

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORIS JEAN WRIGHT and U.S. POSTAL SERVICE,  
POST OFFICE, Inglewood, CA

*Docket No. 02-43; Submitted on the Record;  
Issued October 15, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of total disability commencing February 6, 1993, causally related to her accepted emotional condition.

This is appellant's third appeal before the Board on this issue. In the first appeal the Board affirmed in part and reversed in part the Office's May 6, 1994 decision, finding that appellant had not demonstrated that she sustained a recurrence of total disability commencing February 6, 1993, but finding that the Office did not meet its burden of proof to rescind its acceptance of appellant's claim for post-traumatic stress disorder (PTSD).<sup>1</sup> The facts and circumstances of the case are detailed in the first decision and are hereby incorporated by reference.<sup>2</sup> In the second appeal the Board set aside a June 22, 1998 merit decision and remanded the case for further development including consideration of new evidence properly before it, that the Office failed to consider at the time of the June 22, 1998 decision.<sup>3</sup>

The case history leading up to the second Board decision is as follows: By letter dated May 26, 1998, appellant requested reconsideration of the Board's December 17, 1997 decision.<sup>4</sup> Appellant argued that she signed a job offer acceptance of work at Long Beach although appellant felt she could not work there or even at her present site in the medical unit. She noted that a move was made in late December 1992 or January 1993, claimed that the Form CA-8 "petition of modification of eight hours" was never discussed with her by her employer or by the Office and claimed that "the petition was a recurrence arising from [her] present job" and made

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<sup>1</sup> Docket No. 94-2492 (issued December 17, 1997).

<sup>2</sup> Appellant's claim had been accepted for PTSD.

<sup>3</sup> Docket No. 99-1178, (Order Remanding Case issued July 6, 2001).

<sup>4</sup> As the Office cannot reconsider a decision by the Board, the reconsideration request would apply to the Office's most recent merit decision dated May 6, 1994. See 20 C.F.R. § 501.6(c) (the decision of the Board shall be final as to the subject matter appealed and such decision shall not be subject to review, except by the Board).

her totally incapable of working six hours. Appellant claimed that she experienced back pain because of lifting boxes and “tons of medical files,” claimed that her physician’s report reflected these medical diagnoses, claimed that the medical diagnoses had not changed from the initial Statement of Accepted Facts, but this was due to “archaic medical terms,” and noted that Dr. Marshall S. Cherkas, a Board-certified psychiatrist and appellant’s attending physician, had treated her since 1983.

In support of her reconsideration request appellant submitted a February 26, 1998 medical report, from Dr. Cherkas which noted that he had been treating her for PTSD, that diagnostic terminology had changed and that “several large characteristics of PTSD include recurrent or persistent symptoms of anxiety related to any stressful situations that are parallel to or stimulated by the initial provoking incidents.” Dr. Cherkas concluded, therefore, that appellant’s agoraphobia and panic disorder were all directly related to the PTSD and that all of her primary disabling symptoms, including pain, muscular distress, anxiety, recurrent depression and vulnerability to stress factors at work were directly related to the initial diagnosis.

Also submitted to the record on June 16, 1998 was a January 23, 1996 narrative report, from Dr. Cherkas, which described his treatment of appellant since May 1983. Dr. Cherkas reported appellant’s June 28, 1980 low back and neck injury,<sup>5</sup> reviewed her claimed personnel problems and identified his diagnosis as PTSD. Dr. Cherkas stated that thereafter he revised her diagnosis from PTSD to a somatoform disorder as she had left the traumatic situation and experienced some resolution, but continued to have physical complaints, especially regarding her back and panic attacks with agoraphobia and he noted that appellant had been disabled on many occasions due to PTSD as well as the somatoform disorder, with low back pain, agoraphobia, panic episodes, which have interfered with her work performance. Dr. Cherkas opined that when appellant was required to transfer to the Long Beach unit she again developed anxiety and panic with crying spells and he noted:

“The basis of the causation had to do with not only the back injury, but response to this by some of the supervisory staff and inappropriate handling of her employment capacities, such as pressures regarding the ‘schemes.’ Ultimately, the fact that she was required to move to Long Beach when she had made an excellent adaptation in the former office was the last issue that created disability, particularly due to her anxiety with agoraphobia, as well as the back pain.”

Dr. Cherkas diagnosed “[p]ost-traumatic stress disorder, largely resolved, [u]ndifferentiated somatoform disorder [and] [p]anic disorder with agoraphobia,” and noted that there was no natural progression of an emotional illness leading towards this disability.

By response dated June 16, 1998, the employing establishment stated that appellant was to be relocated in 1992 like every other employee of that unit and that the offered job was the same job she was performing, but in a different location. The employing establishment indicated that it was unclear as to what appellant was referring when she claimed that the Form CA-8 “petition of modification of eight hours” was never discussed with her and it noted that appellant

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<sup>5</sup> Which the record supports was a contusion, mild cervical strain and myofascial lumbar strain during her probationary period.

appeared to believe she was disabled in late 1992 due to a recurrence. The employing establishment commented on appellant's inference that in moving "tons of medical files" in late 1992 she violated her lifting restrictions, noting that the Board had previously determined that the record did not support such an inference and that there was no evidence from appellant or her physician that she sustained a new injury or a recurrence at that time.

By decision dated June 22, 1998, the Office denied modification of the May 6, 1994 Office decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office stated that it reviewed the February 26, 1998 medical report and found that Dr. Cherkas did not provide sufficient medical rationale to support his contention that appellant's claimed recurrence was causally related to her original condition. The Office noted that appellant's fear of a transfer to a different work location and fear of new relationships, crowds and change were noncompensable factors of employment and were self-generated. It also noted that Dr. Cherkas seemed to state that appellant left work due to muscular pain from lifting boxes, which reagravated her emotional condition, however, the Office noted that there were no ongoing objective orthopedic conditions or residuals established. The Office found that appellant stopped work in 1992 because of fear of an imminent transfer and that the medical evidence presented was neither reasoned nor did it address any material change in the nature or extent of the injury-related condition. The Office also found no change in the nature or extent of her light duties was demonstrated, that a change in the location of the same light duties did not constitute such a change and that the original wage-earning capacity determination was not erroneous.

By letter dated August 10, 1998, appellant requested reconsideration of the June 22, 1998 decision. She claimed that agoraphobia and panic disorders were not self-generated but were a component of PTSD and appellant claimed recurrences of total disability for four days in March 1991, two days in July 1991, two and one-half months between July 1991 and October 15, 1991 and in February 1992.

In support of her request, appellant submitted an August 4, 1998 report, from Dr. Cherkas, which quoted from the DSM IV regarding the definition of PTSD, which noted that PTSD manifests when a person is exposed to triggering events that resemble or simulate an aspect of the original traumatic event resulting in irritability, anger, difficulty concentrating or completing tasks, or phobic avoidance of situations or activities that resemble or symbolize original trauma, sometimes manifesting as panic disorder or agoraphobia. Dr. Cherkas explained that PTSD caused emotional fragmentation with marked anxiety which had a high probability of continuing over time with remissions and exacerbations, dependent upon the person's capacity towards adaptation. He noted that a person can fragment in many ways including anxiety of varying intensity, panic, physical symptoms and poor concentration. Dr. Cherkas then applied these psychiatric principles to appellant's case stating that while working at the Marina prior to February 1992, she had periods of disability because of her marked anxiety, fearfulness and sensitivity about people, that at the time of the planned move, appellant experienced excessive stresses from the intensive workload due to the impending transfer and that there were problems with other personnel, creating some paranoid feelings and depression and anxiety, which were the direct result of job difficulties and were not self-generated. Dr. Cherkas noted: "[Appellant's] agoraphobia and unwillingness to drive out in the streets and go to work again was a continuing result of the fragmentation due to the initial trauma and her fear of contact with

critical supervisors, coemployees, etc. At times, this did lead to panic and yet none of this was simply ‘self-generated.’” He disagreed with Dr. Head’s<sup>6</sup> conclusion that appellant’s agoraphobia and panic attacks were not employment related. Dr. Cherkas further noted that nomenclature changes resulted in psychogenic pain disorder now being referred to as a somatoform disorder. He noted that although he had diagnosed a preexisting avoidant personality disorder, prior to the initial disability there was no basis for considering that personality disorder to be work disabling except for the trauma of the original injury.

By decision dated January 14, 1999, the Office denied appellant’s request for a further review of her case on its merits under 5 U.S.C. § 8128 on the basis that the evidence submitted in support was cumulative and was not sufficient to warrant further merit review. The Office cited to requirements under 20 C.F.R. § 10.138(b)(1) and then found that Dr. Cherkas’s report was cumulative as he asserted that previously mentioned noncompensable work factors precipitated appellant’s recurrence and as he did not explain what materially changed in either appellant’s light-duty job requirements or in her emotional condition.

On February 3, 1999 appellant filed an application for review of the Office decisions dated January 14, 1999 and June 22, 1998.

On July 6, 2001 the Board considered the issues at hand, and it issued an Order Remanding Case noting that in the case of *William A. Couch*,<sup>7</sup> it held that when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by a claimant and received by the Office before the final decision is issued. In the present case, with her reconsideration request dated May 26, 1998, appellant submitted a February 26, 1998 medical report, from Dr. Cherkas, a Board-certified psychiatrist and appellant’s treating physician. The Office reviewed this evidence for its June 22, 1998 decision. However, also submitted to the record on June 16, 1998 was a January 23, 1996 report, from Dr. Cherkas, which described his treatment of appellant since May 1983 and included his diagnosis of PTSD. As this report was dated after the Office’s May 6, 1994 decision, it had not been previously reviewed by the Office and was not, therefore, subject to review by the Board for its December 17, 1997 decision. Moreover, this report submitted to the Office on June 16, 1998 was not reviewed by the Office prior to the issuance of its June 22, 1998 decision. In the June 22, 1998 memorandum to the Director, incorporated by reference, the Office specifically noted that the February 26, 1998 medical report that it reviewed lacked sufficient medical rationale to support that appellant’s claimed recurrence was causally related to her original condition. The January 23, 1996 report timely received by the Office on June 16, 1998 was not addressed or reviewed. The Board found that the Office, in its June 22, 1998 decision, did not review the additional evidence properly submitted by appellant and received by the Office on June 16, 1998, as no reference is made to it in the Office’s decision and remanded the case for consideration of all the evidence submitted prior to the issuance of its June 22, 1998 decision.

By decision dated August 1, 2001, the Office denied appellant’s request for modification of the June 22, 1998 decision, finding that the evidence submitted in support was insufficient to

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<sup>6</sup> Dr. William B. Head, a Board-certified psychiatrist and an employing establishment fitness-for-duty examiner.

<sup>7</sup> 41 ECAB 548 (1990).

warrant modification. The Office noted that, in accordance with the Board's July 6, 2001 order, it considered Dr. Cherkas's treatment notes dated November 4, 1992 and February 9, 1998; a January 23, 1996 medical report from Dr. Cherkas; and a Form CA-20 attending physician's supplemental report dated December 2, 1992. It did not, however, discuss any review on its merits of Dr. Cherkas's August 4, 1998 report.

The Office found that the treatment notes dated November 4, 1992 and February 9, 1998, merely noted appellant's complaints, symptoms and medication. It found that the November 4, 1992 note indicated that appellant was having "marked fears of a possible transfer to Long Beach unit even though it is closer to her home. She fears new relationships, crowds, change, etc. Also is frightened of driving alone. Missed work on November 3 and 4, 1992 due to agoraphobia. Still having problems with obsessional thinking." The Office found that this report was insufficient to establish that appellant sustained a recurrence of total disability as a result of her PTSD, as it indicated that appellant was having problems with the possibility of transfer as well as self-generated fears, which were not compensable under the Federal Employees' Compensation Act. The Office further noted that the February 9, 1998 report, referred to a February 26, 1998 narrative report, which was fully discussed in the prior decision. It concluded that, therefore, this report was not new and was insufficient to establish a recurrence of total disability or a worsening of appellant's PTSD.

The Office found that Dr. Cherkas' December 2, 1992 Form CA-20 was largely illegible, but noted a possibility of paranoia and recommended further psychiatric work up. It found that this report was also insufficient to establish a recurrence of total disability or a worsening of appellant's PTSD.

The Office also reviewed the January 23, 1996 report, from Dr. Cherkas and noted that he indicated that when appellant requested a transfer to the Long Beach unit she began to experience disabling symptoms. The Office found that appellant's desire to work in a particular location is not compensable and did not arise in the course of her regular or specially assigned duties. The Office noted that Dr. Cherkas indicated that appellant's total disability was caused by her back injury and the response to this injury by supervisory staff and the inappropriate handling of her employment capacities such as pressures regarding "schemes." It noted that he found that the required move to Long Beach was the last issue that created disability, particularly due to anxiety with agoraphobia and back pain. The Office found that Dr. Cherkas opined that appellant's disability resulted from her back pain, the employing establishment's handling of her limitations, the impending transfer and self-generated fears and lacked any medical rationale suggesting otherwise. The Office found that there continued to be insufficient medical evidence to establish that appellant sustained a recurrence of total disability, that her work-related condition materially worsened, or that there was a change in the light-duty job requirements.

The Board finds that this case is not in posture for decision.

An individual who claims a recurrence of disability due to an accepted employment 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. 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 reasoning.<sup>8</sup> Causal relationship is a medical issue and can be established only by medical evidence.<sup>9</sup>

Further, an employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.<sup>10</sup> As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.<sup>11</sup>

Following the 1983 acceptance by the Office of appellant's claim for disability due to post-traumatic stress syndrome, appellant returned to modified part-time duty on March 13, 1988 working six hours per day,<sup>12</sup> and continued until November 20, 1992 when she stopped work altogether. The Office paid compensation through February 5, 1993 and then by decision dated April 1, 1993, it denied appellant's claim for a February 6, 1993 recurrence of total disability. The Board affirmed this finding by decision dated December 17, 1997. A request for modification by the Office was denied by decision dated June 22, 1998.

However, further evidence had been submitted to the Office prior to the June 22, 1998 merit decision, which was not reviewed and which prompted the July 6, 2001 Order Remanding Case. On June 16, 1998 the Office received a relevant, fairly comprehensive January 23, 1996 report, from Dr. Cherkas, in which he provided amplification of his previous reports. The Office analyzed this evidence as to the compensability of the implicated work factors, as well as to a recurrence of disability under *Hedman*.<sup>13</sup> The Board concurs that this report does not establish a change in the nature or extent of appellant's injury-related condition nor a change in the nature or extent of her light-duty job requirements and notes that the compensability of identified work factors is not relevant to the analysis.

However, following the June 22, 1998 decision, the Office also received an August 4, 1998 report, from Dr. Cherkas, which it was briefly mentioned in its January 14, 1999 nonmerit decision. In this report he explained how appellant's present diagnoses of agoraphobia and panic disorder were related to PTSD as developmental sequelae on the basis of psychopathologic fragmentation of the original disorder known as PTSD. Dr. Charkas explained that PTSD did not resolve in appellant's case, but through the psychopathology of fragmentation, continued

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<sup>8</sup> *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>10</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>11</sup> *Id.*

<sup>12</sup> A wage-earning capacity was done at that point determining that appellant's income working six hours per day represented her wage-earning capacity.

<sup>13</sup> *See supra* note 11.

with remissions and exacerbations precipitated by work factors that resembled or symbolized her initial traumatic employment events, including increasing workload with the packing up of medical records, conflicts with coworkers and contact with critical supervisors.<sup>14</sup> Dr. Cherkas' opined that appellant's agoraphobia and panic disorder about driving and going to work again were a continuing result of the fragmentation due to the initial PTSD. Dr. Cherkas also explained how appellant's present somatoform disorder had originally been known as psychogenic pain disorder. He further identified changes in the nature and extent of appellant's dormant PTSD with her manifestations of agoraphobia and panic disorder.<sup>15</sup> The Board finds that, contrary to the Office's January 14, 1999 abbreviated characterization of the report in its nonmerit decision, the report was not repetitive of Dr. Cherkas's earlier reports, it was directly relevant to the issues at hand, it discussed the evolution of or "change in the nature and extent" of appellant's emotional condition and it was rationalized.

Proceedings under the Act are not adversary 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.<sup>16</sup> This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability due to a change in the nature and extent of her employment-related PTSD, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between her allegedly disabling complaints and periods of disability and her original PTSD, that is sufficient to require further development of the case record by the Office.<sup>17</sup> Additionally, there is no opposing medical evidence in the record.

For this reason, the case will be remanded to the Office for the creation of a statement of accepted facts, composition of specific questions to be addressed and the referral of appellant, together with the relevant case record, to an appropriate psychiatric specialist, for a rationalized medical opinion as to whether she sustained an employment-related change in the nature and extent of her accepted PTSD. Following such further development as the Office deems necessary, it shall issue a *de novo* decision on the merits of the case.

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<sup>14</sup> Whether these events in and of themselves are compensable factors of employment or not is irrelevant as it is what they resemble or symbolize to appellant, which triggered the exacerbations of the previously dormant PTSD manifesting in fragmentation sequelae such as agoraphobia and panic disorder.

<sup>15</sup> The manifestation of a derivative psychopathology in a previously quiescent psychiatric state is as much a change in the nature and extent of the psychopathology as is objective changes in a previously stable physical injury.

<sup>16</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>17</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the August 1, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC  
October 15, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member