. An MRI scan of the cervical spine dated November 26, 2003 revealed disc protrusions at C5-6, C4-5. An MRI scan of the lumbar spine dated November 26, 2003 revealed a disc bulge at L1-2, L2-3, L3-4. A functional capacity evaluation dated February 11, 2004 noted that appellant could work light duty with lifting limited to 20 pounds occasionally and up to 10 pounds frequently. On March 4, 2004 Dr. Afield noted that he closed her case upon her return to work October 10, 2003; however, appellant experienced lumbar pain and depression which caused her to stop working.

Reports from Dr. Siek dated May 27 and September 23, 2004 addressed appellant's complaints of pain in the neck, low back and hips. He advised that she had not worked since January 31, 2004 and diagnosed sprain of the cervical spine, central disc protrusion at C5-6 with mild central stenosis, disc bulge at C4-5, sprain of the thoracic spine, sprain in the lumbar spine with spondylosis and early degenerative arthritis, disc bulge at L3-4, increased anxiety and stress at her job, chronic depression, tendinitis of the right shoulder and right hip, degenerative cysts in both acetabula, chronic depression and obesity. In his report of September 23, 2004, Dr. Siek noted that appellant presented with pain in her neck and diagnosed chronic myofasciitis of the neck and upper and lower back, disc protrusion at C5-6 and mild scoliosis.

On November 24, 2004 appellant submitted a CA-7, claim for compensation, requesting compensation for the period of August 6, 2002 to December 31, 2003.

By letter dated December 14, 2004, the Office asked appellant to submit medical evidence establishing her disability from work for the claimed period. The Office also requested that she explain why she was claiming disability compensation for dates prior to her date of injury of July 1, 2004.

In a decision dated March 4, 2005, the Office denied appellant's claim for compensation for the period of August 11, 2002 to January 10, 2003 on the grounds that the evidence did not establish that her disability was due to her accepted work injury.

On April 7, 2005 appellant requested reconsideration and submitted additional medical evidence. A report from Dr. Afield, dated November 11, 2002, who indicated that she was confused and that there was a work-related component to her condition. He advised that appellant could not return to work at this time. In a report dated November 14, 2002, he noted that a neurobehavioral assessment revealed severe depression and post-traumatic stress disorder but did not reveal organic brain impairment. Dr. Afield opined that stress at work caused appellant's condition and advised that she could not return to work. On January 2, 2003 she presented depressed and reported that her supervisor discriminated against her. Dr. Afield opined that appellant was impaired and believed her condition was work related. In a report dated January 24, 2003, he noted that she was depressed; however, appellant appeared to experience favorable results from medication and advised that she could return to work within a month.

Appellant submitted a report from Dr. Afield dated February 3, 2003 which noted that she was fearful of returning to work because of racial overtones and harassment from her supervisor. On February 24, 2003 he advised that she successfully returned to work. Dr. Afield indicated on April 30, 2003 that appellant showed increased signs of stress, depression and anxiety due to conflicts with her supervisor upon her return to work. He also addressed treatment at hypercholesterolemia, chronic low back pain, degenerative disc disease and scoliosis and intermittent work stoppage. In a report dated March 4, 2004, he noted that on October 10, 2003 appellant experienced increased back pain and depression and worked intermittently until June 21, 2003 when she stopped work completely. In a report dated May 5, 2004, Dr. Afield noted her complaints of neck and low back pain with depression and opined that appellant's problems were work related and advised that she could not return to work. In reports dated August 20, 2004 to January 10, 2005, he indicated that she retired but still experienced neck and back pain. Appellant also submitted a new report from Dr. Siek dated June 20, 2005, who recalculated her impairment rating in accordance with the A.M.A., *Guides* and noted a 16 percent impairment of the lower extremity.

In a July 19, 2005 decision, the Office denied appellant's reconsideration request on the grounds that she neither raised substantive legal questions, nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>1</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>2</sup> The issue of

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<sup>1</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>2</sup> *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for aggravation of cervical spine stenosis, aggravation of thoracic strain, aggravation of lumbar spondylosis, aggravation of tendinitis right hip, aggravation of tendinitis of the right shoulder and aggravation of depression. The Board notes that the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning August 11, 2002 to January 10, 2003<sup>4</sup> is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Accompanying appellant's claim were reports from Dr. Afield, who treated her on February 1 and 3, 2003 for anxiety and depression. On March 4, 2004 he noted that she attempted to return to work; however, appellant experienced lumbar pain due to her herniated discs and depression and stopped shortly thereafter. However, Dr. Afield did not, in this report or in others, specifically address whether appellant had any employment-related disability beginning August 6, 2002 to December 31, 2003 causally related to her July 2004 employment injury. The Board notes that there was no contemporaneous medical evidence submitted to support disability for the period claimed. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>5</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Other reports from Dr. Siek dated February 23 and March 22, 2004 noted that appellant was unable to perform her job as a tow operator because it involved bending over and hooking up cages and loads. He diagnosed sprain of the cervical spine, central disc protrusion at C5-6, with mild central stenosis, disc bulge at C4-5, sprain of the thoracic spine, sprain in the lumbar spine with spondylosis and early degenerative arthritis, disc bulge at L3-4, increased anxiety and stress at her job, chronic depression, tendinitis of the right shoulder and right hip. Dr. Siek opined that appellant's job permanently aggravated all of her injuries and she could not return to the employing establishment. The Board finds that, although his supported causal relationship in this conclusory statement he failed to provide medical rationale or reasoning, explaining whether she had any employment-related disability beginning August 6, 2002 to December 31, 2003 causally related to her July 2004 employment injury.<sup>6</sup> Other reports from him dated May 27 and

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<sup>3</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>4</sup> The Board notes that appellant's claim for compensation dated November 24, 2004 requested compensation for the period of August 6, 2002 to December 31, 2003. On March 4, 2005 the Office issued a decision denying her claim for compensation from August 11, 2002 to January 10, 2003, but did not address the dates of August 6 and 10, 2002 or January 11 to December 31, 2003. Since the Office did not issue a final decision with regard to this period, the Board does not have jurisdiction over the matter. See 20 C.F.R. § 501.2(c).

<sup>5</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>6</sup> *Id.*

September 23, 2004 revealed appellant's continued complaints of pain in the neck, low back and hips and advised that she had not worked since January 31, 2004. However, as noted above, Dr. Siek did not, in this report or in others, specifically address whether she had any employment-related disability beginning August 6, 2002 to December 31, 2003 causally related to her July 2004 employment injury.<sup>7</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence did not provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of July 2004. Consequently, the medical evidence did not establish that the claimed period of disability were due to appellant's employment injury of July 2004.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>8</sup> the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>9</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
- (ii) Advances a relevant legal argument not previously considered by the (Office);
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

The Office's July 19, 2005 decision, denied appellant's reconsideration request without conducting a merit review on the grounds that the evidence submitted neither raised substantive legal questions, nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

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<sup>7</sup> See *Jimmie H. Duckett*, *supra* note 5.

<sup>8</sup> 5 U.S.C. § 8128(a).

<sup>9</sup> 20 C.F.R. § 10.606(b).

<sup>10</sup> 20 C.F.R. § 10.608(b).

With her July 19, 2005 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by the Office. After the March 4, 2005 decision which denied appellant's claim for compensation for the period of August 11, 2002 to January 10, 2003, she submitted a report from Dr. Afield, dated November 11, 2002, who indicated that appellant was confused and that there was a work-related component to her condition and advised that she could not return to work at this time. In a report dated November 15, 2002, he diagnosed depression and post-traumatic stress disorder and opined that stress at work caused her condition and advised that appellant could not work at this time. Dr. Afield noted on January 2, 2003 that appellant presented depressed and reported that her supervisor discriminated against her. He opined that her depression was work related. This evidence is relevant as the reports are contemporaneous to the claimed period of claimed disability in 2002 and address appellant's disability as causally related to her July 2004 employment injury which was accepted for aggravation of depression.

The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.<sup>11</sup> The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), the new evidence submitted by appellant is sufficient to require reopening of her claim for further review on its merits.

Therefore, the Office, in its decision dated July 19, 2005, improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. The case will be remanded for further merit review. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.<sup>12</sup>

### CONCLUSION

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of July 2004. The Board further finds that the Office, in its decision dated July 19, 2005, improperly denied her request for reconsideration of her case on its merits.<sup>13</sup>

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<sup>11</sup> See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>12</sup> 20 C.F.R. §§ 10.606(b)(2)(i) and (ii) (1999), see also *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>13</sup> As the Office did not issue a final decision with regard to a schedule award, the Board does not have jurisdiction over the matter. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 19, 2005 is set aside and remanded for further action consistent with this decision and the March 4, 2005 decision is affirmed.

Issued: January 3, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board