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

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| **A.J., Appellant** | ) | |
| **and** | ) | **Docket No. 09-951** |
| | ) | **Issued: December 23, 2009** |
| **DEPARTMENT OF THE ARMY, USA TACOM, Warren, MI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On February 23, 2009 appellant, through counsel, filed a timely appeal of July 18, 2008 and January 22, 2009 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

### ***ISSUES***

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective July 18, 2008 on the grounds that he no longer had any residuals or disability causally related to his accepted employment injury; (2) whether appellant had any continuing employment-related residuals or disability after July 18, 2008; and (3) whether appellant established that he sustained a psychiatric or emotional condition as a consequence of his accepted September 22, 2006 employment injury.

## ***FACTUAL HISTORY***

On October 19, 2006 appellant, then a 27-year-old mechanical engineer, filed an occupational disease claim alleging that, on September 22, 2006, he sustained injuries to his head, neck, back and arm when he was rear-ended by a dump truck during work-related travel. The Office accepted the claim for concussion, post-concussion syndrome and neck sprain. Appellant returned to part-time work on December 11, 2006, but again stopped working on December 12, 2006.

Appellant was treated by Dr. Bharat M. Tolia, a Board-certified psychiatrist and neurologist. On January 17, 2007 Dr. Tolia diagnosed: status post motor vehicle accident; whiplash with cervical pain; cerebral concussion; after-concussion syndrome with cognitive difficulty, mood disorder, affective disorder, child-like behavior and emotional lability; back stiffness; insomnia; mood swings; right arm and hand pain; and right-sided cluster headaches. His neurological examination was normal. Dr. Tolia found appellant to be alert, awake and oriented, with normal attention span, recall, speech and language functions.

In a letter dated February 12, 2007, the Office asked appellant to provide a report from Dr. Tolia, which provided objective findings to substantiate his diagnoses and a rationalized opinion explaining how those conditions were causally related to his accepted injury.

In a report dated March 14, 2007, Dr. Tolia reiterated his previous diagnoses and opined that appellant was unable to work. He stated that appellant continued to complain of head pain, which worsened after he worked for a few hours. Dr. Tolia related appellant's complaints of irritability, sadness, estrangement, isolation and hyper vigilance. He noted that appellant had difficulty concentrating; was confused and distracted; had an exaggerated startle response; and suffered from headaches and nausea. The record contains follow-up reports from Dr. Tolia from March 22 through December 12, 2007 reflecting appellant's complaints of continuing memory problems, headaches and stress. On July 12, 2007 Dr. Tolia diagnosed post-traumatic stress syndrome.

On March 29, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Yasmeen Ahmad, a Board-certified psychiatrist and neurologist, for a second opinion as to whether appellant had continuing residuals causally related to his accepted September 22, 2006 injury and, if so, whether he was disabled as a result of those residuals. In a report dated April 18, 2007, Dr. Ahmad stated that there was no objective evidence supporting continuing residuals of a neck sprain, concussion or postconcussion syndrome related to the September 22, 2006 injury. He opined that, from a neurological standpoint, appellant was capable of performing his preinjury duties of a mechanical engineer without any restrictions. Based on his review of the entire record, Dr. Ahmad provided a history of injury, which reflected appellant's report that he did not hit his head or pass out during or as a result of, the accepted incident. On examination, appellant was alert, oriented and able to do "serial [seven] subtraction;" however, the speed of processing was extremely slow. Cranial nerve testing revealed pupils that were equal, round and reactive to light and normal discs fundus (cranial nerves 2); intact extraocular movements (cranial nerves 3, 4 and 6); intact sensation and strength bilaterally (cranial nerve 5); symmetrical nasal labile folds bilaterally and equal wrinkling of the forehead (cranial nerve 7); air conduction better than bone conduction, with a midline Weber

(cranial nerve 8); uvula midline and well-elevated palate (cranial nerves 9 and 10); strength of aternocleidomastoid intact bilaterally (cranial nerve 11); and midline tongue, with no atrophy or fasciculations (cranial nerve 12). Motor examination showed no pronator drift or subtle weakness. Strength was 5/5 in all muscle groups. Deep tendon reflexes were 2+ in the upper extremities, 3 to 4+ at the knee and 0 to 1+ at the ankles with downgoing Babinski. On sensory examination, appellant was intact to pinprick. Cerebellar examination revealed normal "finger-nose-finger" test and normal tandem gait. Appellant had full range of motion in the cervical spine with flexion, extension and lateral rotation. Dr. Ahmad noted that appellant had extreme confusion with every instruction.

Dr. Ahmad found no clinical evidence of seizure activity or of cognitive deficits secondary to the 2006 motor vehicle accident. He noted that the cognitive deficits that appellant was describing, such as pouring water on a surface rather than in a glass and forgetting to take the dog on his way to walk, were not consistent with the type of minor injury that he sustained; nor were they consistent with a closed-head injury. Dr. Ahmad diagnosed medication overuse headaches, which he opined would cease in a period of one to four weeks, once the over-the-counter pain medications and triptans were stopped. Regarding appellant's alleged neck pain, Dr. Ahmad found no radicular symptoms and no numbness or tingling. The neurological examination was completely normal, with normal strength and sensation and bilaterally symmetrical reflexes. Dr. Ahmad stated that appellant's neck pain was myofascial, self-limited and resolved and opined that he had returned to preaccident status within a few weeks to a few months after the accepted injury.

The Office found a conflict in medical opinion between the Office's second opinion physician and Dr. Tolia. It referred appellant, together with a statement of accepted facts, a list of questions and the medical record to Dr. William M. Leuchter, a Board-certified psychiatrist and neurologist, to resolve the conflict as to whether appellant continued to suffer residuals from his accepted conditions and, if so, whether he was disabled as a result of those residuals.

In a February 6, 2008 report, Dr. Leuchter reviewed the entire medical record and provided a history of injury and treatment and examination findings. He stated that, although appellant exhibited rather bizarre and inappropriate behavior, he exhibited no neurological symptoms and was not neurologically disabled as a result of his accepted injury. Dr. Leuchter found that appellant had a good memory for events surrounding the accident, with no evidence of retrograde or anterograde amnesia. He opined that appellant's behavior was psychiatric in origin and could not be related to his motor vehicle accident. In addition, appellant's neurological testing, including a magnetic resonance imaging scan of the brain, a previous head computerized tomography scan and electrophysiological studies, was normal. Dr. Leuchter found no evidence of peripheral or central nervous system dysfunction, constructional apraxia or visual spatial disorientation. On physical examination, both pupils were equal, round and reactive at five millimeter. The discs were flat; the fields were full; and the corneas were equal. There was no facial weakness. Cranial nerves 8 through 12 were normal. Muscle mass and tone was normal. There was no drift, no tremor and no focal weakness. Pinprick, light touch and position were all intact. Deep tendon reflexes were 2+ in the arms, 3 in the knees, 2+ in the ankles and symmetrical. Dr. Leuchter noted that appellant appeared to be overusing medications.

In a supplemental report dated March 12, 2008, Dr. Leuchter opined that appellant's accepted neck sprain had fully resolved. Appellant had full range of motion in his neck, with no residual muscle spasm, tenderness or pain on movement. His complaints of neck pain were not substantiated at the time he was seen on February 6, 2008 with any objective neurological or neuromuscular findings.

Appellant submitted a March 16, 2007 neuropsychological evaluation from Dr. Bradley G. Sewick, a Board-certified clinical neuropsychologist, who indicated that he administered a battery of tests and reviewed certain medical records. Dr. Sewick stated that appellant was functioning very well from a neurobehavioral perspective up until the time of a September 22, 2006 automobile accident with acceleration/deceleration-type of head trauma, which he stated was consistent with literature concerning concussive brain injury. He diagnosed cognitive disorder and a pain disorder with dysomnia, secondary to the September 22, 2006 head injury. Dr. Sewick also noted evidence of a mood disorder with post-traumatic anxiety symptoms and some psychotic features. He also suggested the possibility that appellant might have an organic personality syndrome secondary to the accepted injury.

On April 7, 2008 the Office proposed to terminate appellant's compensation and medical benefits. It determined that Dr. Leuchter's referee report established that appellant's injury-related disability and residuals had ceased. Appellant was afforded 30 days within which to submit any additional evidence.

On May 6, 2008 Dr. Tolia reported that appellant had scored below average on the Neurotax memory test (70.6 percent) and that electroencephalogram testing was abnormal for subcortical paroxysmal disturbance. He stated that appellant had numerous mood disorders and continued to experience sensitivity to light, anxiety, memory and concentration loss, neck and leg pain as a result of his September 2006 head injury.

The record contains an April 22, 2008 report from Dr. Sewick. The report reflects that appellant was unable to return to work following his accepted injury, which was characterized as life-changing and likely career-ending. Following the accident, appellant reportedly was experiencing auditory and visual hallucinations, extreme difficulty differentiating between reality and his perceptions, intense feelings of fear, symptoms of post-traumatic stress, debilitating emotional and physical fatigue, depression, inability to regulate his own emotions, extreme nervousness, hyper vigilance, anxiety, fear, disinhibition, anger, verbal and physical impulsivity, notable weight loss of 25 pounds, irregular sleep patterns, obsessive-compulsive tendencies, nightmares of morbid and dreadful content, feelings of peculiarity, social isolation, not to mention multiple physical pain problems relating to injury. In addition, he reported symptoms of photosensitivity, dizziness, loss of coordination, a significant decrease in his stamina, constant headaches that range from mild to severe intensity, neck, shoulder and back pain and pain in his right upper extremity including tingling. In a separate report dated April 22, 2008, Dr. Sewick stated that appellant continued to present with deficits in executive skills, concentration, memory, processing information, insight and judgment due to his September 22, 2006 motor vehicle accident. He diagnosed cognitive disorder, pain disorder with dysomnia, mood disorder with post-traumatic anxiety symptoms with psychotic features, all of which he indicated were secondary to the September 22, 2006 head injury. Dr. Sewick also recommended ruling out organic personality syndrome secondary to the September 22, 2006 accident.

The Office referred appellant, together with a statement of accepted facts, to Dr. Michael H. Gotlib, a Board-certified psychiatrist and neurologist, for a second opinion evaluation, who was asked to provide an opinion as to whether appellant sustained a psychological or emotional condition causally related to his accepted 2006 motor vehicle accident. In a June 6, 2008 report, Dr. Gotlib stated that he had reviewed the medical record available to him, as well as the statement of accepted facts and found no evidence of a psychiatric condition.[1] He noted that appellant reported no psychotic symptoms, no hallucinations or delusions, no mood symptoms, no depression, no mania and no anxiety symptoms at the time of his examination. On examination, appellant was alert and oriented, with no auditory or visual hallucinations seen or reported. He had good immediate recent and remote memory. Appellant knew the name of the President and Vice President. He could tell the difference between the sun and a ball. Appellant was able to do "serial 7's" and to spell "w—o—r—l—d" frontward and backwards. He could repeat "No ifs ands and buts." Appellant had goal directed speech of normal range, affect and intensity. Dr. Gotlib opined that, from a psychiatric standpoint, appellant was not disabled and was able to perform his usual job as a mechanical engineer without restrictions and that no further treatment was indicated. He also indicated that he would defer to a neuropsychologist on the issue of whether appellant had a cognitive disorder, although he found no evidence of such a condition.

By decision dated July 18, 2008, the Office finalized the termination of appellant's compensation and medical benefits effective that date. It found that Dr. Leuchter's referee report was sufficient to resolve the conflict in the medical evidence and established that appellant was not disabled and had no remaining residuals from his accepted injury. The Office further found that Dr. Gotlib's second opinion report represented the weight of the medical evidence regarding appellant's psychological condition and established that he suffered from no work-related psychiatric condition.

On July 24, 2008 appellant, through counsel, requested a telephone hearing. At the November 5, 2008 hearing, he testified that he hit his headrest during the September 22, 2006 motor vehicle accident. Appellant stated that he was unable to perform the duties of his position after the injury. Appellant's attorney argued that Dr. Gotlib's report was deficient, as he did not have access to all of the medical records and saw him for only five minutes.

Appellant submitted a July 22, 2008 note from Dr. Sewick, reflecting his opinion that appellant had a cognitive disorder due to a head injury. He also submitted follow-up therapy notes from S. MacDonald, a licensed counselor, from July 22 through December 1, 2008.

By decision dated January 22, 2009, the Office hearing representative affirmed the July 18, 2008 decision terminating appellant's compensation and medical benefits. The representative found that the weight of the medical evidence on the issue of residuals and disability related to the accepted injury was represented by Dr. Leuchter's February 6 and March 12, 2008 reports, which established that appellant no longer had residuals from the September 22, 2006 motor vehicle accident. He also found that appellant had failed to meet his burden of proof to establish that he had sustained a psychiatric condition causally related to the

[1] Dr. Gotlib stated that he had not received all treatment notes from appellant's therapists and indicated that review of those notes would be useful.

accepted injury, based on Dr. Gotlib's second opinion report, which represented the weight of the medical evidence on that issue.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.[2] After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[7]

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

The Board finds that the Office correctly determined that a conflict in the medical opinion evidence arose between Dr. Tolia, appellant's treating physician, and Dr. Ahmad, an Office referral physician, as to whether appellant had any residuals or disability causally related to his accepted conditions. Dr. Tolia opined that appellant suffered from continuing employment-related residuals and total disability. On the other hand, Dr. Ahmad opined that appellant's employment-related concussion, postconcussion syndrome and neck sprain had resolved and he could return to work with no restrictions. Accordingly, the Office properly referred the case to an impartial medical specialist for the purpose of resolving the conflict.[8]

In his February 6, 2008 report, Dr. Leuchter opined that appellant was not disabled and had no remaining residuals from his accepted conditions. He reviewed the entire medical record

[2] *A.W.*, 59 ECAB ___ (Docket No. 08-306, issued July 1, 2008).

[3] *J.M.*, 58 ECAB ___ (Docket No. 06-661, issued April 25, 2007).

[4] *See Del K. Rykert*, 40 ECAB 284 (1988).

[5] *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007).

[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[7] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[8] *Id*.

and provided a history of injury and treatment and detailed examination findings. Dr. Leuchter stated that, although appellant exhibited rather bizarre and inappropriate behavior, he was not neurologically disabled and, in fact, exhibited no neurological symptoms and as a result of his accepted concussion, postconcussion syndrome and neck sprain. He found that appellant had good memory for events surrounding the accident, with no evidence of retrograde or anterograde amnesia. Dr. Leuchter opined that appellant's behavior was psychiatric in origin and could not be related to his motor vehicle accident. In addition, appellant's neurological testing was normal. Dr. Leuchter found no evidence of peripheral or central nervous system dysfunction. Appellant showed no symptoms of constructional apraxia or visual spatial disorientation. His examination revealed equal, round and reactive pupils, flat discs, full fields and equal corneas; no facial weakness, no drift, no tremor and no focal weakness; normal muscle mass and tone; and normal sensation and deep tendon reflexes. Cranial nerves 8 through 12 were normal. In his March 12, 2008 supplemental report, Dr. Leuchter opined that appellant's accepted neck sprain had fully resolved. Appellant had full range of motion in his neck, with no residual muscle spasm, tenderness or pain on movement. His complaints of neck pain were not substantiated at the time he was seen on February 6, 2008 with any objective neurological or neuromuscular findings.

The Board finds that Dr. Leuchter's opinion was based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and statement of accepted facts, physical examination and negative findings on objective examination, he found that appellant did not have any residuals or disability causally related to his accepted concussion, postconcussion syndrome and neck sprain. Dr. Leuchter opined that appellant's bizarre behavior was psychiatric in origin and could not be related to his accepted injury. Moreover, appellant's claimed neck pain was not substantiated by any objective findings. Dr. Leuchter's well-rationalized reports constitute the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits as of July 18, 2008.

On appeal, appellant's representative argues that the Office's July 18, 2008 and January 22, 2009 decisions were contrary to fact and law. For reasons stated herein, the Board finds this argument to be without merit.

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

Once the Office met its burden of proof to terminate his compensation and medical benefits, appellant had the burden to establish that he had any residuals or disability causally related to his accepted injury.[9] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[10] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] Rationalized

[9] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

[10] *Kathryn E. Demarsh*, *supra* note 6.

[11] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

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.[12]

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

After the Office properly terminated appellant's compensation and medical benefits, effective July 18, 2008, the burden of proof shifted to appellant to establish continuing employment-related residuals and disability.[13] Appellant submitted a July 22, 2008 note from Dr. Sewick, reflecting his opinion that appellant had a cognitive disorder due to a head injury. He also submitted follow-up therapy notes from a counselor from July 22 through December 1, 2008. Dr. Sewick did not explain how the cognitive disorder was causally related to appellant's accepted conditions. Therefore, his report is of limited probative value and insufficient to give rise to a new conflict or otherwise show that the termination was improper.[14] Moreover, as Dr. Sewick is a psychologist, rather than a medical physician, he is not considered a "physician" under the Federal Employees' Compensation Act for purposes of determining whether appellant had continuing residuals from his accepted medical conditions.[15] Further, notes from a counselor do not constitute probative medical evidence.[16]

The Board finds that appellant has failed to meet his burden of proof to establish that he had any residuals or disability causally related to his accepted conditions after July 18, 2008.

## ***LEGAL PRECEDENT -- ISSUE 3***

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional

[12] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007); *Solomon Polen*, 51 ECAB 341 (2000).

[13] *I.J.*, *supra* note 6; *Joseph A. Brown, Jr.*, *supra* note 9.

[14] The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value. *Mary A. Ceglia*, 55 ECAB 626 (2004). *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also David L. Scott*, 55 ECAB 330 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004).

[15] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2).

[16] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). *Id. See Merton J. Sills*, 39 ECAB 572, 575 (1988).

conduct.[17] The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.[18] With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.[19]

Proceedings under the Act are not adversary in nature; nor is the Office a disinterested arbiter.[20] While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[21] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[22]

## ***ANALYSIS -- ISSUE 3***

The Board finds that the case is not in posture for decision as to whether appellant developed a psychiatric condition as a result of his accepted September 22, 2006 injury. Therefore, the case will be remanded for further development of the medical evidence.

Appellant's treating physicians opined that appellant developed psychiatric conditions as a consequence of his September 22, 2006 motor vehicle accident. On January 17, 2007 Dr. Tolia, who began treating appellant at the time of his accepted injury, diagnosed mood disorder, affective disorder, child-like behavior and emotional lability, in addition to his accepted physical conditions. On March 17, 2007 he diagnosed post-traumatic stress disorder. On May 6, 2008 Dr. Tolia stated that appellant had numerous mood disorders and continued to experience sensitivity to light, anxiety, memory and concentration loss, neck and leg pain as a result of his September 2006 head injury.

In a March 16, 2007 neuropsychological evaluation, Dr. Sewick, a Board-certified clinical neuropsychologist diagnosed pain and cognitive disorders secondary to the September 22, 2006 head injury and noted evidence of a mood disorder with post-traumatic anxiety symptoms and some psychotic features. On April 22, 2008 he stated that, following the accepted injury, appellant experienced auditory and visual hallucinations, extreme difficulty differentiating between reality and his perceptions, intense feelings of fear, symptoms of post-traumatic stress, debilitating emotional and physical fatigue, depression, inability to regulate his own emotions, extreme nervousness, hyper vigilance, anxiety, fear, disinhibition, anger, verbal and physical impulsivity, notable weight loss of 25 pounds, irregular sleep patterns, obsessive-compulsive tendencies, nightmares of morbid and dreadful content, feelings of peculiarity, social

[17] *Albert F. Ranieri*, 55 ECAB 598 (2004).

[18] *Id.; Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

[19] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[20] *Vanessa Young*, 55 ECAB 575 (2004).

[21] *Richard E. Simpson*, 55 ECAB 490 (2004).

[22] *Melvin James*, 55 ECAB 406 (2004).

isolation, not to mention multiple physical pain problems relating to injury. Dr. Sewick diagnosed cognitive disorder, pain disorder with dysomnia, mood disorder with post-traumatic anxiety symptoms with psychotic features, all of which he indicated were the result of the September 22, 2006 head injury.

The Office referred appellant to Dr. Gotlib for an opinion as to whether appellant sustained a psychological or emotional condition causally related to his accepted 2006 motor vehicle accident. In his June 6, 2008 report, Dr. Gotlib stated that he had reviewed the medical record available to him, as well as the statement of accepted facts and found no evidence of a psychiatric condition. Finding that his report constituted the weight of the medical evidence, the Office hearing representative found that appellant had failed to establish a claim for a psychiatric condition. The Board finds, however, that Dr. Gotlib's report is deficient and requires supplementation.

Dr. Gotlib noted that he had not reviewed appellant's entire medical record. As his opinion was not based on a complete factual and medical background, it is of diminished probative value.[23] Objective examination findings were scant and superficial. The Board is unable to determine from the fact that appellant knew the names of the President and Vice President, could tell the difference between the sun and a ball, was able to do "serial 7's" and to spell "w—o—r—l—d" frontward and backwards and could repeat "No ifs, ands and buts," that he did not have a psychiatric condition. Dr. Gotlib noted that appellant was alert and oriented, with no auditory or visual hallucinations seen or reported; had good immediate recent and remote memory; and had goal directed speech of normal range, affect and intensity. He opined that, from a psychiatric standpoint, appellant was not disabled and was able to perform his usual job as a mechanical engineer without restrictions and that no further treatment was indicated. However, Dr. Gotlib did not explain how his findings compelled the conclusion that appellant did not have a psychological condition, nor did he address Dr. Leuchter's opinion that appellant's bizarre and inappropriate behavior was psychiatric in origin. Most importantly, Dr. Gotlib did not discuss the discrepancies between his findings and those of Dr. Sewick or explain why the symptoms exhibited by appellant, as documented by Dr. Sewick, were not caused or exacerbated by the September 22, 2006 injury. Without such explanation, his opinion is of limited probative value.

The Board finds that this case is not in posture for a decision. Although the opinions of appellant's treating physicians are not fully rationalized, they support his claim for a consequential psychiatric condition. Once the Office undertook to develop the record by seeking a second opinion on the relevant issue, it had the responsibility to do so in a proper manner.[24] Given the deficiency in Dr. Gotlib's report, the Office should not have denied appellant's claim for a consequential injury, prior to receiving a clarifying report. Accordingly, the Board will remand the case to the Office for appropriate further medical development. After further development as deemed necessary, it should issue an appropriate merit decision on appellant's claim.

[23] *K.W.*, *supra* note 12.

[24] *Melvin James*, *supra* note 22.

## ***CONCLUSION***

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits, effective July 18, 2008, on the grounds that he had no residuals or disability related to his accepted employment injury. The Board also finds that appellant has failed to establish that he had any employment-related residuals or disability after July 18, 2008 due to his accepted conditions. The Board finds, however, that the case is not in posture for a decision as to whether appellant has established that he sustained a psychiatric condition as a consequence of his accepted injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 22, 2009 and July 18, 2008 are affirmed in part and remanded in part.

Issued: December 23, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board