

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL J. CLOONAN and U.S. POSTAL SERVICE,  
POST OFFICE, Turtle Creek, PA

*Docket No. 00-24; Submitted on the Record;  
Issued March 27, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after November 8, 1994 due to his employment-related emotional condition.

In September 1991 appellant, then a 46-year-old mail carrier, filed a claim alleging that he sustained an employment-related emotional condition.<sup>1</sup> The Office of Workers' Compensation Programs accepted that appellant sustained an adjustment disorder.<sup>2</sup> Appellant received compensation for various periods of disability between 1991 and 1994.

Effective November 14, 1994, appellant was placed in an enforced leave status after the employing establishment determined that he was mentally unfit to work.<sup>3</sup> The employing establishment based its determination on a September 21, 1993 report from Dr. Robert Wettstein, a Board-certified psychiatrist, who performed a fitness-for-duty examination, and an October 1, 1993 report from Dr. Paul D. Seiferth, a physician specializing in emergency medicine for the employing establishment.<sup>4</sup> By initial decision dated October 31, 1997, the MSPB upheld the employing establishment's actions.

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<sup>1</sup> Appellant indicated that he first became aware of his condition on June 24, 1991.

<sup>2</sup> The Office accepted that appellant established employment factors with respect to an improper March 1991 suspension without pay and referrals for fitness-for-duty examinations.

<sup>3</sup> The employing establishment previously placed appellant on emergency off-duty status beginning on October 5, 1992 for allegedly threatening coworkers. By decision dated March 19, 1993, the Merit Systems Protection Board (MSPB) reversed the employing establishment's action, granted appellant back pay, and ordered the employing establishment to "retroactively restore" appellant to his position effective October 5, 1992. Appellant received pay retroactive to October 5, 1992. The employing establishment placed appellant on administrative leave but did not allow him to return to work.

<sup>4</sup> Dr. Wettstein indicated that appellant was unable to work due to a nonwork-related personality disorder.

On June 29, 1998 appellant filed a notice of recurrence of disability alleging that he was entitled to retroactive wage-loss compensation beginning November 8, 1994.

By decision dated January 4, 1999, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after November 8, 1994 due to his employment-related emotional condition. Appellant requested a review of the written record by an Office hearing representative and, by decision dated and finalized June 13, 1999, an Office hearing representative affirmed the Office's January 4, 1999 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after November 8, 1994.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>5</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>6</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>7</sup>

In support of his claim, appellant submitted a June 29, 1998 form report in which Dr. David C. Norris, an attending Board-certified psychiatrist, listed the date of injury as June 24, 1991 and diagnosed "adjustment disorder with mixed emotional features." Dr. Norris indicated that appellant had been totally disabled since November 8, 1994. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>8</sup> Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Norris did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. He did not describe appellant's employment-related condition or explain why it had changed such that he was no longer able to work.

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<sup>5</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>6</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988). It should be noted that the relevant question before the Board is not whether the employing establishment properly handled appellant's work status, but rather whether appellant submitted sufficient medical evidence to establish that he sustained a recurrence of disability on or after November 8, 1994 due to his employment-related emotional condition.

<sup>8</sup> *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

In a report dated August 10, 1998, Dr. Norris rendered an equivocal opinion regarding appellant's disability, which would appear to conflict with his earlier reports.<sup>9</sup> He stated:

“In my correspondence, regarding [appellant], and in my treatment of him, I have considered him psychiatrically suitable to resume working for the [employing establishment].

“At this point, after five years of his being unable to obtain employment by the [employing establishment], I must conclude he has been indeed disabled and unable to work from a psychiatric standpoint beginning October 1, 1993, and that he continues to be disabled as from a psychiatric standpoint through the present time.”<sup>10</sup>

In this report, Dr. Norris did not clearly detail his opinion on the cause of appellant's disability or otherwise provide a rationalized opinion showing that appellant sustained an employment-related recurrence of disability on or after November 8, 1994.<sup>11</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>12</sup> Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

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<sup>9</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

<sup>10</sup> In a report dated February 8, 1994, Dr. Norris had indicated that appellant was able to return to work. As noted above, Dr. Norris indicated in his June 29, 1998 form report that appellant had been totally disabled since November 8, 1994.

<sup>11</sup> It should be noted that the record contains evidence, including a September 21, 1993 report of Dr. Wettstein, a Board-certified psychiatrist who performed a fitness-for-duty examination, that appellant's continuing disability was not due to an employment-related condition.

<sup>12</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The June 13 and January 4, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
March 27, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member