

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRED F. GOSLEY and DEPARTMENT OF THE NAVY,  
NAVY SUPPLY SYSTEMS COMMAND, Philadelphia, PA

*Docket No. 98-1704; Submitted on the Record;  
Issued September 15, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that his emotional condition is causally related to employment factors.

On July 27, 1967 appellant, then a 39-year-old file clerk, sustained an employment-related lumbosacral strain and herniated disc at L4-5 for which he underwent surgery on September 27, 1967. He returned to light duty on January 15, 1968, sustained a recurrence of disability on September 16, 1968 and was placed on the compensation rolls. On May 24, 1971 he began working for the Commonwealth of Pennsylvania as a psychiatric aide at the Philadelphia State Hospital. By decision dated September 26, 1974, the Board affirmed a May 31, 1974, decision of the Office of Workers' Compensation Programs, in which the Office determined that appellant's actual earnings as a psychiatric aide represented his wage-earning capacity. On June 4, 1975 appellant sustained an injury while employed by the Commonwealth of Pennsylvania. He has not worked since.

In 1975 appellant began psychiatric treatment and submitted reports from Dr. Arnold D. Goldman, a Board-certified psychiatrist, regarding his emotional condition. By letter dated February 16, 1977, the Office informed appellant that psychiatric treatment was not authorized. Following appellant's request for reconsideration of the May 31, 1974 wage-earning capacity decision, in an April 13, 1979 decision, the Office denied his request. Appellant timely requested a hearing that was held on January 28, 1980. By decision dated March 17, 1980, an Office hearing representative found that while appellant's wage-earning capacity had changed, this was due to the injury he sustained while an employee of the Commonwealth of Pennsylvania. The hearing representative noted that appellant was receiving state workers' compensation for this injury and affirmed the April 13, 1979 Office decision.

Appellant continued to submit medical reports regarding his emotional condition and on November 2, 1987, the Office referred him to Dr. Scott Fleischer, a Board-certified psychiatrist, for a second-opinion evaluation. On December 17, 1997 the Office referred appellant to

Dr. Perry Berman,<sup>1</sup> a Board-certified psychiatrist, for a second-opinion evaluation. By decision dated April 13, 1998, the Office denied appellant's claim for psychiatric treatment. The Office based its conclusion on the opinion of Dr. Berman. The instant appeal follows.

The relevant medical evidence includes reports from Dr. Goldman, who is Board-certified in psychiatry and neurology, who began treating appellant in 1975 and submitted reports, in which he diagnosed reactive depression. In reports dated March 1, 1977, June 17, 1980 and March 10 and May 13, 1981, Dr. Goldman advised that appellant's depression was caused by the limitations of the July 1967 back injury. By report dated April 24, 1981, Dr. S. Lee advised that appellant's depression was caused by the July 27, 1967 employment injury. In a report dated May 9, 1991, Dr. Lee A. Barber, a Board-certified internist, advised that appellant's depression was causally related to his "work injuries."

In reports dated February 16, 1977 and February 12, 1987, an Office medical adviser stated that the medical evidence of record did not establish that appellant's psychiatric condition was related to the July 27, 1967 employment injury.

By report dated November 13, 1987, Dr. Fleischer, who is Board-certified in psychiatry and neurology and provided a second opinion for the Office, related the history of appellant's two injuries and diagnosed dysthymic disorder and possible periods of major depressive disorder in the past which was "in part due to his inability to handle the injury that resulted from the accident."

In a February 15, 1998 report, Dr. Berman, a Board-certified psychiatrist who provided a second opinion for the Office, noted appellant's history of injury and diagnosed depression-dysthymia which he advised was due to his life style that was "without focus." He concluded that appellant's current psychiatric condition was "relatively insignificant" and not related to the 1967 employment injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an employment-related emotional condition.

To establish that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his or her

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<sup>1</sup> Both Drs. Fleischer and Berman were provided with the medical record, a set of questions and a statement of accepted facts.

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

claimed condition and employment.<sup>3</sup> Causal relationship is a medical issue,<sup>4</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

In the present case, the Board finds that the medical evidence submitted by appellant in support of his claim is insufficient to establish that his emotional condition was causally related to the 1967 employment injury.<sup>6</sup> The weight of the medical evidence rests with the 1998 report from Dr. Berman, who provided a second-opinion evaluation for the Office and advised that there was no evidence to establish that appellant's current mild depression was related to the 1967 employment injury. He has provided the only contemporaneous examination of appellant and diagnosed depression with dysthymia which he attributed to appellant's lifestyle.

The decision of the Office of Workers' Compensation Programs dated April 13, 1998 is hereby affirmed.

Dated, Washington, DC  
September 15, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> *Donald W. Long*, 41 ECAB 142 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> The Board notes that Dr. Goldman's reports are 19 to 24 years old.