



accepted his claim for lumbar strain, herniated nucleus pulposus at L2-3 and authorized surgery.<sup>1</sup> Appellant was paid appropriate compensation for all periods of disability. He did not stop work but returned to a light-duty position.

Accompanying appellant's claim was a magnetic resonance imaging (MRI) scan dated May 19, 1999, which revealed a large right sided disc herniation at L2-3. He came under the care of Dr. Mark A. Williams, a Board-certified urologist, who in a report dated September 17, 1999, noted a history of appellant's injury and diagnosed an L2-3 disc herniation. In reports dated October 19, 1999 to October 19, 2000, Dr. James A. Goss, a Board-certified internist, noted treating appellant conservatively for a herniated disc at L2 without success and recommended surgery. Dr. Goss indicated that appellant underwent epidural injections with little improvement and his condition appeared to be worsening. In his report dated October 19, 2000, Dr. Goss treated appellant for continued low back pain and advised that he requested a referral for anxiety due to his chronic pain. He noted on March 14, 2002 that appellant returned to work and experienced an aggravation of his back condition. Dr. Goss advised that appellant was fairly distraught due to the recurrence of pain and was taking anxiety medications. Other reports from Dr. Jerry Kotula, a Board-certified internist, dated January 24 to September 1, 2000 noted a history of appellant's injury and diagnosed L2-3 disc herniation. He noted performing epidural steroid injections at L2-3. Also submitted were reports from Dr. Timothy S. Smyth, a Board-certified anesthesiologist, dated July 17, 2000 to May 2, 2001, who diagnosed herniated disc at L2-3 with radiculopathy, resolved and degenerative disc disease. On May 2, 2001 he diagnosed severe degenerative disease with lumbago and anxiety disorder. Dr. Smyth related that appellant felt his major problem was anxiety related to his pain and his job. On November 8, 2001 Dr. Smyth referred him to a psychiatrist for evaluation and treatment for depression secondary to chronic pain. On February 25, 2002 he noted appellant's complaints of depression and anxiety which he believed was associated with his pain and that appellant was treated by Dr. Robert A. Sullivan, psychologist, who discharged him from his care noting that he could not assist appellant further with his depression.

Appellant filed several CA-7, claim for compensation forms for the periods February 7 to 17, 2000; June 4 to 21, 2001; January 30 to February 20, 2002; and March 6 to 28, 2002.

Thereafter, appellant submitted a report from Dr. Goss dated April 30, 2002, who advised that his back pain was appreciably better and that he related that his discomfort comes from an emotional reaction to his back pain. He noted an essentially normal physical examination and diagnosed low back pain. On May 7, 2002 the physician advised that appellant was experiencing lumbar spondylosis and spasms and would be unable to work from April 1 to May 10, 2002. Dr. Goss' September 10, 2002 report noted treating him since May 1999 for a work-related back injury and indicated that appellant experienced anxiety associated with his chronic pain. He opined that some of appellant's back condition was related to his work load. Other notes from Dr. Williams dated March 15 and May 13, 2002 indicated that he was treated for chronic back pain and anxiety. Dr. Williams noted that appellant was doing well overall and had returned to light-duty work. On August 30, 2002 the physician advised that appellant recently experienced

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<sup>1</sup> The record reflects that appellant did not undergo the authorized surgery.

an increase in low back pain which resulted in increased anxiety and depression. Dr. Williams indicated that appellant's anxiety has impacted his ability to do his job.

In a decision dated August 23, 2002, the Office denied appellant's claim for a consequential emotional condition on the grounds that the medical evidence did not establish that his emotional condition was causally related to appellant's accepted injury of May 11, 1999.

In an undated letter, appellant requested a review of the written record and submitted additional medical evidence. On November 8, 2001 Dr. Smyth referred appellant for treatment of his depression secondary to chronic pain. His report dated January 25, 2002 advised that the exact etiology of appellant's pain has escaped elucidation and he was resistant to interventional and pharmacological intervention and recommended continued treatment with a psychologist. Other reports from Dr. Goss dated October 3 to November 7, 2002 diagnosed low back pain and lumbar spondylosis. A statement dated October 31, 2002 from a nurse, Susan Miranda, advised that appellant's chronic back pain contributed to his depression and anxiety.

A human resource specialist with the employing establishment submitted a letter dated September 11, 2002 and opined that appellant's anxiety and depression was due to his chronic back pain.

In a decision dated December 2, 2002, the hearing representative vacated the Office decision dated August 23, 2002 and remanded the case for further development. The hearing representative noted that appellant claimed entitlement to compensation for several periods of wage loss from February 7 to March 6, 2002 and must be instructed to submit a Form CA-2a, notices of recurrence of disability along with supporting evidence for each claimed recurrence. The hearing representative also directed the Office to prepare a statement of accepted facts and refer appellant and the case record to an Office referral physician for an opinion as to whether his emotional condition was causally related to the accepted injury of May 11, 1999.

In a letter dated December 24, 2002, the Office advised appellant of the type of medical evidence needed to establish his claim for a consequential emotional condition and requested that he submit such evidence. The Office particularly requested that he submit a reasoned opinion addressing the relationship of his claimed emotional condition and specific employment factors. In a separate letter of the same date, the Office requested that he submit a Form CA-2a notice of recurrence of disability and additional evidence with regard to each period he was claiming a recurrence of disability.

Appellant submitted employing establishment medical records from May 14, 1984 to October 2, 1998, which documented his treatment for chronic anxiety disorder. The records noted his history of acute anxiety attacks commencing when he was in ninth grade and subsequent treatment in May 1984 for depression due to marital problems, in July 1986 for an acute anxiety attack, in March 1987 for generalized anxiety with no identifiable stressor and intermittently from 1987 to 1999 for chronic anxiety disorder. Also submitted were reports from Dr. Goss dated February 29, 1988 to April 15, 2003, which noted his continued treatment for lumbar degenerative disc disease and lumbar spondylosis. In a report dated January 9, 2003, Dr. Williams noted treating appellant on January 9, 2003 and advised that he experienced exacerbations of his anxiety on February 7, June 4 and 21, 2002. He diagnosed generalized

anxiety disorder with exacerbation due to a back injury, osteoarthritis, chronic low back pain and hypercholesterolemia. The physician noted appellant's back condition worsened which caused his anxiety to worsen. Dr. Sullivan submitted a report dated January 15, 2003 which noted treating appellant from January to July 2001 for chronic pain disorder resulting from a work-related injury with symptoms of anxiety and depression.

In several undated statements appellant reiterated a history of his back injury and subsequent treatment for low back pain and anxiety due to his back injury. On April 2, 2003 appellant filed a Form CA-7, claim for compensation for the period April 3 to 18, 2003.

On April 14, 2003 the Office referred appellant for a second opinion to Dr. James M. Turnbull, a Board-certified orthopedic surgeon.

On August 11, 2003 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated that he experienced a recurrence of low back pain on November 19, 1999 causing disability on and after April 3, 2003 causally related to his accepted work injury. Appellant indicated that at the time of the recurrence of disability he was working in a light-duty position.

In a report dated September 16, 2003, Dr. Turnbull indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of his work-related injury of May 11, 1999. Dr. Turnbull noted upon mental examination that appellant wept openly, his mood was moderate depression, his affect was appropriate to thought content and moved through a normal range, his general level of intellectual functioning was slightly below average intelligence, his thinking was logical, coherent and goal oriented without any evidence of thought disorder and he denied suicidal/homicidal ideation. He diagnosed panic disorder without agoraphobia, dysthymia and low back pain. Dr. Turnbull advised that appellant's condition was not causally related to the accepted medical conditions of lumbar strain and lumbar herniated disc. He opined that appellant had a history of at least three episodes of severe anxiety in the past and opined that his current anxiety is a recurrence of his previous condition. He further stated that he found it significant that appellant failed to inform him that he was in treatment at the neuropsychiatric clinic for a three-year period prior to his most recent episodes of anxiety.

In a decision dated December 1, 2003, the Office denied appellant's claim for a consequential emotional condition on the grounds that the evidence did not demonstrate that the claimed medical condition was related to the accepted injury of May 11, 1999.

In a decision dated January 14, 2004, the Office denied appellant's claim for recurrence of disability commencing April 3, 2003. In an undated application he filed a request for reconsideration of the Office decision dated January 14, 2004.<sup>2</sup>

In an undated application appellant requested a review of the written record with regard to the December 1, 2003 Office decision and submitted additional evidence. On April 2 and 15, 2003, Dr. Goss advised that appellant had a significant degenerative lumbar spine which was

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<sup>2</sup> The Board does not have jurisdiction over this claim for recurrence in the present appeal, as the Office has not rendered a decision on the reconsideration request filed by appellant. *See* 20 C.F.R. § 501.2(c).

causally related to the May 11, 1999 work injury and would be off work from April 3 to 15, 2003. In a report dated February 10, 2004, he opined that appellant's work-related back injury of May 11, 1999 developed into a chronic degenerative condition. Dr. Gross further opined that, although appellant did have an underlying problem with chronic degeneration in his lumbar spine, his degenerative disc condition was directly related to his work injury and 50 percent of his current pain was caused by his work injury.

In a decision dated May 10, 2004, the hearing representative affirmed the Office decision dated December 1, 2003.

### **LEGAL PRECEDENT**

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background establishing a causal relationship.<sup>3</sup>

The basic rule respecting consequential injuries, as expressed by Larson is, "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment."<sup>4</sup> The subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury."<sup>5</sup>

With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.<sup>6</sup>

### **ANALYSIS**

In this case, the Office accepted appellant's claim for a lumbar strain, herniated disc at L2-3. However, the medical evidence is insufficient to establish that the employment incident on May 11, 1999 caused a consequential emotional condition.

In his report dated September 16, 2003, Dr. Turnbull diagnosed panic disorder without agoraphobia, dysthymia and low back pain. He opined that appellant's emotional condition was not causally related to the accepted medical conditions of lumbar strain and lumbar herniated disc. Dr. Turnbull advised that appellant had a history of at least three episodes of severe anxiety in the past and opined that his current anxiety is a recurrence of his previous condition and unrelated to his May 11, 1999 work-related injury.

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<sup>3</sup> *Brian E. Flescher*, 40 ECAB 532 (1989).

<sup>4</sup> *Larson, The Law of Workers' Compensation* § 13.00.

<sup>5</sup> *Id.* at § 13.11.

<sup>6</sup> *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

Appellant submitted numerous reports from his treating physician, Dr. Goss. On March 14, 2002 he noted that appellant was fairly distraught due to the recurrence of pain and was taking anxiety medications. Dr. Goss' April 30, 2002 report advised that appellant's back pain was appreciably better and that he related that his discomfort comes from an emotional reaction to his back pain. He reported that appellant experienced anxiety associated with his chronic pain and opined that some of his back condition was related to his work load. However, Dr. Goss did not provide a specific and rationalized opinion as to the causal relationship between appellant's employment and his diagnosed anxiety condition. He did not explain how and why specific activities would have caused or aggravated the claimed condition.<sup>7</sup> This is particularly important as the evidence of record reveals that appellant was treated for chronic anxiety disorder from May 14, 1984 to October 2, 1998, prior to his May 11, 1999 work injury. The records reflect that appellant has a history of acute anxiety attacks commencing when he was in ninth grade and was intermittently treated for chronic anxiety disorder from 1987 to 1999. None of Dr. Goss's reports mention this preexisting anxiety disorder or explain how this preexisting condition would affect his current condition.<sup>8</sup>

Other reports from Dr. Smyth from May 2, 2001 to February 25, 2002 diagnosed severe degenerative disease with lumbago and anxiety disorder. His report of May 2, 2001 indicated that appellant felt his major problem these days was anxiety related to his pain and his job. Dr. Smyth indicated on February 25, 2002 that appellant complained of depression and anxiety which he believed was associated with his pain. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether this work injury caused his emotional condition. To the extent that Dr. Smyth is providing his own opinion, the physician does not provide a well-reasoned discussion explaining how appellant's emotional condition was causally related to his employment. Without any explanation or rationale for the conclusion reached, such report is insufficient to meet appellant's burden of proof.<sup>9</sup>

Appellant also submitted a report from Dr. Williams dated March 15, 2002, which noted his treatment for chronic back pain and anxiety. In his report's dated May 13 and August 30, 2002, Dr. Williams diagnosed chronic anxiety, hypertension and hypercholesterolemia and advised that appellant's low back pain resulted in increased anxiety and depression and has impacted his ability to do his job. On January 9, 2003 he advised that appellant experienced exacerbations of his anxiety on February 7, June 4 and 21, 2002 and diagnosed generalized anxiety disorder with exacerbation due to back injury, osteoarthritis, chronic low back pain and hypercholesterolemia. However, Dr. Williams merely provided conclusory statements and failed to provide a specific and rationalized opinion as to the causal relationship between appellant's employment and his diagnosed anxiety condition.<sup>10</sup> He did not explain how and why specific

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<sup>7</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>8</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>9</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>10</sup> See *Jimmie H. Duckett*, *supra* note 7.

activities would have caused or aggravated the claimed condition. This is important as the evidence of record reveals that appellant was treated for chronic anxiety disorder from May 14, 1984 to October 2, 1998 and none of Dr. Williams' reports mention this preexisting chronic anxiety disorder or explain how this preexisting condition would affect his current condition.<sup>11</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Sullivan submitted a report dated January 15, 2003, which noted treating appellant from January to July 2001 for chronic pain disorder resulting from a work-related injury with symptoms of anxiety and depression. However, as noted above, Dr. Sullivan failed to provide a specific and rationalized opinion as to the causal relationship between appellant's employment and his diagnosed anxiety condition.<sup>12</sup> He did not explain how and why specific activities would have caused or aggravated the claimed condition. Further, Dr. Sullivan failed to mention that appellant had a preexisting chronic anxiety disorder for which he intermittently sought treatment from 1984 to 1999, nor did he explain how this preexisting condition would affect appellant's current condition.<sup>13</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

Also submitted was a statement dated October 31, 2002 from Susan Miranda, a nurse, who advised that appellant has chronic back pain which contributed to his depression and anxiety. However, such reports are not considered medical evidence as a physician's assistant is not considered a physician under the Act.<sup>14</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. In a case such as this, proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement.<sup>15</sup> The Board finds that appellant has not met this burden with respect to his claim.

### CONCLUSION

The Board finds that appellant has failed to establish that his emotional condition is consequential to the accepted May 11, 1999 injury.

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<sup>11</sup> See *Frank Luis Rembisz*, *supra* note 8.

<sup>12</sup> See *Jimmie H. Duckett*, *supra* note 7.

<sup>13</sup> See *Frank Luis Rembisz*, *supra* note 8.

<sup>14</sup> See 5 U.S.C. § 8101(2). This subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>15</sup> See *Margaret A. Donnelly*, 15 ECAB 40 (1963).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2004 and December 1, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 1, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member