



employment injury; and (2) whether appellant's claim should be expanded to include depression and anxiety as consequences of her accepted condition.<sup>1</sup>

### **FACTUAL HISTORY**

On March 20, 2003 appellant, then a 43-year-old contact representative, filed a traumatic injury claim, alleging that she injured her lower back while moving a box in the performance of duty. Her claim was accepted for displaced lumbar intervertebral disc at L5-S1. Appellant returned to work on June 2, 2003.

Appellant submitted a statement dated April 26, 2004, received by the Office on January 24, 2005, from Dr. Grace O'Brien, a Board-certified family practitioner, who reported that appellant suffered from chronic depression, bipolar disorder, personality disorder, prior suicide attempts, severe fatigue, mental confusion, chronic pain syndrome and chronic low back pain. She opined that appellant was unable to hold down a full-time position due to her inability to concentrate, difficulties dealing with stress, severe pain in her back, inability to sit or stand for prolonged periods of time and her inability to push or bend. Dr. OBrien stated that appellant would "best be remedied by being given a medical disability until future notice."

On April 27, 2005 appellant filed a claim for a recurrence of disability, alleging that she was unable to work as of April 4, 2004. She claimed that chronic pain from her accepted work injury had aggravated her preexisting depression and anxiety.

On April 27, 2005 appellant filed a claim for compensation (Form CA-7) for the period April 4, 2004 through April 27, 2005.

Appellant submitted unsigned physician's progress notes dated February 17, March 2 and April 28, 2005 reflecting appellant's complaints of continued back pain and depression. September 17, 2004 and March 11, 2005 reports from Dr. O'Brien reflected that appellant was treated for migraine headaches and suffered from chronic bipolar disorder and depressive disorder. On April 1, 2004 she provided impressions of depression, general anxiety, personality disorder and "chronic LBP with radiculopathy." On January 10, 2005 Dr. O'Brien indicated that appellant's legs were "painful," with right radiculopathy. She also stated that appellant was negative for psychiatric or emotional upset. In a February 3, 2005 report of a follow-up examination for appellant's back pain, Dr. O'Brien noted that appellant had a chronically tender lower back and tender range of motion.

In an unsigned report dated April 13, 2005, Roxina Fischer, a nurse practitioner, indicated that appellant suffered from chronic bipolar affective disorder and depressive disorder, conditions for which she was seeing a psychiatrist on a regular basis. An unsigned report dated

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<sup>1</sup> The Office issued a decision dated February 27, 2004 denying appellant's request for a schedule award, finding that she had not sustained any permanent impairment to a specified member under 5 U.S.C. § 8107. By decision dated April 12, 2005, an Office hearing representative affirmed the Office's February 27, 2004 decision. By letter dated December 9, 2005, appellant's representative appealed the Office's December 5, 2005 decision only. Neither appellant nor her representative has appealed the schedule award decision. Therefore, the Board will not address the merits of the April 12, 2005 decision.

January 25, 2005 from Christopher Lindsay, a physician's assistant, indicated that appellant was treated for pain in her lower back.

Appellant submitted numerous physicians' notes bearing illegible signatures, including notes from February 17 through March 2, 2005; notes dated March 15, 2005 from the Ogden Clinic reflecting that appellant was seen for a migraine headache and leg and arm pain related to a work injury; notes dated March 8, 2004 indicating that appellant was seen for stress; and notes dated February 17, 2005 stating that appellant had severe problems with mental health issues and referring to a "Lakeview suicide attempt."

On May 20, 2005 the Office informed appellant that her case was still open and active and that, therefore, her CA-2a submission was unnecessary and thereby voided.

By letter dated May 27, 2005, appellant's representative inquired as to why the Office had not listed appellant's consequential emotional condition as an accepted condition. He stated that appellant had suffered a recurrence of disability, in that chronic pain resulting from her 2002 work injury had aggravated her preexisting depression and anxiety and rendered her unable to work as of April 4, 2004.

Appellant submitted a May 7, 2004 supervisor's statement from Shantel Price reflecting unsatisfactory work attendance. The record contains a February 10, 2005 report of a magnetic resonance imaging (MRI) scan of the lumbar spine and an unsigned request for retirement disability to be effective August 7, 2004.

On August 3, 2005 appellant's representative stated that, after resuming employment, appellant had suffered a breakdown and was hospitalized for a consequential psychological condition. He requested that appellant's claim be expanded to include her psychological condition.

On August 22, 2005 the Office notified appellant that the medical evidence submitted was insufficient to establish that she had a consequential psychological condition, and advised her that she had 30 days to provide contemporaneous medical evidence with detailed medical findings and a reasoned medical opinion supporting her claim.

Appellant submitted numerous documents from her personnel file, including her October 28, 1986 application for federal employment and employment time reports from March 27 through August 7, 2004. In an unsigned report dated August 21, 2005, Dr. William Sheffield, Board-certified in the field of emergency medicine, indicated that he had seen her for knee pain. Appellant submitted unsigned physicians' notes bearing illegible signatures for the period April 28 through May 25, 2005.

On August 28, 2005 appellant's representative advised the Office that he had "nothing further to send [the Office]" at that time and asked that a decision be issued on appellant's claim.

Appellant submitted an unsigned July 5, 2004 initial psychiatric evaluation from Dr. Carl G. Rasmusen, a treating physician, who indicated that appellant was being admitted

voluntarily to Lakeview Hospital for suicidal ideations after a domestic violence episode. Appellant reported to Dr. Rasmusen that she had been depressed since 1998 as a result of chronic pain from a disc repair. She told him that chronic pain combined with her depression made it impossible for her to function. Dr. Rasmusen diagnosed major depressive disorder recurrent, severe, without psychoses. He indicated that anxiety disorder, benzodiazepine abuse and post-traumatic stress disorder (PTSD) should be ruled out. Axis II diagnoses included affective instability, rather than bipolar disorder. He also noted that appellant had chronic right leg pain (Axis III) and social and marital stressors (Axis IV).

In an unsigned report dated July 5, 2004, Dr. Brian J. Rogers, a treating physician, provided an assessment of depression; suicidal ideation; fatigue; headache and right leg pain.

In an unsigned discharge summary dated July 9, 2004, Dr. Rasmusen indicated that appellant had been admitted for suicidal ideation following a domestic violence episode, which involved appellant's incarceration. Dr. Rasmusen stated that appellant was "highly motivated to get on disability, claiming that her medications had affected her memory and ability to function."

In an unsigned September 1, 2005 psychiatric evaluation, Dr. Rasmusen indicated that appellant had been voluntarily admitted again to Lakeview Hospital for suicidal ideations to drive off of a cliff. He noted that appellant's chief complaint was that she had not been awarded "emotional disability in addition to the physical part." Dr. Rasmusen provided diagnoses of bipolar disorder, Type II, anxiety disorder NOS, and chronic right leg and low back pain. He indicated that PTSD, benzodiazepine abuse, and major depressive disorder should be ruled out.

In an unsigned Lakeview Hospital discharge summary dated September 7, 2005, Dr. Rasmusen indicated that appellant had been admitted on August 31, 2005 for suicide ideation. He stated that at the time of admission, she had no acute physical abnormality other than back pain. Dr. Rasmusen provided final Axis I diagnoses of "bipolar disorder NOS; anxiety disorder NOS; rule out major depressive disorder; post-traumatic stress disorder recurrent." He provided an Axis II diagnosis of "histrionic personality features"; Axis III diagnosis of "chronic low back pain"; and Axis IV diagnoses of "disability pending; legal issues pending."

In an unsigned report dated September 5, 2005, Dr. A. Brett Morrill, a treating physician, provided diagnoses of major depression with a history of bipolar disorder; hypothyroidism; chronic low back pain; and urinary tract infection. He indicated that appellant's chief complaint was worsening depression.

By letter dated October 16, 2005, appellant's representative advised the Office that appellant was claiming disability for the period "April 4, 2004 – ongoing."

By letter dated October 24, 2005, the Office acknowledged appellant's request to expand her claim to include a psychological condition and wage loss for the period April 4, 2004 through April 27, 2005 and continuing for that condition. The Office informed appellant that the medical evidence submitted was insufficient to support a consequential psychological condition and provided her 30 days to provide additional evidence.

On October 17, 2005 appellant submitted a claim for compensation for the period April 28, 2005 to “ongoing.”

Appellant submitted an April 8, 2004 physician’s release statement signed by Sharon St. John, LPC., who stated that appellant suffered from severe depression, accompanied by suicidal threats, mental confusion, fatigue, and PTSD. She opined that appellant’s chronic pain exacerbated her depression and that she was able to work only part time as a result.

In an April 13, 2004 certification of health care provider, appellant stated that she was unable to work due to chronic pain and depression. She further stated that she had been suffering from ongoing depression since 1998.<sup>2</sup>

In a report dated July 25, 2004, Ms. St. John stated that appellant had been her client for two years. She indicated that appellant was depressed and had marital issues that were exacerbated by PTSD from a 13-year history of incest that she had tried to repress. Ms. St. John noted that appellant had debilitating back pain and had missed so much work that she began having panic attacks. She opined that appellant’s chronic pain exacerbated her depression.

On November 17, 2005 the Office acknowledged appellant’s claim for lost wages for the period April 4, 2004 through October 17, 2005 and informed her that she had 30 days to provide medical evidence to support her claim. By letter dated November 21, 2005, appellant’s representative informed the Office that appellant had no additional evidence to submit in support of her claim.

By decision dated December 5, 2005, the Office denied appellant’s recurrence claim for lost wages for the period April 4, 2004 through October 17, 2005 on the grounds that she had failed to submit sufficient medical evidence establishing that her claimed depression was causally related to her accepted condition.

### **LEGAL PRECEDENT -- ISSUE 1**

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>3</sup>

An employee 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes

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<sup>2</sup> The signature line on the form contains “Dr. O’Brien.” However, the Board notes that the signature on the form does not conform to Dr. O’Brien’s signature as it appears on the numerous other reports contained in the record.

<sup>3</sup> 20 C.F.R. § 10.5(x) (2003).

that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>4</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>5</sup>

The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on April 4, 2004 causally related to her October 31, 2002 employment injury. The medical evidence of record does not provide sufficient facts or rationalized medical opinion to support her claim. The Board further finds that appellant has failed to establish that she was totally disabled due to an employment-related condition from April 4, 2004 through October 17, 2005 entitling her to monetary compensation.

Appellant's claim was accepted for displaced lumbar intervertebral disc at L5-S1. She returned to work on June 2, 2003. She filed claims for compensation for the period April 4, 2004 through October 17, 2005. However, appellant did not submit any probative medical evidence demonstrating total disability for this period of time due to her accepted condition. She also filed a claim for recurrence of disability, alleging that chronic pain from her accepted work injury had aggravated her preexisting depression and anxiety. However, appellant failed to provide a sufficiently rationalized medical opinion explaining a causal relationship between her current condition and her October 31, 2002 injury.

Appellant submitted numerous reports from Dr. O'Brien. September 17, 2004 and March 11, 2005 reports reflected that appellant was treated for migraine headaches and suffered from chronic bipolar disorder and depressive disorder. On April 1, 2004 Dr. O'Brien provided impressions of depression, general anxiety, personality disorder and "chronic LBP with radiculopathy." On January 10, 2005 she indicated that appellant's legs were "painful," with right radiculopathy. Dr. O'Brien also stated that appellant was negative for psychiatric or emotional upset. In a February 3, 2005 report of a follow-up examination for appellant's back pain, she noted that appellant had a chronically tender lower back and tender range of motion. In a statement dated April 26, 2004, Dr. O'Brien reported that appellant suffered from chronic depression, bipolar disorder, personality disorder, prior suicide attempts, severe fatigue, mental confusion, chronic pain syndrome and chronic low back pain. She opined that appellant was unable to hold down a full-time position due to her inability to concentrate, difficulties dealing with stress, severe pain in her back, inability to sit or stand for prolonged periods of time, and her

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<sup>4</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>5</sup> *Mary A. Ceglia*, 55 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004).

<sup>6</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

inability to push or bend. Dr. O'Brien's reports lack probative value for several reasons. None of her reports addressed whether appellant was totally disabled from performing the specific requirements of her job due to her work-related condition during the period in question, nor did she provide any objective medical evidence to establish appellant's inability to work. Moreover, appellant's claim was accepted for a back injury only. She had the burden of proving that she was disabled for work as a result of her employment injury.<sup>7</sup> None of Dr. O'Brien's reports provided a rationalized explanation as to how appellant's current alleged disabling condition, depression, was causally related to the accepted employment injury. Her conclusory statement that appellant would be best remedied by being given medical disability is insufficient to establish appellant's claim. It is also unclear whether Dr. O'Brien attributed appellant's disability to residuals from her accepted condition or to her psychological condition. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>8</sup>

The record contains reports dated July 5 and 9, 2004, and September 1 and 7, 2005 from Dr. Rasmusen, a psychiatrist who treated appellant during her stays at Lakeview Hospital. Although Dr. Rasmusen provided diagnoses related to appellant's emotional condition, he offered no opinion regarding appellant's ability to work during any specific period of time. Thus, these reports are not relevant to appellant's claim that she was totally disabled from performing the specific requirements of her job, due to her work-related condition during the period in question. Additionally, by virtue of the dates of the reports and the corresponding dates of treatment, they are not relevant to the alleged onset of appellant's recurrent disability in April 2004. Moreover, as the reports are unsigned, they lack probative value.<sup>9</sup>

The remaining medical evidence of record is insufficient to establish appellant's claim. Appellant submitted an April 8, 2004 physician's release statement and an unsigned July 25, 2004 report from Ms. St. John. These reports are of no probative value, as a licensed counselor is not a physician as defined under the Act.<sup>10</sup> Appellant submitted unsigned reports from Roxina Fischer, a nurse practitioner, and Christopher Lindsay, a physician's assistant. As nurse practitioners and physician's assistants are not considered physicians under the Act, their opinions are of no probative value. Moreover, in that they were unsigned and thus lacking proper identification, they cannot be considered as probative medical evidence.<sup>11</sup> Similarly, unsigned reports from Drs. Rogers, Sheffield and Morrill lack probative value, as do numerous physicians' notes bearing illegible signatures.

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<sup>7</sup> *Id.* See also *David H. Goss*, 32 ECAB 24 (1980).

<sup>8</sup> See *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004); see also *David L. Scott*, 55 ECAB \_\_\_\_ (Docket No. 03-1822, issued February 20, 2004); *Brenda L. DuBuque*, 55 ECAB \_\_\_\_ (Docket No. 03-2246, issued January 6, 2004).

<sup>9</sup> *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>10</sup> Section 8101(2) of the Act provides in pertinent part as follows: "(2)'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, *id.*

<sup>11</sup> *Merton J. Sills*, *supra* note 9.

Appellant had the burden of establishing by the weight of the substantial, reliable and probative evidence that she was disabled for work for the period April 4, 2004 through October 17, 2005 due to a condition that was causally related to her accepted injury. However, she failed to furnish rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concluded that for each period of disability claimed, the disabling condition was causally related to the employment injury. For the reasons stated above, the Board finds that she failed to sustain her burden of proof.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

The general rule respecting consequential injuries is that, 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 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.<sup>13</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>14</sup> With respect 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, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between her diagnosed psychological condition and her October 31, 2002 injury.

Dr. O'Brien reported that appellant suffered from chronic depression, bipolar disorder, personality disorder, prior suicide attempts, severe fatigue, mental confusion, chronic pain syndrome and chronic low back pain, and opined that appellant was unable to hold down a full-time position due to her inability to concentrate, difficulties dealing with stress, severe pain in her back, inability to sit or stand for prolonged periods of time, and her inability to push or bend. However, none of Dr. O'Brien's reports includes an opinion that appellant's psychological

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<sup>12</sup> See *Fereidoon Kharabi*, *supra* note 6. (The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.)

<sup>13</sup> See *Debra L. Dillworth*, 57 ECAB \_\_\_\_ (Docket No. 05-159, issued March 17, 2006). See also *Albert F. Ranieri*, 55 ECAB \_\_\_\_ (Docket No. 04-22, issued July 6, 2004).

<sup>14</sup> *Id.* See also *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>15</sup> *Kathy A. Kelley*, 55 ECAB \_\_\_\_ (Docket No. 03-1660, issued January 5, 2004).

condition was causally related to her accepted injury. Therefore, they lack probative value. Moreover, Dr. O'Brien is a family practitioner, not a psychiatrist. Therefore, a diagnosis of depression would be outside her area of expertise.

The only medical evidence of record that contains an opinion that appellant's depression was causally related to her accepted condition was the report of Ms. St. John, who opined that appellant's chronic pain exacerbated her depression. However, as noted above, as a licensed counselor is not a physician as defined under the Act, her reports are of no probative value.<sup>16</sup> For the reasons stated above, the remaining medical evidence of record lacks probative value.

Appellant asserted her belief that chronic pain from her accepted work injury had aggravated her preexisting depression and anxiety. An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>17</sup>

Appellant failed to submit any probative medical evidence explaining how her accepted condition caused or contributed to her psychological condition. Specifically, she failed to demonstrate how her depression arose as a natural consequence of her accepted injury, rather than as a result of an intervening cause. The Board finds the evidence of record is insufficient to discharge appellant's burden of establishing that her depression was a consequential injury of the accepted conditions of displaced lumbar intervertebral disc at L5-S1.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a recurrence of total disability from April 4, 2004 through October 17, 2005 causally related to her October 31, 2002 employment injury. The Board further finds that appellant did not meet her burden of proof in establishing that her depression was a consequence of her accepted lumbar condition.

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<sup>16</sup> Section 8101(2) of the Act provides in pertinent part as follows: "(2)'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, *supra* note 8.

<sup>17</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board