

The issues are: (1) whether the Office properly terminated appellant's compensation and medical benefits effective May 18, 2005 on the grounds that she no longer had any residuals of her accepted employment-related injury; (2) whether appellant had any continuing employment-related residuals or disability after May 18, 2005; and (3) whether appellant met her burden of proof to establish that she had any additional conditions causally related to the accepted October 25, 1995 injury.

## **FACTUAL HISTORY**

This is the second time this case has been before the Board. In a decision dated September 11, 2001, the Board reversed the Office's September 7, 1999 decision denying appellant's emotional condition claim. The Board found that appellant had established a compensable factor of employment, namely that her supervisor, Jan Wards, had acted in an abusive manner on October 25, 1995 when she told appellant that she would be fired if she failed to verify a voucher. The Board remanded the case for development of the medical evidence. The facts and the law contained in the Board's September 11, 2001 decision are incorporated herein by reference.<sup>1</sup>

On October 12, 2001 the Office accepted appellant's claim for a brief depressive disorder.<sup>2</sup>

On February 24, 2003 appellant submitted a claim for compensation from October 25, 1995 and continuing. The record reflects that she elected disability retirement effective May 1, 1996.

The Office referred appellant to Dr. William Hitch, a neuropsychologist, for a second opinion evaluation. Dr. Hitch was asked to provide an opinion as to whether appellant's acute adjustment disorder or brief depressive reaction continued and whether her preexisting, underlying fibromyalgia and chronic fatigue syndrome were aggravated by the accepted October 25, 1995 work incident. In a February 16, 2005 report, he compared current neuropsychological test results with those obtained in 1995 and opined that she did not have a progressive dementing illness. Dr. Hitch stated that many of her scores were clustered solidly within normal limits and at times considerably above that. He indicated that any neurocognitive concerns were probably secondary to appellant's history of fibromyalgia and chronic fatigue syndrome, particularly since both of these disorders typically present, neurocognitively, with difficulties in memory, speed of processing and concentration. Dr. Hitch stated that he was unable to provide an opinion as to whether appellant continued to experience residuals of these diagnosed conditions or whether her preexisting, underlying fibromyalgia and chronic fatigue syndrome were aggravated by the accepted work incident, because such a determination was outside of his area of expertise.

The Office referred appellant to Dr. Bruce A. Heyl, Board-certified in the areas of psychiatry and neurology, for another second opinion evaluation. In a report dated May 18, 2005, Dr. Heyl provided a history of injury and treatment and indicated that he had reviewed the entire medical record. His examination of appellant revealed an excellent memory of events,

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<sup>1</sup> Docket No. 00-795 (issued September 11, 2001).

<sup>2</sup> The Office initially accepted appellant's claim on March 6, 1996 for an acute adjustment disorder and brief depressive reaction. In a November 20, 1996 decision, it rescinded its acceptance. On May 22, 1997 the Office denied appellant's claim on the grounds that she had failed to identify a compensable factor of employment. On July 17, 1998 an Office hearing representative affirmed the Office's May 22, 1997 decision and on September 7, 1999 the Office denied modification of its previous decision. On September 11, 2001 the Board reversed the September 7, 1999 decision, finding that the Office failed to meet its burden of proof to rescind its prior acceptance of appellant's emotional condition claim.

times and places in her medical history. Dr. Heyl found her to be of above-average intelligence and there was no evidence of loosened thought associations or delusional thought content. Appellant seemed in no particular distress. Dr. Heyl diagnosed acute adjustment disorder/brief depressive reaction, associated with the October 25, 2005 incident. He specified that this disorder was related in time and circumstance to appellant's employment injury of 1995 and had no continuing impact on her present state of mental health. Dr. Heyl also diagnosed chronic somatization disorder, which he indicated predated the 1995 work incident; personality disorder; and myasthenia gravis, fibromyalgia, chronic fatigue syndrome, hypothyroidism and borderline diabetes mellitus, by medical history. He opined that appellant did not have a work-related emotional disorder. Dr. Heyl stated that she continued with disabled health and was entrenched in her pattern of disabled adjustment, with limited motivation to undertake serious rehabilitative efforts.

By decision dated July 26, 2006, the Office terminated appellant's compensation and medical benefits effective May 18, 2005. It found that the weight of the medical evidence, which was represented by Dr. Heyl's second opinion report, established that she no longer had any disability or residuals causally related to her accepted injury. In a separate letter dated July 26, 2006, the Office informed appellant that she was entitled to compensation for specific dates between May 1, 1996 and May 18, 2005, based on temporary total disability, in the total amount of \$360,738.97.

On July 7, 2007 appellant requested reconsideration of the Office's termination of benefits. She objected to the diagnosis of brief depressive disorder, rather than post-traumatic stress disorder (PTSD). Appellant also asked that the accepted conditions be expanded to include aggravation of her preexisting fibromyalgia and spinocerebellar syndrome.

Appellant submitted a June 26, 2007 report from Dr. Diana D. Banks, Board-certified in the areas of psychiatry and neurology, who stated that she had been treating appellant since October 24, 1994. Dr. Banks opined that the October 25, 1995 work incident aggravated appellant's preexisting fibromyalgia and spinocerebellar syndrome. She indicated that her examination of appellant one month after the accepted incident revealed increased pain, lower extremity weakness and slowing speech and decline in ability to concentrate. Dr. Banks opined that appellant continued to exhibit those symptoms.

On August 8, 2007 the Office denied modification of its July 26, 2006 decision. It found that Dr. Banks' report failed to explain how specific work factors aggravated any specific diagnosed conditions.<sup>3</sup>

On August 4, 2008 appellant again requested reconsideration. She again asked the Office to expand her claim to include PTSD, as well as aggravation of the previously identified preexisting conditions.

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<sup>3</sup> The claims examiner noted that appellant had filed previous claims with the Office, including: File No. xxxxxx924 (December 1, 1994) for back, neck and head injuries, which was denied on May 14, 1996; File No. xxxxxx932 (December 12, 1992) for a minor injury, with no loss of work; and File No xxxxxx681 (March 31, 1988), which was accepted for left shoulder strain.

Appellant submitted a July 29, 2008 report from Dr. James W. Opoien, a Board-certified family practitioner, who first treated her on March 10, 1998. After reviewing the medical and factual history, Dr. Opoien opined that her preexisting conditions of fibromyalgia, chronic fatigue syndrome and neuromuscular/spinocerebellar syndrome were aggravated by the October 25, 1995 work incident. He stated that appellant had not recuperated sufficiently to return to work status and that she continued to exhibit symptoms of pain, weakness, dysphagia, dyspnea, gait instability and cognitive dysfunction, which were exacerbated by the accepted work incident.

In an undated report, Dr. William L. Camp, a clinical psychologist, diagnosed adjustment disorder and depressed mood, exacerbated by PTSD. He also diagnosed myasthenia gravis; fibromyalgia; chronic fatigue syndrome; hypothyroidism and borderline diabetes mellitus. Dr. Camp opined that the October 25, 1995 employment incident resulted in an emotional breakdown, which led to an aggravation of her preexisting physical and neurological conditions and the development of PTSD. He also opined that appellant continued to experience symptoms related to the incident.

In a letter dated September 18, 2008, Dr. William Candler, an employing establishment physician, opined that there was no causal relationship between the accepted October 25, 2005 work incident and appellant's current medical condition. He also stated that there was no clinical evidence of PTSD and that it was medically implausible that a single stressful event accelerated her multiple medical conditions. Dr. Candler based his opinion on a review of Dr. Heyl's May 18, 2005 report.

By decision dated November 4, 2008, the Office denied modification of its August 8, 2007 decision. It found that the evidence was insufficient to refute Dr. Heyl's well-reasoned opinion, which constituted the weight of the medical evidence and that appellant failed to submit rationalized medical evidence establishing residuals subsequent to May 18, 2005.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>4</sup> After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>5</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>7</sup> To terminate authorization for medical treatment,

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<sup>4</sup> A.W., 59 ECAB \_\_\_\_ (Docket No. 08-306, issued July 1, 2008).

<sup>5</sup> J.M., 58 ECAB \_\_\_\_ (Docket No. 06-661, issued April 25, 2007).

<sup>6</sup> See *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> T.P., 58 ECAB \_\_\_\_ (Docket No. 07-60, issued May 10, 2007).

the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>8</sup>

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

The Board finds that the Office met its burden to terminate appellant's medical and compensation benefits effective May 18, 2005.

Following the Board's September 11, 2001 decision, the Office accepted appellant's claim for a brief depressive disorder. In early 2005, it referred her to Dr. Heyl for an examination and an opinion as to whether she had any disability or residuals due to the accepted injury.<sup>9</sup> Dr. Heyl reviewed the entire record and statement of accepted facts and performed a thorough examination of appellant. He found that she had an excellent memory of events, times and places in her medical history. Dr. Heyl found her to be of above-average intelligence, with no evidence of loosened thought associations or delusional thought content. Appellant seemed in no particular distress. Dr. Heyl diagnosed acute adjustment disorder/brief depressive reaction, associated with the October 25, 1995 incident. He specified that this disorder was related in time and circumstance to appellant's employment of 1995 and had no continuing impact on her present state of mental health. Dr. Heyl also diagnosed chronic somatization disorder, which he indicated predated the 1995 work incident; personality disorder; and myasthenia gravis, fibromyalgia, chronic fatigue syndrome, hypothyroidism and borderline diabetes mellitus, by medical history. He opined that appellant did not have a work-related emotional disorder. The Board finds that Dr. Heyl's well-rationalized report, which was based upon a proper factual and medical background, represents the weight of the medical evidence and establishes that appellant was no longer disabled and had no residuals from her accepted injury as of May 18, 2005.

Appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Heyl's opinion or to create a conflict. In fact, she did not submit any medical evidence between the date of the Board's September 11, 2001 decision and the Office's August 8, 2007 termination decision. The weight of the medical evidence establishes that appellant was no longer disabled as a result of her accepted conditions and had no injury-related residuals.

On appeal, appellant's representative argues that the decision terminating her benefits was contrary to fact and law. For reasons stated herein, the Board finds this argument to be without merit.

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

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability or residuals causally related to her

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<sup>8</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> The Board notes that the Office initially referred appellant to Dr. Hitch. As he was unable to provide an opinion on the issues of continuing disability and residuals, his report lacks probative value. *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

accepted injury.<sup>10</sup> 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.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> 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.<sup>13</sup>

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

After the Office properly terminated appellant's compensation and medical benefits in its August 8, 2007 decision, the burden of proof shifted to her to establish continuing employment-related disability or residuals.<sup>14</sup> As part of this burden, appellant is required to present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>15</sup> However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and while appellant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>16</sup>

Appellant has submitted medical evidence after August 8, 2007 which supports her claim that she continued to experience residuals and/or disability causally related to the accepted 1995 incident. On June 26, 2007 Dr. Banks, appellant's treating psychiatrist since 1994, stated that she examined appellant one month after the accepted October 25, 1995 work incident. At that time appellant was experiencing increased pain and exhibited lower extremity weakness, slowing speech and decline in ability to concentrate. Dr. Banks opined that appellant continued to exhibit those symptoms. On July 29, 2008 Dr. Opoiens who had been treating appellant for 10 years, opined that she had not recuperated sufficiently from the October 25, 1995 work injury to return to work status and that she continued to exhibit symptoms of pain, weakness, dysphagia, dyspnea, gait instability and cognitive dysfunction, which were exacerbated by the accepted

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<sup>10</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *Kathryn E. Demarsh*, *supra* note 8.

<sup>12</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>13</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>14</sup> *I.J.*, *supra* note 8; *Joseph A. Brown, Jr.*, *supra* note 10.

<sup>15</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>16</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 15; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

incident. In an undated report, received by the Office on August 8, 2008, Dr. Camp diagnosed adjustment disorder and depressed mood, exacerbated by PTSD. He opined that the October 25, 1995 employment incident resulted in an emotional breakdown, which led to an aggravation of her preexisting physical and neurological conditions and the development of PTSD. Dr. Camp also opined that appellant continued to experience symptoms related to the October 25, 1995 incident.

The Board notes that while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she continues to experience residuals and/or disability causally related to the accepted 1995 incident and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her claimed conditions and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>17</sup>

On remand, the Office should submit a statement of accepted facts to appellant's treating physician or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

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

Regarding consequential injuries, the basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>18</sup>

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>19</sup> To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>20</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>21</sup> Rationalized medical evidence is 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

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<sup>17</sup> See *Virginia Richard*, *supra* note 15; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>18</sup> *S.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-536, issued November 24, 2006), citing *A. Larson, The Law of Workers' Compensation* § 10.01 (2004).

<sup>19</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>20</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>21</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.<sup>22</sup>

Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>23</sup>

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

The Board finds that this case is not in posture for a decision as to whether appellant's claim should be expanded to include PTSD and aggravation of her preexisting fibromyalgia and spinocerebellar syndrome as a result of her 1995 employment injury.

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>24</sup> To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>25</sup> As noted above, however, proceedings under the Act are not adversarial in nature and while appellant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>26</sup>

The medical evidence of record supports appellant's claim that her preexisting conditions of fibromyalgia and spinocerebellar syndrome were exacerbated by the 1995 employment injury and that the accepted injury led to PTSD. On June 26, 2007 Dr. Banks opined that the October 25, 1995 work incident aggravated her preexisting fibromyalgia and spinocerebellar syndrome, as evidenced by her increased pain, lower extremity weakness and slowing speech and decline in ability to concentrate. On July 29, 2008 Dr. Opoien opined that appellant's preexisting conditions of fibromyalgia, chronic fatigue syndrome and neuromuscular/spinocerebellar syndrome were aggravated by the October 25, 1995 work incident and stated that she had not recuperated sufficiently to return to work status and that she continued to exhibit symptoms of pain, weakness, dysphagia, dyspnea, gait instability and cognitive dysfunction, which were exacerbated by the accepted work incident. Dr. Camp diagnosed adjustment disorder and depressed mood, exacerbated by PTSD. He also diagnosed myasthenia gravis; fibromyalgia; chronic fatigue syndrome; hypothyroidism and borderline diabetes mellitus.

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<sup>22</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>23</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>24</sup> *Jaja K. Asaramo*, *supra* note 19.

<sup>25</sup> *Jennifer Atkerson*, *supra* note 20.

<sup>26</sup> *Phillip L. Barnes*, *supra* note 16; *see also Virginia Richard*, *supra* note 15; *Dorothy L. Sidwell*, *supra* note 16; *William J. Cantrell*, *supra* note 16.

Dr. Camp opined that the October 25, 1995 employment incident resulted in an emotional breakdown, which led to an aggravation of her preexisting physical and neurological conditions and the development of PTSD.

While none of these reports are completely rationalized, they are consistent in indicating that appellant's preexisting conditions were aggravated by the 1995 employment injury. Dr. Camp's opinion that the accepted injury led to the development of PTSD is not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed conditions and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>27</sup>

The Board notes that Dr. Heyl's May 18, 2005 report did not contain an opinion as to whether appellant's preexisting conditions were aggravated by the October 1995 employment injury. Therefore, his report is of no probative value on this issue.<sup>28</sup> The Board finds that the Office was obligated to obtain a supplemental report from Dr. Heyl addressing whether appellant's preexisting conditions were aggravated by the accepted injury. Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.<sup>29</sup> Therefore, the case must be remanded for further development of the medical evidence.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits, effective May 18, 2005, on the grounds that she had no residuals or disability causally related to her accepted employment injury. The Board further finds that the case is not in posture for a decision as to whether appellant had any continuing employment-related residuals or disability after May 18, 2005 and whether she met her burden of proof to establish that she had any additional conditions causally related to the accepted October 25, 1995 injury.

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<sup>27</sup> See *supra* note 17.

<sup>28</sup> See *A.D.*, *supra* note 9; *Michael E. Smith*, *supra* note 9.

<sup>29</sup> See *Henry G. Flores, Jr.*, 43 ECAB 901 (1992); see also *Charles J. Jenkins*, 40 ECAB 362 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' dated November 4, 2008 is affirmed in part and set aside and remanded in part, consistent with this opinion.

Issued: November 23, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board