

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 26, 2002 on the grounds that she no longer had residuals of her employment-related lumbosacral strain and subluxation; and (2) whether appellant established that she had any continuing employment-related disability after June 26, 2002. On appeal, through her attorney, appellant argues that the referee physician should not be credited and that her disabling emotional condition is a consequence of her employment-related back condition.

## **FACTUAL HISTORY**

This case has been before the Board on two prior occasions.<sup>1</sup> In the first appeal, the Board reviewed an August 17, 2000 decision in which the Office terminated appellant's compensation benefits effective November 6, 1999. The Office had found that the weight of the medical evidence established that appellant no longer suffered from either her accepted orthopedic conditions of lumbosacral strain and subluxation or her accepted post-traumatic stress disorder (PTSD). By decision dated November 26, 2001, the Board affirmed the Office's determination that appellant's employment-related PTSD had ceased by November 6, 1999.<sup>2</sup> With respect to appellant's orthopedic conditions, however, the Board found that the case was not in posture for decision due to an unresolved conflict in the medical opinion evidence between appellant's treating physicians, Dr. Cary L. Twyman, a Board-certified neurologist, and Dr. Douglas A. Vick, a Board-certified osteopath specializing in osteomanipulative medicine, and Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, who had provided a second-opinion examination for the Office, regarding whether appellant continued to suffer from residuals of her accepted back conditions.<sup>3</sup>

Appellant subsequently requested reconsideration with the Office of the portion of the November 26, 2001 decision that found that her employment-related PTSD had resolved, and in a decision dated March 28, 2002, the Office found the evidence and arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim. Appellant thereafter appealed to the Board and in a decision dated January 6, 2003 the Board affirmed the March 28, 2002 decision of the Office.<sup>4</sup> The law and the facts as set forth in the previous Board decisions are incorporated herein by reference.

The Office continued to develop the case regarding appellant's orthopedic conditions, and on January 30, 2002 referred her, along with a revised statement of accepted facts, a set of questions and the medical record, to Dr. Gary T. Bray, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated February 21, 2002, Dr. Bray advised, *inter alia*, that appellant's work-related orthopedic conditions had resolved but that she had a nonorthopedic functional impairment.

By letter dated April 15, 2002, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that her back condition had resolved. Appellant disagreed with the proposed termination and her attorney further argued that appellant's

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<sup>1</sup> On August 8, 1988 appellant, then a 46-year-old registered nurse, sustained an employment-related lumbosacral strain and subluxation. The accepted condition was later expanded to include post-traumatic stress disorder.

<sup>2</sup> The Board credited the opinion of the second-opinion examiner, Dr. Robert P. Granacher, Jr., a Board-certified psychiatrist, who provided a July 26, 1999 report in which he diagnosed major depression, recurrent, with severe personality disorder but no evidence of PTSD. The physician advised that appellant's depression preexisted her 1988 injury and that, while the injury may have aggravated the PTSD, the work-related effects had ceased. He concluded that appellant's current emotional condition was totally independent of any injury she received at work.

<sup>3</sup> Docket No. 00-2712.

<sup>4</sup> Docket No. 02-1144.

disabling emotional condition was a consequence of her back condition. Appellant also submitted an April 13, 2002 magnetic resonance imaging (MRI) scan of the lumbosacral spine and resubmitted a December 9, 1999 psychiatric evaluation by Dr. David Shraberg, a Board-certified psychiatrist. By decision dated May 16, 2002, the Office terminated appellant's compensation benefits, effective that day, on the grounds that the medical opinion evidence as provided by Dr. Bray, the impartial examiner, established that her orthopedic conditions had resolved.

On June 6, 2002 appellant, through her attorney, requested a hearing and submitted additional medical evidence.<sup>5</sup> On June 26, 2002 an Office hearing representative modified the termination to become effective that day.<sup>6</sup> Appellant continued to submit medical evidence.<sup>7</sup> On September 16, 2003 appellant's attorney requested that the Office perform a review of the written record and again argued that appellant's current emotional condition was a consequence of her back condition, further stating that Dr. Bray's opinion had been equivocal. By decision dated December 15, 2003, an Office hearing representative affirmed the Office decisions dated May 16 and June 26, 2002.

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

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>8</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup> Furthermore, 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.<sup>10</sup>

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<sup>5</sup> The medical evidence included an April 18, 2002 report from Dr. Steven R. Hayes, Board-certified in anesthesiology, reports dated April 23 and May 22, 2002 from Dr. Twyman, a June 3, 2002 report from Dr. David L. Jackson, Board-certified in physical medicine and rehabilitation, and a functional capacity evaluation dated June 11, 2002.

<sup>6</sup> The Office hearing representative referred to the arguments made by appellant's attorney in his May 15, 2002 letter and a subsequent letter dated May 29, 2002. The latter is not found in the case record.

<sup>7</sup> This evidence consisted of reports dated July 25, 2001 and June 24, 2002 from Dr. Vick, June 6, 2002 and August 11, 12 and September 16, 2003 reports from Dr. Riggs, a June 11, 2002 report from Dr. Jackson, a report of epidural injection dated September 26, 2002 and a January 16, 2003 report from Dr. Maureen A. Flannery, Board-certified in family practice.

<sup>8</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>9</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>10</sup> *Gloria J. Godfrey*, *supra* note 8.

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

In the instant case, the Board found that a conflict in medical opinion existed between the opinions of appellant's treating physicians, Dr. Twyman, Board-certified in neurology, and Dr. Vick, a Board-certified osteopath specializing in osteomanipulative medicine, and Dr. Keisler, who had provided a second-opinion examination for the Office, regarding whether appellant continued to suffer from residuals of her accepted back conditions. The Office then properly referred appellant to Dr. Bray, also Board-certified in orthopedics, for an impartial medical evaluation.

By report dated February 21, 2002, Dr. Bray noted the history of injury and treatment and his review of the medical records. He advised that appellant climbed off the examining table without assistance and on examination had full range of motion of the cervical and lumbar spines with no palpable spasm in the lumbar back. X-rays demonstrated a mild offset of L4 and 5 with corresponding mild degenerative disc disease at that level. The physician stated:

"It is my impression that [she] has a complex medical history including social-psychiatric disorders from review of her outside records. However, based on a purely orthopedic problem, I think she probably had an aggravation at the time of her injury of degenerative dis[c] disease. Over the ensuing 12 to 14 years she has had some progression of that degeneration. I do not believe the injury she describes or the activity she describes would be sufficient to cause any long-term functional impairment. Indeed, the long-term changes on x-ray are the only objective findings of her subjective complaints. Despite that, here is a lady who has not worked for 14 years and she clearly has a nonorthopedic functional impairment which I am not qualified to comment on in the form of psychiatric dysfunction.

"I would anticipate that she would have had a transient aggravation of her low back associated with the injury she sustained, but would have anticipated that to resolve within six months or certainly within a year from the injury in and of itself. From an orthopedic standpoint, other than the chronicity, I would not restrict her activities from her previous nursing duties. However, the prognosis remains quite guarded. I think she would benefit from an aggressive exercise program, but based on the chronicity, the prognosis has to be quite guarded."

In an attached work capacity evaluation, Dr. Bray advised that appellant could work with restrictions but stated "the above work capacity evaluation is based on orthopedic lumbosacral condition only; I believe her mental problems would keep her from working. She's been off 13 years."

The Board finds the opinion of Dr. Bray is entitled to special weight and sufficient to meet the Office's burden of proof to terminate appellant's compensation. Subsequent to Dr. Bray's February 21, 2002 report, appellant submitted a number of medical reports<sup>11</sup> including an April 13, 2002 MRI scan of the lumbar spine which demonstrated posterior bulging at L3-4 and disc herniation at L4-5. These findings were discussed by Dr. Hayes, Board-certified in anesthesiology, in an April 18, 2002 report in which he enumerated multiple diagnoses.<sup>12</sup> A functional capacity evaluation dated June 11, 2002 stated that while in the waiting area appellant was observed to sort papers on the floor, fully bent over in the chair while seated but that during the evaluation she demonstrated posturing behavior. The examiner concluded, "[a]s evaluation activities were incomplete or self-limited, [appellant's] maximum functional ability cannot be determined. Flexibility does not appear to be limited, however, discomfort reports appear overrated." None of these reports, however, contains an opinion regarding the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup>

Appellant also submitted reports dated June 3 and 11, 2002 in which Dr. David J. Jackson, a Board-certified psychiatrist, noted appellant's report of history of injury, her complaints and history of treatment. Examination findings included tenderness to palpation diffusely in the entire thoracolumbar distribution of the left down into the sacroiliac region. He advised that appellant's "emotional status and psychological situation" were difficult to assess because he is not a psychiatrist but "were not normal." Dr. Jackson diagnosed chronic low back pain, history of fibromyalgia, psychiatric disorder of unknown level, depression and anxiety and hypothyroidism. He advised that 50 percent of appellant's chronic back pain was due to the work injury and 50 percent to the natural aging process. Regarding her ability to return to work, the physician advised that she would not be able to return to work secondary to her emotional and psychiatric status but saw no reason why she could not return to work based on her back condition if she was placed on a light-duty work schedule that required no heavy lifting or transferring of patients.

In an April 23, 2002 report, Dr. Twyman advised that appellant's examination was unchanged and that she had recently broken her left foot. He diagnosed chronic back pain, multifactorial with sacroiliac dysfunction and degenerative disc disease, chronic right shoulder pain with known degenerative cervical disc disease as well as rotator cuff injury, fibromyalgia and anxiety/depression syndrome. He concluded that he did not think appellant was able to work

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<sup>11</sup> Appellant also resubmitted Dr. Shraberg's December 19, 1999 psychiatric evaluation in which he opined that appellant's psychiatric conditions were causally related to employment. The Board, however, finds this report too distant in time and irrelevant to the issue of whether the Office properly terminated her orthopedic condition in June 2002.

<sup>12</sup> Dr. Hayes diagnosed fibromyalgia, lumbar arthralgia, lumbar degenerative disc and joint disease, lumbar herniated nucleus pulposus, lumbar radiculitis, left trochanteric bursitis, possible mild lumbar facet arthropathy, cervicalgia, cervical degenerative disc and joint disease, cervical facet arthropathy, partial tear right shoulder rotator cuff, recent left ankle sprain with metatarsal fracture times 2, obesity times 50 pounds, history of rapid heart rate with chest pains, hypothyroid, replaced, hiatal hernia with reflux and anxiety and depression.

<sup>13</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

due to multiple psychological, mechanical/orthopedic and neurologic symptomatology. In a May 22, 2002 attending physician's report, Dr. Twyman advised that appellant's condition was permanent, that chronic pain had reduced her pain tolerance and that she had developed an anxiety/depression syndrome.

Dr. Rosa Riggs, appellant's treating Board-certified psychiatrist, submitted an attending physician's report dated June 6, 2002 in which she diagnosed PTSD, major depression (chronic), anxiety, and panic attacks which, she advised, had been affected by appellant's chronic back pain. Dr. Vick submitted an attending physician's report dated June 24, 2002 in which he advised that appellant was totally disabled due to her neuromusculoskeletal injury with severe muscle spasm and chronic pain due to the employment injury.

Initially the Board notes that Drs. Twyman and Vick had been on one side of the conflict in medical evidence and merely reiterated their prior conclusions in the above-mentioned reports. After an impartial specialist resolves a medical conflict, additional reports submitted by a physician who was on one side of the conflict that the impartial specialist resolved, are insufficient to overcome the opinion of the impartial specialist or to create a new medical conflict.<sup>14</sup> The Board further finds that the reports of Dr. Jackson, who advised that appellant could return to limited-duty work based on her orthopedic condition and was disabled by her emotional condition, are insufficient to overcome the special weight accorded Dr. Bray as by decision dated November 26, 2001, the Board found that appellant's employment-related emotional condition had ceased.<sup>15</sup>

While Dr. Bray advised that appellant had restrictions due to her mental condition, as stated above, the Board had previously found that any employment-related component had resolved.<sup>16</sup> Dr. Bray provided thorough, well-rationalized reports in which he explained his findings and conclusions that any work-related orthopedic condition had ceased. The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 26, 2002.

### **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 causally related to her accepted injuries.<sup>17</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>18</sup> Causal relationship is a medical issue and the medical evidence required to

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<sup>14</sup> *Michael Hughes*, 52 ECAB 387 (2001).

<sup>15</sup> *Supra* note 1.

<sup>16</sup> *Supra* note 3.

<sup>17</sup> *See Manuel Gill*, 52 ECAB 282 (2001).

<sup>18</sup> *Id.*

establish a causal relationship is rationalized medical evidence.<sup>19</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>20</sup>

## **ANALYSIS -- ISSUE 2**

The relevant medical evidence<sup>21</sup> regarding any employment-related disability after June 26, 2002 includes a July 30, 2002 report in which Dr. Twyman reiterated his conclusions that appellant's many medical problems<sup>22</sup> were chronic and irreversible and she was not employable for even sedentary work. As Dr. Twyman had been on one side of the conflict resolved by the well-rationalized opinion of Dr. Bray, the Board finds his opinion insufficient to meet appellant's burden.<sup>23</sup>

Appellant further submitted reports dated August 11 and 12, and September 15, 2003 from Dr. Riggs. In an attending physician's report dated August 11, 2003, Dr. Riggs noted the history of injury and diagnosed post-traumatic stress disorder, chronic severe depression and anxiety disorder with panic attacks, and severe and chronic back pain. She checked the "yes" box indicating these conditions were employment related, stating that appellant's depression, anxiety and post-traumatic stress disorder were caused by the employment-related conditions and opined that appellant was totally disabled. In reports dated August 12 and September 15, 2003, Dr. Riggs advised that appellant had been in treatment with her for 10 years. She further diagnosed L4-5 disc herniation, sacroiliac pain, lumbar spondylosis and an L3-4 annular bulge and concluded that appellant's pain complaints were inextricably tied to her physical and psychological trauma.

The Board finds that Dr. Riggs' reports are insufficient to meet appellant's burden to establish that she has any continuing disability causally related to her accepted conditions. In its

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<sup>19</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>20</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>21</sup> Appellant also submitted a September 26, 2002 report describing an epidural injection treatment which did not contain an opinion regarding the cause of her condition. She also submitted a November 16, 2003 report in which Dr. Flannery noted appellant's evaluation for acupuncture treatment for pain. While the physician described the history of injury as related by appellant and findings of myofascial trigger points on examination, she likewise did not provide an opinion on the cause of appellant's condition.

<sup>22</sup> Dr. Twyman diagnosed chronic low back pain multifactorial in nature with components of degenerative disc disease of the lumbar spine, lumbar multilevel spondylosis and sacroiliac dysfunction, a history of chronic right shoulder pain related to multilevel degenerative cervical disc disease, chronic rotator cuff injury, fibromyalgia, hypothyroidism, anxiety and depression syndrome. The Board notes that only lumbosacral strain and subluxation and PTSD disorder were accepted as employment related. *Supra* note 1.

<sup>23</sup> *Michael E. Smith*, *supra* note 13.

November 26, 2001 decision, the Board fully considered Dr. Rigg's opinion that appellant's many conditions were caused by employment and, when finding that the weight of the medical evidence rested with Dr. Granacher the second-opinion examiner, the Board found that Dr. Granacher fully explained the interplay between appellant's various conditions. He further advised that appellant's depression predated the 1988 employment injury.<sup>24</sup> While appellant is now alleging that her current emotional condition is a consequence of her employment-related back condition, the Board notes that the Office has not issued a decision on her claim that she suffers a consequential injury, and thus the Board does not have jurisdiction over this issue.<sup>25</sup> As appellant has submitted no probative medical evidence establishing that she continues to be disabled from employment-related conditions, she has not met her burden of proof.

### **CONCLUSION**

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 26, 2002 and appellant failed to establish that she continued to be disabled after that date.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2003 be affirmed.

Issued: June 16, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>24</sup> *Supra* note 2.

<sup>25</sup> The Board's jurisdiction is limited to review of final decisions of the Office. 20 C.F.R. § 501.2(c).