

symptoms and was admitted to the hospital on October 20, 2001 to rule out anthrax. Although appellant's blood tests were negative for anthrax, he was prescribed a 60-day course of Cipro as a precautionary measure and to treat his respiratory symptoms. Appellant's claim was initially denied on December 20, 2001 and a request for reconsideration was denied on March 8, 2002. It was accepted, however, that anthrax had been found at the employing establishment and on April 22, 2002 the Office rescinded those prior orders and accepted the claim for presumptive pulmonary anthrax, resolved.² Appellant received compensation for wages lost from October 22 to 29, 2001.

On October 17, 2002 appellant requested that his claim be expanded to include onset of post-traumatic stress disorder due to his anthrax exposure.³ Appellant submitted a copy of an August 27, 2002 report from Dr. Leonard J. Schindel, a Board-certified internist, who related that appellant had been under treatment for the past year for post-traumatic stress disorder caused due to anthrax exposure and the events that followed. Dr. Schindel indicated that appellant had elevated blood pressure and had been referred to a psychologist for treatment.

In an October 4, 2002 report, Dr. Robert LoPresti, a clinical psychologist, advised that appellant had been in psychotherapy since September 13, 2002 for post-traumatic stress disorder as a result of inhalation anthrax exposure on October 9, 2001 at his workplace. Dr. LoPresti opined that appellant was retraumatized each time he reported to work and that his work situation created "chronic disabling stress, anxiety, depression and other medical complications." He opined that appellant was disabled for work due to post-traumatic stress disorder.

On October 28, 2002 appellant filed a claim for a recurrence of disability beginning September 27, 2001. He noted that he had respiratory problems following his exposure to anthrax on October 9, 2001. He alleged that he became severely upset and had difficulty breathing due to all the publicity and talk of anthrax. In a letter dated November 5, 2002, the Office advised appellant of the factual and medical evidence required to establish his claim for a recurrence of disability. Appellant was informed of his burden of proof, which required that he submit a comprehensive medical opinion addressing how his alleged disability was causally related to accepted work injury. Although appellant was given 30 days to respond to the letter, he did not submit additional evidence.

In a November 14, 2002 letter, the employing establishment challenged appellant's claim, noting that appellant had a history of respiratory problems and that he had recently undergone elective surgery to staple his stomach due to severe obesity. It was noted that appellant had returned to light duty following his surgery.

By decision dated December 6, 2002, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's alleged recurrence of disability and his accepted work injury. The Office further found that appellant failed to establish a causal relationship between his diagnosed post-traumatic stress

² The Office considered the claim to be one for occupational disease and not a traumatic injury.

³ Appellant filed a series of Form CA-7 claims for lost wages beginning April 26 to October 18, 2002. The Office, however, instructed appellant that he would have to file a claim for a recurrence of disability.

disorder and his anthrax exposure on October 9, 2001. The Office held that appellant's post-traumatic stress disorder was not a consequential injury.⁴

Appellant subsequently filed requests for reconsideration on December 19, 2002 and February 21, 2003.⁵ The Office denied modification in decisions dated January 10 and May 28, 2003. The Office noted that, in its last merit decision of May 28, 2003, the first issue that needed to be resolved was whether appellant suffered a work-related injury subsequent to possible exposure to anthrax. The Office pointed to the negative test results for anthrax and stated that, since appellant had not met his burden of proof regarding the initial claimed injury, he was unable to establish a recurrence of disability. With respect to appellant's claim for post-traumatic stress disorder, the Office determined that appellant's medical evidence at best supported the conclusion that appellant's emotional condition was based on self-generated fear. The Office once again noted that appellant had not suffered a work-related injury; therefore, his claim for post-traumatic stress disorder was self-generated based on conjecture on appellant's part that he had anthrax when there was no evidence of record that he contracted that disease.

LEGAL PRECEDENT

When an employee claims a recurrence of or continuing disability causally related to an accepted employment injury, he or she has the burden of establishing by weight of the reliable, probative and substantial evidence that the claimed period of disability is causally related to the accepted injury.⁶ It is an accepted principle of workers' compensation law that, when the primary injury is known to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.⁷

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact. Section 8124(a) of the Federal Employees' Compensation Act provides: "The [Office] shall determine and make findings of facts and make an award for or against payment of compensation."⁸ The Office regulations, at 20 C.F.R. § 10.130, provide in part that the final decision of the Office "shall contain findings of fact and a statement of reasons." The Board has held that when the Office intermingles the issues of the cases to such an extent that it is

⁴ Appellant also filed a request for an oral hearing, which was received by the Office on December 23, 2002. The Office contacted appellant and asked him which form of appeal he wished to pursue. During a telephone conference on January 7, 2003, he stated that he wished to pursue the request for reconsideration and withdrew his request for a hearing.

⁵ Appellant submitted additional evidence consisting of a November 22, 2002 report from Dr. LoPresti, documentation regarding the levels of anthrax found in appellant's duty station, medical bills and letters to government and news officials.

⁶ *Carmen Gould*, 50 ECAB 504 (1999).

⁷ *Charlet Garrett Smith*, 47 ECAB 562 (1996).

⁸ 5 U.S.C. § 8124(a).

impossible for the Board to determine the basis for the decision, the case shall be returned to the Office for further consideration.⁹

ANALYSIS

In the May 28, 2003 decision, the Office properly determined that appellant had failed to submit sufficient medical evidence to establish that he sustained a recurrence of disability. There is no reasoned medical evidence of record addressing why appellant was disabled for work as alleged. Appellant did not provide a rationalized medical opinion explaining how his alleged disability was causally related to his accepted work injury. Furthermore, the evidence before the Office at the time of its May 28, 2003 decision does not establish that appellant sustained a consequential injury. Although appellant has been diagnosed with post-traumatic stress disorder by Dr. LoPresti, the physician's October 4, 2002 report did not address with medical rationale how appellant's emotional condition arose from his presumptive anthrax, particularly in light of the fact that appellant's test results were negative and he returned to full duty prior to onset of his stress symptoms.

The Board, however, finds that the Office decisions of May 28 and January 10, 2003, incorrectly stated that appellant had failed to establish a work-related injury. Those decisions ignore that the Office specifically accepted this claim for presumptive pulmonary anthrax based on appellant's potential exposure to anthrax at work on October 9, 2001. Because the Office ignored that appellant's claim was accepted, it did not give proper consideration to appellant's evidence on reconsideration. Given the contradictory findings by the Office with respect to fact of injury in this case, the Board is unable to render a decision on appellant's reconsideration evidence to determine whether he has since satisfied his burden of proof to establish that he sustained a recurrence of disability or a consequential emotional condition. The case will be remanded to the Office for a merit review of appellant's reconsideration request, taking into account that the Office has already accepted that appellant sustained a work-related injury. If it is the Office's intent to rescind acceptance of this claim, it must so state in its findings of fact and statement of reasons in a *de novo* decision. Unless the Office rescinds acceptance of the claim, it must review appellant's evidence on reconsideration to determine whether appellant has established a recurrence of disability or whether he has a consequential emotional condition causally related to his accepted work injury. On remand, after further development of the record as deemed necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant established that he sustained a recurrence of disability or whether he developed an emotional condition as a consequence of his accepted employment injury.

⁹ See generally *Robert L. Johnson*, 51 ECAB 480 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 28 and January 10, 2003 are vacated and the case is remanded for further consideration consistent with this opinion.

Issued: March 4, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member