



On February 20, 2003 appellant filed an occupational disease claim alleging that on January 30, 2003 he first realized his depression and anxiety were due to the assault by a subordinate on September 5, 2002. On March 9, 2004 the Office accepted the claim for cervical and thoracic subluxations and acute post-traumatic stress disorder.

On April 28, 2003 the Office received a memorandum dated February 24, 2003 from appellant regarding his request for representation regarding an accountability transfer. He related that he believed that he was being subjected to intimidation and discrimination by his immediate supervisors. Appellant also related that he “did not understand why [he] did not receive the proper medical treatment after being physically assaulted by an employee that was temporarily assigned to my office that should not have been.” He also stated that John Raciti, manager of customer service operations, tone of voice was sarcastic when making the comment that appellant would be blamed if “anything is missing from this station.”

On March 25, 2004 appellant filed a claim for a recurrence of disability beginning January 30, 2003 due to his September 5, 2002 employment injury, which the Office accepted.

Appellant filed another claim on March 25, 2004 for a recurrence of disability beginning February 24, 2003.

On June 7, 2004 the Office received a November 10, 2003 report by Dr. Harold J. Pascal, a treating psychiatrist, who diagnosed major depressive disorder and post-traumatic stress disorder. He noted that appellant had a recurrence of disability beginning January 30, 2003 due to the attack and his perception that he was harassed and “not fully protected from this attack and assault.” Appellant returned to work for a few hours on February 24, 2003 in order “to transfer stock to the person taking over [his] responsibilities.” With regards to his recurrence of disability, Dr. Pascal opined that appellant’s disability for the period January 31 to February 24, 2003 was directly related to the September 5, 2002 attack, but provided no opinion as to the cause of appellant’s disability subsequent to February 24, 2003.

By decision dated September 7, 2004, the Office denied appellant’s claim for a recurrence of disability beginning February 24, 2003. The Office found that the record contained insufficient medical evidence supporting a recurrence of disability on February 24, 2003 due to his accepted employment injuries.

On December 27, 2004 appellant, through counsel, requested reconsideration of the September 7, 2004 decision denying his claim. He submitted a November 19, 2004 report by Dr. Harold Pascal, who opined “there is no other reason psychiatrically for [appellant’s] (sic) total disability of February 24, 2003 other than” the September 5, 2002 assault. Dr. Pascal stated:

“[Appellant] was brutally attacked while he worked at the [employing establishment]. There was no other precipitating incident that caused his post[-] traumatic stress disorder. [Appellant] experienced fear that it would happen again, nightmares and night terrors concerning that attack, inability to function on the job as a result of the incident and recurrences in his own mind of that incident over and over again. He relived the experience and this reliving caused a

numbness in his physical person as well as a psychological numbness.... Therefore, there is no question medically that as a result of the injuries and conditions that he suffered while employed with the [employing establishment] are directly related to the assault he suffered.”

By decision dated March 9, 2005, the Office denied appellant’s February 24, 2003 recurrence claim. The Office found that Dr. Pascal did not have an accurate history as he failed to consider appellant’s March 28, 2003 memorandum regarding a February 24, 2003 incident regarding an accountability transfer.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office’s regulations provides in pertinent part:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>1</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>2</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.<sup>3</sup> Moreover, the physician’s conclusion must be supported by sound medical reasoning.<sup>4</sup>

An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant’s unsupported belief of causation.<sup>5</sup> However, proceedings under the Federal Employees’ Compensation Act are not adversarial 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>6</sup> This holds true in recurrence claims as well as in initial traumatic and occupational claims.

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<sup>1</sup> 20 C.F.R. § 10.5(x)

<sup>2</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>3</sup> Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include his opinion with medical reasons regarding the causal relationship between the employee’s condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

<sup>4</sup> *Robert H. St. Onge*, *supra* note 2.

<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

<sup>6</sup> *Betty J. Smith*, 54 ECAB \_\_\_ (Docket No. 02-149, issued October 29, 2002).

## ANALYSIS

In the instant case the Office accepted appellant's claim for cervical and thoracic subluxations and post-traumatic stress disorder on March 9, 2004 causally related to a September 5, 2002 assault by a coworker and accepted a claim of a recurrence of disability for the period January 30 to February 23, 2004. The issue is whether appellant's disability commencing February 24, 2003 is causally related to his post-traumatic stress disorder.

In support of his request, appellant submitted reports dated November 10, 2003 and November 19, 2004 by Dr. Pascal. In his November 10, 2003 report, Dr. Pascal diagnosed major depressive disorder and post-traumatic stress disorder. He noted that appellant had a recurrence of disability beginning January 30, 2003 due to the attack and his perception that he was harassed and "not fully protected from this attack and assault." Dr. Pascal noted that appellant returned to work for a few hours on February 24, 2003 in order "to transfer stock to the person taking over [his] responsibilities." With regard to his recurrence of disability, Dr. Pascal opined that appellant's disability for the period January 31 to February 24, 2003 was directly related to the September 5, 2002 attack, but provided no opinion as to the cause of his disability subsequent to February 24, 2003.

However, Dr. Pascal, in his November 19, 2004 report, opined "there is no other reason psychiatrically for [appellant's] (sic) total disability of February 24, 2003 other than" the September 5, 2002 assault. Dr. Pascal noted the attack upon appellant at the employing establishment and that he continued to relive the experience thereby hindering his ability to perform his assigned duties and causing "a numbness in his physical person as well as a psychological numbness." He opined that "there is no question medically that as a result of the injuries and conditions that he suffered while employed with the [employing establishment] are directly related to the assault he suffered."

The Board notes that the Office accepted appellant's claims for a recurrence of disability for the period January 30 to February 23, 2003 and he returned to work for a few hours on February 24, 2003. Moreover, Dr. Pascal did address the events of February 24, 2003 in his November 10, 2003 report, when appellant returned to work "to transfer stock to the person taking over [his] responsibilities." He provided reports which attributed appellant's recurrence of disability to his September 5, 2002 employment injury. Although these do not contain rationale sufficient to discharge his burden of proof that his total disability beginning February 24, 2003 was causally related to his September 5, 2002 injury, they constitute substantial evidence in support of his claim and raise an unrefuted inference of causal relationship sufficient to require further development of the case record by the Office. Moreover, there is no opposing medical evidence in the record for this period.

On remand the Office should develop the medical evidence as appropriate to obtain a rationalized opinion regarding whether appellant sustained a recurrence of disability on or about February 24, 2003 causally related to the September 5, 2002 injury and, if so, the period of disability. Following such further development of the case record as it deems necessary, the Office should issue a *de novo* decision.

**CONCLUSION**

The case is not in posture for decision regarding whether appellant sustained a recurrence of disability causally related to the accepted September 5, 2002 employment injury. The case will be remanded to the Office for further proceedings consistent with this opinion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 5, 2005 is set aside and the case remanded for further development consistent with the above opinion.

Issued: August 17, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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