

² Appellant has not filed an appeal from the Office's March 4, 2010 decision denying her claim for an emotional condition. As such, the Board has jurisdiction to review it. *See* 20 C.F.R. § 501.3.

ISSUES

The issues are: (1) whether appellant established an employment-related disability from August 3 through October 26, 2009; and (2) whether appellant sustained an aggravation of her preexisting cervical, thoracic and lumbar spondylosis, right shoulder rotator cuff tendinitis, right carpal tunnel syndrome and lumbar radiculopathy as a result of her January 12, 2009 employment injury.

On appeal, appellant argued that the Office erred in ignoring the report of her treating physician and did not explain why this report was incomplete or based on an inaccurate factual background.

FACTUAL HISTORY

On January 27, 2009 appellant, then a 49-year-old supply technician, filed a traumatic injury claim alleging that, on January 12, 2009, while her supervisor and assistant supervisor tried to prevent her from leaving the supervisor's office and the building, she was held, pushed, pulled, jerked and snatched around. She alleged that, as a result, she suffered neck and chest pains on the right side and pains in her right arm, hand, upper leg and entire back.

In statements dated January 12 and 17, 2009, appellant indicated that she was called into the Office of the First Sergeant (1SG) Michael S. Oliver on January 12, 2009 by Sergeant First Class (SFC) Anthony Green; that 1SG Oliver initiated the meeting by stating that he was giving her a warning; that she wished to copy the document and confer with the Civilian Personnel Advisory Center before signing but that 1SG Oliver insisted she sign it; that she attempted to leave the office with the document but that 1SG Oliver told SFC Green to stop her and not let her leave the Office; that SFC Green immediately jumped in front of her and that 1SG Oliver and SFC Green forcibly restrained her, holding her against her will. She noted that she managed to get past them after squirming, twisting and yelling but that they pursued her and tried to take the document away and in doing so they began jerking, pulling and twisting her body trying to loosen the grip of the document.

An Equal Employment Opportunity (EEO) counselor's report signed on February 5, 2009 indicated that a resolution had been reached with regard to appellant's complaint with regard to the January 12, 2009 incident and she was reassigned to another job with no loss of pay. In discussing her case, the EEO counselor discussed written statements and interviews with various persons, including 1SG Oliver, SFC Mario Garcia, SFC Green and Felisha Griffin.

In a May 17, 2009 report, 1SG Oliver stated that, when conducting a counseling session with appellant, she exited his office at which time he departed with SFC Green. He stated that at no time did either of them impede her movement or prevent her from exiting the room. 1SG Oliver noted that when appellant continued to the front door of Building 17, SFC Green grabbed the top edge of the sheet of paper (letter of warning) at which point she pulled away ripping the paper in half and departed the office. He stated that at no time did SFC Green physically come close to her or make contact with her, but that he only touched the edge of the paper that she was holding. 1SG Oliver indicated that appellant contacted the military police who conducted an investigation and determined that nothing had happened. He indicated that

the investigators failed to find any evidence of a crime and found it impossible that the events she claimed to have happened ever occurred.

In a May 12, 2009 report, Dr. Curtis J. Black, appellant's treating Board-certified family practitioner, stated that she was assaulted by her supervisor and an assistant supervisor on January 12, 2009. His history of injury was consistent with hers. Dr. Black noted that appellant was having severe pain in her right wrist as a result of the assault and that she had a dramatic worsening of her carpal tunnel syndrome since that day. He noted that she needed carpal tunnel surgery on her right wrist and on an urgent basis due to the continual pain and numbness in her right hand and wrist.

On June 19, 2009 the Office accepted appellant's claim for sprain of shoulder, upper arm and right acromioclavicular (AC) joint as well as a sprain of the lumbar region of the back.

In a July 21, 2009 note, Dr. Black stated that appellant had mild right carpal tunnel syndrome from her chronic lifting and carrying as part of her regular work for the past several years. He concluded that the incident at work has aggravated the right wrist to the point that surgery is now necessary on the wrist and caused the damage of the left wrist to the point that surgery is also necessary on this wrist. In an August 13, 2009 progress note, Dr. Black reported that appellant had major injuries sustained as a result of an assault that occurred in her workplace. He noted that she could not return to her former workplace or her previous job as a supply technician. Dr. Black stated that appellant would be unable to work until she has found a satisfactory clerical job. He noted that, as a result of her assault at work, she has had an acute worsening of her previous mild carpal tunnel syndrome to the point that surgery was required on the right wrist. Dr. Black further noted that appellant suffered a neck injury with moderate constant pain in her arms and suffered a right shoulder injury, consistent with rotator cuff damage which may require future surgery. He noted that she has low back pain with pain and numbness down her right leg consistent with sciatica and has pain in her right hip. Dr. Black also noted that appellant had pain in her right knee with crepitus on movement. He opined that she was able to perform the duties of a clerical position only.

On August 28, 2009 appellant filed a claim for compensation for the period August 3 through October 26, 2009.

In an August 13, 2009 note, Dr. Black stated that appellant may not return to work for 14 days and noted that she needed a transfer to a clerical position. In an August 26, 2009 note, he stated that she may not return to work until November 26, 2009 due to severe low back pain with sciatica as she needed bed rest and medication.

On September 24, 2009 Dr. Black reported that appellant was not able to return to "even a clerical position at this time." He concluded that she was totally disabled as a result of an assault in the workplace on January 12, 2009. Dr. Black explained that appellant had developed rotator cuff tendinitis with constant severe pain and decreased range of motion of the right shoulder to the point that she is unable to lift or carry anything heavier than five pounds. He noted that she had a severe recurrence of her low back pain from the lower thoracic spine to the lower lumbar area with resultant sciatica which does not allow her to stand and walk for more than 10 minutes and she was currently unable to sit for longer than 10 minutes without lying

down. Dr. Black again noted that appellant had a worsening of her carpal tunnel problem since her surgical correction with continual numbness in all her fingers and weakness in her hand to the point that she cannot grip utensils, pens or pencils. He concluded that she would be totally disabled during the period August 3 through November 30, 2009 unless her pain decreases earlier.

By decision dated November 16, 2009, the Office denied appellant's claim for compensation for the period August 3 through October 26, 2009.

By letter dated February 24, 2010, appellant requested reconsideration. In support of her request, she submitted a progress note dated January 20, 2010 wherein Dr. Black indicated that she may return to work on January 27, 2010 and noted that she may perform clerical work only on a permanent basis. In a March 9, 2010 report, Dr. Black responded to questions sent to him by the Office. He noted that appellant had onset of severe chronic post-traumatic stress disorder as a direct result of the assault of January 12, 2009. Dr. Black noted that she is currently disabled partially by the inability to sleep, the hypervigilance, the flashbacks, the panic disorder and the moderate depression directly related to the events of January 12, 2009. He noted that appellant has since returned to work and has had three spells of severe anxiety and panic when the perpetrator entered her workplace area. Dr. Black noted that, during the last episode on March 8, 2010, she had to leave work and come to his office at which time he noted that she had elevated blood pressure and was complaining of headache and chest pain. He opined that appellant will continue to have severe flare ups of her post-traumatic stress disorder for the remainder of her life. Dr. Black also noted that she had cervical spondylosis, thoracic spondylosis and lumbar spondylosis immediately after the assault on January 12, 2009. He stated that appellant indicated that her neck was twisted due to the pushing by the noncommissioned officer (NCO) involved while her upper and lower back were wrenched. Dr. Black noted that, subsequent to the assault, she has had more intense constant neck, thoracic spine and lumbar spine pain with markedly limited range of motion of the cervical, thoracic and lumbar spine. He found a permanent restriction as a result of this injury.

With regard to appellant's rotator cuff tendinitis, Dr. Black noted that she has had severe right shoulder pain with inability to elevate or rotate her right upper arm as a direct result of the injuries suffered during the assault. He indicated that appellant had an x-ray which showed degenerative changes in the area of the AC joint and magnetic resonance imaging (MRI) scan showed tendinitis of the supraspinatus muscle shortly after the injury. Dr. Black noted that she has supraspinatus tendinitis as a direct result of the hyperextension of her shoulder from the injury. He reported that the natural progression of disability from baseline as a result of her underlying arthritis would have been gradually increasing pain in the right shoulder without loss of range of motion of the shoulder and that the aggravation of the shoulder will be permanent.

With regard to appellant's carpal tunnel syndrome Dr. Black stated that appellant had a carpal tunnel syndrome for which she was treated by wearing a wrist splint prior to the assault. He stated that, during the assault, appellant's right wrist was slammed against a wall and she had immediate severe pain and numbness in her right hand and inability to move her fingers. Dr. Black noted that since the assault, her previous Grade 2 carpal tunnel impingement was now significantly worse at Grade 3 and required wrist surgery as a direct result of the injury and not due to the carpal tunnel problem which was getting better with the use of wrist splints. He noted

that appellant would have had slow progression of her wrist problem over a period of 10 to 15 years but would have been unlikely to have needed surgery without the injury. Dr. Black noted that the aggravation was permanent. With regard to appellant's lumbar radiculopathy, he stated that appellant had sudden onset of severe sciatic nerve pain down her right and left leg with numbness in several toes of each foot as a direct result of the assault. Dr. Black pointed out that she had been having problems with her low back and intermittent sciatica down her left leg for at least three years since another job injury in 2006. However, he noted that, as a direct result of the current injury, appellant had the occurrence of right sciatica which is persistent and severe and that the MRI scan of the lumbar spine showed a large left sided disc herniation at L5-S1 which due to its size was causing continual pain down the right leg and intermittent pain down the left leg. Dr. Black further noted that she had a sudden enlargement of a previously mild disc bulge or herniation as a direct result of this trauma. He found that assuming that appellant had a previous disc herniation which was causing her intermittent left leg pain in the natural progression would have been increasing pain and numbness in the left leg but not the right leg. Dr. Black noted that the aggravation of this lumbar radiculopathy is anticipated to be permanent.

By decision dated March 30, 2010, the Office denied appellant's request to expand her claim for aggravation of preexisting medical conditions.

By decision dated March 31, 2010, the Office denied modification of the November 16, 2009 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶ Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ 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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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 identified by the claimant.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim that she sustained a sprain of her shoulder, upper arm and right AC joint as well as a sprain of the lumbar region of her back as a result of the January 12, 2009 work incident. However, it denied her claim for compensation for the period August 3 through October 26, 2009.

The Board finds that the case requires further development of the medical evidence. Appellant's physician, Dr. Black, opined that appellant sustained numerous disabling injuries as a result of the accepted work-related assault. In an August 13, 2009 note, he opined that appellant would be unable to work until she found a satisfactory clerical job. Dr. Black noted that, as a result of the assault at work, she had a worsening of her carpal tunnel syndrome, a neck injury, moderate constant pain in her arms and a right shoulder injury which was consistent with rotator cuff damage. He also noted that appellant had low back pain and numbness down her right leg consistent with sciatica and that she had pain in her right hip, as well as a right knee crepitus on movement. In an August 26, 2009 note, Dr. Black reported that she may not return to work until November 26, 2009 due to low back pain with sciatica. In a September 24, 2009 report, he noted that appellant was totally disabled from August 3 through November 30, 2009, noting a recurrence of low back pain and a worsening of her carpal tunnel syndrome. In his March 9, 2010 report, Dr. Black noted that appellant was disabled due to the workplace assault, noting issues with numerous nonwork-related conditions including anxiety, post-traumatic stress disorder, carpal tunnel syndrome, spondylosis (cervical, thoracic and lumbar) as well as rotator cuff tendinitis and right sciatica. Clearly, he opined that appellant was disabled from her regular employment from August 3 through October 26, 2009. However, it is not clear that Dr. Black believed that her disability was due to the accepted conditions of sprain of the shoulder, upper arm and right AC joint or the sprain of the lumbar region of the back. Nevertheless, his opinion is clear enough with regard to employment relationship and disability that it is sufficient to require further development of the evidence. The Board finds that there is no medical opinion in the record that contradicts Dr. Black's finding that the January 12, 2009 work injury was the cause of appellant's disability. Accordingly, Dr. Black's opinion was sufficient to raise an undisputed inference of causal relationship sufficient to require further development by the Office.¹⁰

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *A.A.*, 59 ECAB 726 (2008).

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹¹ The Board has reviewed the reports of Dr. Black and finds that although these reports are not sufficient to establish that appellant was totally disabled due to the accepted work-related conditions, he raises an uncontroverted inference of causal relationship sufficient to require further development by the Office.¹² Accordingly, the Board will remand the case to the Office for further development of the medical evidence.

LEGAL PRECEDENT -- ISSUE 2

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹⁴

ANALYSIS -- ISSUE 2

The Office denied appellant's claim that the preexisting conditions of cervical, thoracic and lumbar spondylosis, right shoulder cuff tendinitis, right carpal tunnel syndrome and lumbar radiculopathy were aggravated as a result of her January 12, 2009 incident. The Board also finds that this case is not in posture for decision with regard to this issue.

In support of her claim for aggravation of her preexisting conditions, appellant submitted several reports by Dr. Black, her treating physician. In his March 9, 2010 report, Dr. Black specifically addressed the aggravation of her preexisting conditions. With regard to appellant's cervical spondylosis, thoracic spondylosis and lumbar spondylosis, he noted that appellant was found to have spondylosis of the cervical, thoracic and lumbar spine on x-rays immediately after the assault on January 12, 2009. Dr. Black noted that she stated that her neck was twisted due to the pushing by the NCO while her upper and lower back were wrenched. He noted that subsequent to the assault appellant had more intense constant neck thoracic spine and lumbar spine pain with marked limited range of motion of the cervical, thoracic and lumbar spine. Dr. Black placed permanent restrictions on her due to these injuries. He stated that, had the incident not occurred, appellant would have had a low increase in her neck pain, upper back pain and low back pain over a period of 10 to 15 years as the natural course of progression from baseline. With regard to appellant's rotator cuff tendinitis, Dr. Black found that the sudden severe right shoulder pain with inability to elevate or rotate her right upper arm were the direct results of the injuries suffered during the assault. He noted that the natural progression of the disability from baseline underlying arthritis would have been gradually increasing pain in the right shoulder without loss of range of motion of the shoulder. Dr. Black noted that the

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹² *Id.*

¹³ *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

¹⁴ *Id.*

aggravation was permanent. With regard to appellant's carpal tunnel syndrome, he noted that she had chronic carpal tunnel problem on the right which was treated with a wrist splint prior to her assault. Dr. Black stated that during the assault her wrist was slammed against a wall and she had immediate severe pain and numbness in her right hand with inability to move her fingers. He noted that appellant needed wrist surgery as a direct result of this injury and not due to the carpal tunnel problem which was getting better with the use of wrists splints. Dr. Black noted that without the assault, there would have been a slow progression of her wrist problems over a period of 10 to 15 years but would have unlikely needed surgery. With regard to appellant's lumbar radiculopathy, he noted that, as a direct result of the assault, appellant had sudden onset of severe sciatic nerve pain down her right and left leg with numbness in several toes of each foot. Dr. Black noted that she had been having problems with her low back since 2006, but that as a direct result of the injury, she had the occurrence of right sciatica which is persistent and severe and that an MRI scan of the lumbar spine showed a large left-sided disc herniation at L5-S1 which due to its size was causing continual pain down the right leg and intermittent pain down the left leg. He noted a sudden enlargement of appellant's previously mild disc bulge or herniation as a direct result of the incident. Dr. Black stated that assuming the natural progression would have been increasing pain and numbness in the left leg but not the right leg.

Dr. Black's uncontradicted opinion is sufficient to require further development of the evidence. The Office found that Dr. Black's opinion was based on an incomplete and inaccurate factual background. In making this determination, it stated that the Military Police report supported that no assault took place. The Office appears to make this conclusion based on the statement of 1SG Oliver. However, although 1SG Oliver indicated that the Military Police conducted an investigation and determined that, nothing had happened, there is no copy of any police report in the record. As this report is highly relevant to appellant's claim, the actual report should have been obtained; a brief notation by one of the involved parties as to what the report stated is entitled to no weight. The Office also noted that SFC Garcia stated in a January 22, 2009 interview that he did not see anyone touching each other in the hallway. However, there is no statement by SFC Garcia in the record; this statement is based on the report of the EEO counselor and not based on a direct statement by SFC Garcia. Basically, the record contains two conflicting versions of what occurred on January 12, 2009, *i.e.*, the allegations by appellant that she was assaulted and the statement by 1SC Oliver stating that she was never touched. Without any further development of the factual evidence, the Office's dismissal of Dr. Black's report based on an incomplete and inaccurate factual background was erroneous. The Board also notes that Dr. Black's report discussed appellant's employment, noted her version of the events of January 12, 2009 and discussed the impact that this incident had on her preexisting spondylosis, right shoulder cuff tendinitis, right carpal tunnel syndrome and lumbar radiculopathy. Dr. Black indicated what he anticipated the natural progression of these conditions would have involved and how it was directly impacted by the January 12, 2009 work injury. This report was sufficient to require the Office to further develop the medical record. The Board notes that there is no medical record contradicting Dr. Black's opinion that appellant sustained an aggravation of these prior conditions as a result of the employment incident. Accordingly, the Board finds that Dr. Black's opinion is sufficient to require further development of the medical evidence by the Office.¹⁵

¹⁵ A.A., *supra* note 10.

CONCLUSION

The Board finds that this case is not in posture for decision. On remand, the Office should prepare a statement of accepted facts and refer appellant for a second opinion examination to determine whether appellant was totally disabled due to the accepted work-related conditions for the period August 3 to October 26, 2009. It should also instruct the second opinion examiner to discuss whether appellant sustained any aggravation of her preexisting cervical, thoracic and lumbar spondylosis, right shoulder rotator cuff tendinitis, carpal tunnel syndrome and lumbar radiculopathy as a result of the January 12, 2009 employment incident. After such further development as deemed necessary, it should issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 31 and 30, 2010 and November 16, 2009 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board