



decision finalizing the proposed termination of medical and compensation benefits on the basis that her injury-related medical conditions had resolved. In a decision dated November 1, 2002, the Board affirmed Office decisions dated July 13, 2001 and March 21 and May 2, 2002, terminating her compensation benefits. The Board accorded the weight of the medical evidence to the April 16, 2001 impartial medical opinion of Dr. David M. Shenker, a Board-certified neurologist.<sup>1</sup> The Board, however, remanded the case for resolution of a conflict in medical opinion between Dr. Dixon F. Spivy, a Board-certified psychiatrist and Dr. Charles Turk, a Board-certified neurologist and psychiatrist, with regard to whether her claimed emotional condition was causally related to the February 8, 1999 employment injury.<sup>2</sup>

In a decision dated April 13, 2004, the Board affirmed the Office's decision dated September 5, 2003, which found that the weight of the medical evidence, as represented by the impartial medical examiner Dr. Nelson Borelli, a Board-certified psychiatrist, established that appellant's emotional condition did not arise out of the February 8, 1999 employment injury.<sup>3</sup> Appellant thereafter filed a petition for reconsideration before the Board. The Board denied the petition on June 16, 2004. The facts of this case are set forth in the Board's prior decisions and are herein incorporated by reference.

By letter dated July 2, 2004, appellant requested reconsideration of the Office's September 5, 2003 decision. Appellant did not submit any additional medical evidence, but submitted a copy of a newspaper article with handwritten notations on the side.

By decision dated August 6, 2004, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated August 11, 2004, appellant requested reconsideration of the Office's August 6, 2004 decision. She alleged that the previous decisions and reviewing medical specialists were biased and rendered erroneous medical conclusions. She also alleged that the impartial medical examiner acted inappropriately and that the claims examiners and various medial providers "hated" her. She submitted copies of publications regarding suspended medical practitioners, medical journals regarding various medical conditions and prescriptions and a statement from her husband concerning his observations of her condition. She also submitted a copy of a complaint filed against Dr. Borelli, the impartial medical examiner and a June 22, 2004 prescription note from Dr. Smith, who noted that she had fibromyalgia syndrome, carpal tunnel syndrome and major depression, had been permanently disabled since February 1999 and required the services of an attendant as she was incapable of performing activities of daily living.

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<sup>1</sup> The Board notes that appellant was referred to Dr. Shenker to resolve the conflict of medical opinion between appellant's treating physician, Dr. Jason Smith, an osteopath and the Office referral physician, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon.

<sup>2</sup> Docket No. 02-1542 (issued November 1, 2002).

<sup>3</sup> Docket No. 04-242 (issued April 13, 2004). The Board notes on January 30, 2004, the Board issued an order dismissing appeal as a double docket number had been assigned. Docket No. 04-257 (issued January 30, 2004).

In a January 17, 2003 medical report, Dr. Smith, an osteopath, opined that appellant was completely and totally incapacitated secondary to the fall of February 8, 1999. He stated that the event of February 8, 1999 produced multiple contusions and deep tissue bruising over appellant's body. He stated that interactions with the employing establishment turned out to be less than expected and, as a result of reported delays and being attacked by a frustrated supervisor, appellant developed deep emotional issues that carried over into her daily activities and placed limitations on her movement, sleep and nutritional well being. He stated that she had chronic pain syndrome and fibromyalgia and was being seen for ongoing physical therapy, medication and psychological intervention. In a September 24, 2003 report, Dr. Smith diagnosed multiple physical and emotional problems and opined that the emotional problems were consequential to the physical injuries sustained on February 8, 1999.

In a December 19, 2002 report, Dr. John J. Zuzga, a rheumatologist, noted the history of injury and her complaints of pain in the neck, bilateral shoulders, low back and occipital area and presented his examination on findings. His preliminary impressions were: complaints of cervical-lumbar pain related to trauma that occurred in 1999; bilateral pes planus; tension cephalgia; and anxiety-depressive disorder, yet to be defined. In a December 26, 2002 report, Dr. Zuzga reviewed appellant's history related to the February 8, 1999 employment injury noted his examination findings and provided a clinical impression of myofascial pain and probably cervical degenerative disc disease. From a historical point of view, he opined that it appeared that the bulk of appellant's problems occurred as a result of the fall at work. Dr. Zuzga stated that the x-ray of the cervical spine which was done at the time of the fall would provide some insight into whether she had evidence of cervical spondylosis. He stated that, other than the history and physical findings, there was very little that would also support the diagnosis of fibromyalgia, but stated that he did not have any difficulty as to whether that diagnosis was related to the fall as it was more of a legal question than it was a medical question. In a March 20, 2003 report, Dr. Zuzga noted that appellant returned with a copy the magnetic resonance imaging scan and noted spinal stenosis with posterior osteophytes and some bulging of the disc at C4-5 and C5-6. A clinical impression of cervical spondylosis with myofascial pain, depression and anxiety disorder was provided. Dr. Zuzga stated that he saw no reason for appellant to follow-up with him.

In a May 7, 2004 report, Dr. Turk reiterated appellant's history of injury and medical care and opined that appellant had a delusional disorder -- paranoid type and not from schizophrenia as described by Dr. Borelli. He further opined that appellant's delusional disorder was causally related to the incident involving the malfunctioning escalator noting that the "event precipitated an acute psychosis and the sudden emergence of paranoid ideation that subsequently elaborated into a delusional disorder whose content includes and perpetuates the symptoms arising from the physical injury to her neck." He expressed his disagreement over Dr. Spivy and Dr. Borelli's opinion that appellant's divorce 13 years earlier was a source of distress and opined that whether or not appellant had a preexisting condition was irrelevant.

By merit decision dated November 10, 2004, the Office denied modification of its previous decisions.

In a November 12, 2004 letter, appellant again requested reconsideration and essentially set forth the same allegations as previously made. She submitted copies of medical and general

publications and news articles concerning various medical conditions. Appellant also submitted a March 27, 2003 Emergency Department Patient Instructions sheet, a December 6, 2004 victim information notice from the Chicago Police Department with a copy of a December 14, 2004 complaint submitted to the police regarding inappropriate care and inappropriate touching by Dr. Borelli. In an August 31, 2001 note, a Dr. Bruce Donenberg, diagnosed delusional behavior. The reports from Dr. Smith, Dr. Turk and Dr. Zuzga were resubmitted to the record.

By merit decision dated February 1, 2005, the Office denied modification of the November 10, 2004 decision.

### **LEGAL PRECEDENT**

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits. Thus, to establish a causal relationship between any new conditions 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>4</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>5</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>6</sup>

### **ANALYSIS**

In her reconsideration requests of August 11 and November 12, 2004, appellant set forth allegations of bias, erroneous medical conclusions and unprofessional conduct with regard to Dr. Borelli, an impartial medical examiner,<sup>7</sup> and other medical providers involved in her case. Appellant submitted evidence that she filed a complaint against Dr. Borelli; however, there is no evidence indicating a final resolution of her allegations. Appellant has not submitted probative evidence to substantiate her allegations of bias or unprofessional conduct and the record does not otherwise support her various allegations.

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<sup>4</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>5</sup> *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> See *William Fidurski*, 54 ECAB \_\_\_\_ (Docket No. 02-516, issued October 9, 2002) (an impartial medical specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias).

Appellant also submitted copies of abstracts of medical literature, articles, newspaper clippings and excerpts from publications. However, these articles do not refer directly to her. The Board has held that excerpts from publications and medical literature are not of probative value in establishing causal relationship as they do not specifically address the individual claimant's medical situation and work factors.<sup>8</sup> The statement provided by appellant's husband is not relevant to this claim, as it was denied on the basis that the medical evidence did not establish that she had any remaining residuals due to the December 8, 1999 work injury and that her emotional condition was not causally related to the December 8, 1999 injury.

Appellant also submitted medical reports from Drs. Smith, Turk, Donenberg and Zuzga, who addressed appellant's current physical conditions and her emotional condition. As noted, the Board affirmed in its November 1, 2002 decision the termination of appellant's accepted multiple contusion conditions based on the special weight accorded to Dr. Shenker, who resolved a conflict of medical opinion of which Dr. Smith was on one side of the conflict. The Board also affirmed, in its April 13, 2004 decision, that the causal relationship between appellant's emotional condition and the work injury was not established, based on the impartial medical opinion of Dr. Borelli, who resolved a conflict of medical opinion of which Dr. Turk was on one side of the conflict.

In his May 7, 2004 letter, Dr. Turk expressed his disagreement with the medical conclusion reached by Dr. Borelli, the impartial medical examiner, reiterated his opinion that the February 8, 1999 event precipitated an acute psychosis and paranoid ideation, which manifested into a delusional disorder and opined whether or not appellant had a preexisting condition was irrelevant. The Board has held that a doctor on one side of conflict in medical opinion that is resolved cannot come back and create a new conflict without submitting new rationale or medical evidence to support his opinion.<sup>9</sup> As previously noted, Dr. Turk was on one side of the conflict of medical opinion regarding whether appellant's emotional condition was causally related to her work injury and he offered no new rationale for his opinion. Thus, his May 7, 2004 letter is insufficient to outweigh the well-rationalized medical opinion assessment provided by Dr. Borelli or to create a new medical conflict.<sup>10</sup>

In his medical reports of January 17 and September 24, 2003 and in his prescription note of June 22, 2004, Dr. Smith essentially opined that appellant had ongoing physical conditions and emotional problems, which included fibromyalgia and depression, causally related to her work-related injury of February 8, 1999 and was totally disabled. In his prescription note of June 22, 2004, Dr. Smith also appears to have diagnosed carpal tunnel syndrome and opined that appellant's condition was such that she required the services of an attendant to perform activities of daily living. Although Dr. Smith diagnosed fibromyalgia and carpal tunnel syndrome and opined that services of an attendant were required, his report is afforded diminished probative value as he supplied no medical rationale or medical evidence to support any ongoing disability

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<sup>8</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000).

<sup>9</sup> *See Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>10</sup> *Id.*

causally related to the work injury.<sup>11</sup> Additionally, Dr. Smith's opinion regarding appellant's emotional condition is of reduced probative value as he is not a specialist in the appropriate field and because he failed to provide medical rationale for his opinion on causal relationship.<sup>12</sup> Thus, his opinion is insufficient to create a new medical conflict with that of Dr. Borelli.<sup>13</sup>

Although Dr. Donenberg diagnosed appellant with delusional behavior his August 31, 2002 note, he failed to comment on the cause of appellant's emotional 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>14</sup>

Dr. Zuzga provided a clinical impression of cervical spondylosis with myofascial pain and an anxiety-depressive disorder along with other conditions. His opinion regarding the causal relationship between the February 8, 1999 work injury and appellant's physical or emotional diagnosis is considered equivocal. In a December 19, 2002 report, he opined that appellant's problems appeared to be a result from her February 8, 1999 fall at work from an historical point of view only, and the physician offered no further rationale. Although Dr. Zuzga stated that the diagnosis of fibromyalgia was supported by history and physical findings, he offered no rationale on the question of a causal relationship, noting that it was more of a legal question than a medical issue. The Board notes that Dr. Zuzga couched his opinion in speculative terms and did not provide a definitive opinion as to when appellant's condition originated or explain why the February 8, 1999 fall at work caused or aggravated appellant's condition.<sup>15</sup> Without any further explanation or rationale, such report is insufficient to establish that appellant had a continuing disability causally related to her employment.

Accordingly, none of the medical reports submitted by appellant after the termination of her compensation benefits included a rationalized opinion regarding the causal relationship between her current conditions and her work-related injury of February 8, 1999.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish any physical or emotional condition causally related to her February 8, 1999 employment injury.

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<sup>11</sup> See *Michael E. Smith*, 50 ECAB 313 (1999) (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>12</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinions of physicians also have training and knowledge in a specialized field of medicine have greater probative value concerning questions peculiar to that field than other physicians).

<sup>13</sup> See *Dorothy Sidwell*, *supra* note 9.

<sup>14</sup> See *Michael E. Smith*, *supra* note 11.

<sup>15</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 1, 2005 and November 10 and August 6, 2004 are affirmed.

Issued: October 11, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board