

**United States Department of Labor
Employees' Compensation Appeals Board**

DENNIS R. MOORE, Appellant)
and) Docket No. 05-1076
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 11, 2006
Springfield, MA, Employer)

)

Appearances:

Frank R. Saia, Esq., for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument May 16, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 13, 2005 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated April 29, 2004 and February 14, 2005, finding that he had not established a recurrence of disability causally related to his August 9, 2001 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of total disability on December 30, 2002 causally related to his August 9, 2001 work-related injury.

FACTUAL HISTORY

On September 5, 2001 appellant, a 40-year-old mail handler, filed a traumatic injury claim, alleging that on August 9, 2001 he injured his shoulder, back and left arm while removing

a heavy mail hamper from a truck in the performance of duty. His claim was accepted for a left shoulder strain. Appellant returned to full-time modified duty on November 7, 2001.

Appellant was treated by Dr. Richard Brody, a Board-certified internist, who on September 13, 2001 diagnosed left rhomboid strain and Dr. Richard Norris, a Board-certified physiatrist, who on November 28, 2001 diagnosed left thoracic and periscapular strain and myofascial pain syndrome.

On April 18, 2002 appellant filed a claim for recurrence of disability, alleging that his pain associated with the August 9, 2001 injury had never ceased. In an April 18, 2002 report, Dr. Brody stated that appellant was "still very symptomatic" and provided a diagnosis of "recurrent left rhomboid pain and spasm." On May 8, 2002 the Office accepted appellant's claim for recurrence of disability.

The Office referred appellant to Dr. Steven E. Selden, a Board-certified orthopedic surgeon, for a second opinion examination. In a June 6, 2002 report, he opined that appellant's left shoulder strain had resolved and that he was capable of working eight hours per day without restrictions. Dr. Selden stated that appellant had lingering subjective complaints of pain, with no objective findings. He indicated that a magnetic resonance imaging (MRI) scan showed minimal desiccation of T7-8, but was otherwise negative. Dr. Selden's examination revealed mild tenderness to palpation medial to the left scapula, with no swelling, spasm or deformity in that area. He found no sign of instability in the left shoulder. Cervical range of motion was normal and his neurological examination revealed no abnormalities. A June 6, 2002 work capacity evaluation reflected Dr. Selden's opinion that appellant could work eight hours per day without restriction.

The record reflects that Dr. Norris administered numerous trigger point injections. On July 23, 2002 Dr. Norris stated that appellant continued to complain of severe pain in the left thoracic paraspinal region. On May 23, 2002 Dr. Brody indicated that appellant had a marked exacerbation of symptoms with tenderness to palpation and clear objective spasms. On June 27 and July 11, 2002 Dr. Brody opined that appellant was not capable of working even light duty. On August 22, 2002 Dr. Brody released appellant to work four hours per day with restrictions, including lifting no more than two pounds, no repetitive bending, no heavy pushing or pulling and no use of the left arm. He recommended that appellant change positions frequently.

The Office found a conflict between the opinions of appellant's physicians and that of the second opinion examiner. It referred appellant, together with a statement of accepted facts and the entire medical record, to Dr. Peter Barnett, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated September 17, 2002, he provided an accurate history of appellant's condition and related in detail the results of his physical examination. Examination of appellant's neck revealed full pain-free range of motion, with no rigidity or spasm. Dr. Barnett found no pain at extremes and no point tenderness. Motion was synchronous. Right and left trapezial areas were normal. Examination of the left shoulder revealed full range of motion, with no weakness, atrophy or instability. He found no winging of the scapula and no scapulothoracic crepitus. Dr. Barnett noted discomfort with palpation and range of motion over the left rhomboid area. He found no spasm, skin abnormality, abnormal sensation or rotator cuff symptomology or biceps abnormalities. Dr. Barnett opined that

appellant's current problems with his left shoulder girdle were causally related to his August 9, 2001 accepted injury, but that he would be able to work eight hours per day, provided that work activities did not require repetitive and prolonged positioning of his left upper extremity or repetitive reaching and lifting with the left upper extremity. In an accompanying work capacity evaluation, Dr. Barnett reiterated his opinion that appellant could work eight hours per day, so long as he was not exposed to uninterrupted lifting, pulling, reaching, pushing or prolonged positioning. He indicated that those activities could be performed in a nonrepetitive fashion and suggested a 15 to 20-pound limit.

In a September 25, 2002 report, Dr. Norris stated that appellant's "trigger point has gotten worse to the point that appellant is in agony with almost anything he does."

On September 26, 2002 Dr. Brody opined that appellant could not function at work due to worsened pain in the left rhomboid area. In an October 10, 2002 report, Dr. Brody stated that an MRI scan showed disc desiccation with questionable minimal central disc protrusion at T7-8 and opined that appellant was completely disabled.

Appellant submitted an October 8, 2002 report of an MRI scan of the thoracic spine, which provided an impression of: "Dis[c] desiccation with questionable minimal central dis[c] protrusion T7-8. Findings are of doubtful clinical significance. Otherwise normal."

On October 9, 2002 Dr. Brody indicated that appellant's MRI scan showed some subtle abnormalities, which "could possibly be the pain generator for this trigger point that is becoming just unbearably painful." He opined that the darkening of C5-6 disc may represent a degeneration of the disc or even annular tears. On October 10, 2002 Dr. Brody stated that appellant's MRI scan showed disc desiccation with questionable minimal disc protrusion at T7-8.

On October 16, 2002 the employing establishment offered appellant a modified mail handler position, which encompassed the restrictions recommended by Dr. Barnett, including no repetitive lifting, pulling, reaching or pushing over 15 to 20 pounds. By letter dated November 5, 2002, the Office informed appellant that it found the limited-duty position offered by the employing establishment to be suitable and advised him to accept the position or explain his reasons for refusing the position within 30 days.

Appellant submitted a report dated October 25, 2002 from Dr. Charles A. Mick, a Board-certified orthopedic surgeon, who provided a diagnosis of thoracic spine pain. His examination revealed that appellant was tender primarily to the left of midline at approximately the T7-8-9 region, as well as in the paraspinal muscles. Shoulder and neurologic examinations were normal. Dr. Mick stated that, based on the results of appellant's MRI scan, he was unable to conclude that appellant's pain was caused by disc abnormalities.

On November 27, 2002 Dr. Norris opined that appellant's return to work as a modified mail handler would be harmful to his health and that he was unable to perform the required duties due to back pain.

On December 2, 2002 appellant rejected the limited-duty job offer, contending that the required bending, reaching, pulling and prolonged sitting would cause spasms and pain to his

back. On December 18, 2002 the Office found appellant's reasons for refusing the suitable work offer unacceptable and advised appellant that he had 15 days to accept the offer.

Appellant returned to work on December 30, 2002, in the position of modified mail handler. In a February 12, 2003 note written on a prescription pad, Dr. Norris "authorized" appellant to leave work as of December 30, 2002 after four to six hours as tolerated, due to severe back pain. Dr. Norris stated that appellant could work six hours per day with restrictions.

On March 3, 2003 appellant filed a claim for recurrence of disability as of December 30, 2002. Appellant alleged that, upon his return to work, he experienced the same muscle spasms, pain, muscle knot and tightness that he experienced following his original injury and that the pain and spasms "never went away."

In progress notes dated February 13, 2003, Dr. Norris indicated that appellant still had severe pain in his thoracic region upon palpation, primarily on the left side and directly over the spine, as well as with thoracic flexion.

By letter dated April 30, 2003, the Office informed appellant that the information submitted was insufficient to establish that he had experienced a recurrence of disability on December 30, 2002 and advised him to submit medical evidence with a diagnosis and reasoned medical opinion explaining the causal relationship between his current condition and the August 9, 2001 accepted injury.

In a May 12, 2003 narrative report, Dr. Norris stated that he was "still trying to accomplish a firm diagnosis." His examination revealed continued persistent severe pain in the left mid thoracic area, exacerbated by flexion and by direct pressure over the mid thoracic vertebrae or over the left thoracic paraspinals. He indicated that it was his "feeling" that appellant's pain was primarily discogenic in nature, but that a "provocative discography" was necessary to determine the origin of the pain. Dr. Norris further opined that appellant's "pain is caused by his work[-]related injury."

By decision dated June 9, 2003, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence failed to establish that the claimed recurrence was causally related to the accepted August 9, 2001 injury.

On July 2, 2003 appellant requested review of the written record.

Appellant submitted a June 27, 2003 report from Dr. Norris, who stated that "While there is no question in my mind that his injury is work related, the precise nature of the injury has yet to be clarified." Relating that a muscle strain would have been expected to clear up long ago, Dr. Norris stated that it was not at all clear that appellant's problem was a rhomboid strain. He indicated that a recent thoracic discogram was nondiagnostic, but that appellant remained extremely disabled from his back pain.

Appellant submitted an unsigned report dated September 5, 2003 from Dr. Claude Borowsky, a Board-certified physiatrist, who provided an assessment of "upper back pain associated with chronic rhomboidal strain and lower trapezial strain with some facet irritability at the T7-8, T8-9 level as well." His examination of appellant revealed unrestricted

cervical range of motion with negative Spurling's and negative Lhermitte's; full thoracic motion; tenderness over the facet region at T7-8 and T6-7 levels; and full elevation of left shoulder. Forward flexion at the shoulder caused burning to begin in the lower border of the scapula. He found full strength without sensory deficit and no winging. Appellant had full lumbar motion with no pain with extension and forward flexion.

By decision dated November 13, 2003, the Office hearing representative affirmed the June 9, 2003 denial of appellant's claim.

In an unsigned progress note dated November 24, 2003, Dr. Borowsky provided an impression of: "thoracic facet-mediated pain, T4-T2; lumbar dis[c]ogenic pain versus lumbar facet mediated pain."

On November 13, 2003 appellant submitted a request for reconsideration.

Appellant submitted a letter dated October 30, 2003 from Dr. Hernando Romero, a Board-certified psychiatrist, who indicated that he had been treating appellant since July 11, 2003 and opined that he was unable to work. He provided diagnoses of major depressive disorder, recurrent; mood disorder due to medical condition; and middle back and left shoulder pain.

In a February 22, 2004 report, Dr. Borowsky diagnosed "probable thoracic facet mediated pain with possible component of thoracic dis[c]ogenic pain; thoracic myofascial pain; intermittent symptoms of lumbar facet mediated pain." He stated that he was not certain whether appellant had reached maximum medical improvement and that his prognosis was uncertain.

By decision dated April 29, 2004, the Office denied modification of the November 13, 2003 decision, finding that appellant had failed to submit a rationalized medical opinion explaining, with objective findings, that appellant had experienced a worsening of his accepted condition of left shoulder strain on or after December 20, 2002 or how his current conditions were related to his accepted injury.

On May 19, 2004 Dr. Romero stated that appellant was severely anxious, depressed and overwhelmed by pressures stemming from his multiple illnesses, responsibilities of his father and uncertainty of his employment. He opined that appellant was "disabled to work in his previous job or in any other job for that matter."

Appellant submitted an October 22, 2004 report from Dr. Marc A. Linson, a Board-certified orthopedic surgeon, who examined him for upper back and left shoulder discomfort. He indicated that appellant had full neck and low back motion. Dr. Linson experienced pain in the left medial scapular region. He found no shoulder girdle atrophy or signs of peripheral nerve entrapment to the shoulders. Noting that x-rays showed some narrowing at C6-7, Dr. Linson opined that appellant "may have a typical cervical radicular discomfort from C6-7."

On November 3, 2004 appellant requested reconsideration. In support of his request, appellant submitted a July 26, 2004 report from Dr. Borowsky, who stated that the history of the mechanism of appellant's original injury would be consistent with injuries to any one of several

structures, including thoracic discs, tendons attaching muscles in the area of the thoracic spine, the muscles themselves or the thoracic facet joints. He noted that appellant had been treated for “presumptive” thoracic facet-mediated pain, myofascial pain and possible injury to thoracic discs with secondary thoracic radicular pain and opined that “all of these can be presumed, to a reasonable degree of medical certainty, to be caused by his injury dated August 9, 2001.” Dr. Borowsky also opined that appellant developed adjustment disorder with depressed mood as a result of chronic pain.

Appellant submitted a November 23, 2004 MRI scan of the cervical spine. In a December 15, 2004 progress note, Dr. Linson described the results of appellant’s cervical MRI scan, which revealed desiccation at C5-6 and C6-7. He noted a small new left disc herniation at C5-6 and a right disc herniation at C6-7, which appeared larger than on a previous July 2000 study.

By decision dated February 14, 2005, the Office denied modification of the April 29, 2004 decision.

LEGAL PRECEDENT

When an employee who is disabled from the job he held when injured in an employment-related accident returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.¹ The Board notes that a recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

The issue of whether an employee has a disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence. The medical evidence required is rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship between appellant’s current condition and the accepted injury. In order to establish that his claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician’s conclusion of a causal relationship.³

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease

¹ *Joseph D. Duncan*, 54 ECAB 471 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² See 20 C.F.R. § 10.5(x).

³ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁴

In assessing the medical evidence of record, the Board considers the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the level of analysis manifested in reaching his or her stated conclusions and the medical rationale expressed in support of the physician's opinion.⁵ The Board has held that a medical opinion not fortified by rationale is of diminished probative value.⁶

Section 8123(a) of the Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

ANALYSIS

Appellant has not met his burden of proving that he sustained a recurrence of disability on December 30, 2002 causally related to his August 9, 2001 work injury. Although he does not contend that the requirements of his limited-duty position changed, appellant has alleged a change in the nature and extent of his injury-related condition. However, he failed to submit sufficient medical opinion evidence explaining how his present condition is causally related to the August 9, 2001 employment injury.

The Office accepted appellant's claim for a left shoulder strain. After returning to modified duty on November 7, 2001, appellant filed a claim for recurrence of disability on April 18, 2002, alleging that his pain associated with the August 9, 2001 injury had never ceased. Dr. Brody opined that appellant was still very symptomatic and provided a diagnosis of recurrent left rhomboid pain and spasm. After accepting appellant's initial recurrence claim, the Office referred him for a second opinion examination to Dr. Selden, who opined that appellant's left shoulder strain had resolved and that he was capable of working eight hours per day without restrictions. Dr. Norris, found that appellant had continued pain in the left thoracic paraspinal region and opined that appellant could not work even light duty. Finding a conflict between the opinions of appellant's treating physicians and Dr. Selden, the Office properly referred appellant to Dr. Barnett for an impartial medical examination.

⁴ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁵ See *Maurissa Mack*, 50 ECAB 498 (1999).

⁶ See *Annie L. Billingsley*, 50 ECAB 210 (1998).

⁷ 5 U.S.C. § 8123(a).

⁸ *Barbara J. Warren*, 51 ECAB 413 (2000).

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁹ The Board finds that the opinion of Dr. Barnett, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history; thus, it is entitled to special weight. In a report dated September 17, 2002, Dr. Barnett accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition, which comported with his findings.¹⁰ He found full pain-free range of motion in the neck, with no rigidity or spasm. Dr. Barnett found no pain at extremes and no point tenderness. Motion was synchronous. Right and left trapezial areas were normal. He found full range of motion in the left shoulder, with no weakness, atrophy or instability; no winging of the scapula; and no scapulothoracic crepitus. Dr. Barnett noted discomfort with palpation and range of motion over the left rhomboid area. He found no spasm, skin abnormality, abnormal sensation, or rotator cuff symptomology or biceps abnormalities. Dr. Barnett opined in his September 17, 2002 report that appellant's current problems with his left shoulder girdle were causally related to his August 9, 2001 accepted injury, but that he would be able to work eight hours per day, provided that work activities did not require repetitive and prolonged positioning of his left upper extremity or repetitive reaching and lifting more than 15 to 20 pounds with the left upper extremity.

On October 16, 2002 the employing establishment offered appellant a modified mail handler position, which encompassed Dr. Barnett's restrictions. The Office found the position suitable. Although appellant initially rejected the limited-duty job offer, contending that the required bending, pulling and prolonged sitting would cause spasms and pain to his back, he ultimately accepted the position and returned to work on December 30, 2002. He filed a claim for a recurrence of disability on March 3, 2003, alleging that he was unable to fully perform the duties of his modified position as of December 30, 2002 and that the pain and spasms he experienced following his original injury "never went away." The Office advised appellant of the evidence needed to establish his claim. However, although he submitted numerous medical reports in support of his claim, the remaining evidence of record is insufficient to overcome the weight accorded Dr. Barnett as the impartial medical specialist. The Board finds that Dr. Barnett's report establishes that appellant was able to perform the duties of the modified position he accepted. Appellant did not provide any rationalized medical reports from a physician who explained how he was disabled by a current condition that was causally related to his accepted injury.

Dr. Mick diagnosed thoracic spine pain on October 25, 2002. Indicating that appellant's shoulder and neurologic examinations were normal, he stated that he was unable to conclude that appellant's pain was caused by disc abnormalities. Dr. Mick provided no explanation as to how appellant's diagnosed spinal condition could be related to the August 9, 2001 injury or his accepted shoulder strain. Therefore, his opinion lacks probative value.

⁹ See *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Manuel Gill*, 52 ECAB 282 (2001).

None of the reports from Dr. Norris contains a rationalized medical opinion addressing the causal relationship between appellant's current condition and the accepted injury. Therefore, the reports lack probative value. On September 25, 2002 Dr. Norris stated that appellant's "trigger point" had worsened to the point that he was in agony "with almost anything he [did]." On November 27, 2002 he opined that appellant's return to work as a modified mail handler would be harmful to his health and that he was unable to perform the required duties due to back pain. In a February 12, 2003 note written on a prescription pad, Dr. Norris "authorized" appellant to leave work as of December 30, 2002, after four to six hours as tolerated, due to severe back pain, stating that appellant could work six hours per day with restrictions. In progress notes dated February 13, 2003, Dr. Norris indicated that appellant still had severe pain in his thoracic region upon palpation, primarily on the left side and directly over the spine, as well as with thoracic flexion. None of these reports provides an opinion regarding the cause of appellant's condition and are, therefore, of limited probative value.¹¹ In a May 12, 2003 report, Dr. Norris opined that appellant's mid-thoracic pain was caused by his work-related injury, but stated that he was "still trying to accomplish a firm diagnosis." He indicated that it was his "feeling" that appellant's pain was primarily discogenic in nature, but that a provocative discography was necessary to determine the origin of the pain. This report lacks probative value on two counts. First, Dr. Norris' opinion is speculative at best, in that he did not provide a clear diagnosis. Second, he has provided no explanation as to how appellant's newly diagnosed mid-thoracic pain is causally related to the accepted shoulder injury. Similarly, in a June 27, 2003 report, Dr. Norris opined that appellant's disabling back pain was work related, but indicated that the precise nature of the injury had yet to be clarified. Stating that a muscle strain would have been expected to clear up long ago, Dr. Norris stated that it was not at all clear that appellant's problem was a rhomboid strain. Again, the report is speculative and contains no explanation as to causal relationship. The reports of Dr. Norris, who was on one side of the conflict that Dr. Barnett was asked to resolve, lack probative value and are insufficient to overcome the opinion of the impartial medical examiner or to create a new medical conflict.

Reports submitted by Dr. Brody also lack probative value. In a September 26, 2002 report, Dr. Brody opined that appellant was completely disabled due to worsened pain in the left rhomboid area. However, he provided no explanation as to the cause of the pain and did not address Dr. Barnett's September 17, 2002 report. On October 9, 2002 Dr. Brody indicated that an MRI scan of appellant's thoracic spine showed some subtle abnormalities, which "could possibly be the pain generator for this trigger point that is becoming just unbearably painful." He opined that the darkening of C5-6 disc may represent a degeneration of the disc or even annular tears. Dr. Brody's opinion is speculative and again offers no explanation as to the cause of his newly diagnosed condition. In an October 10, 2002 report, Dr. Brody opined that appellant was completely disabled. However, he provided no explanation as to a causal relationship between the disability and the accepted August 9, 2001 injury.

Medical reports from Dr. Borowsky fail to establish that appellant was unable to perform the duties of his modified assignment, due to residuals of the 2001 injury. In an unsigned report dated September 5, 2002, Dr. Borowsky provided an assessment of upper back pain associated

¹¹ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Willie M. Miller*, 53 ECAB 697 (2002).

with rhomboidal strain and lower trapezial strain with some facet irritability at the T7-8 and T8-9 levels. Unsigned progress notes dated November 24, 2003, reflected an impression of thoracic facet-mediated pain at T4-T2 and lumbar disc pain. Because they are unsigned, these reports cannot be considered as probative evidence.¹² Moreover, they do not explain how appellant's current pain was related to the accepted injury. In his February 22, 2004 report, Dr. Borowsky diagnosed "probable thoracic facet mediated pain with possible component of thoracic discogenic pain; thoracic myofascial pain; intermittent symptoms of lumbar facet mediated pain." He stated that he was not certain whether appellant had reached maximum medical improvement and that his prognosis was uncertain. This report is speculative and also fails to provide an opinion as to the cause of the diagnosed condition. In a July 26, 2004 report, Dr. Borowsky stated that the history of the mechanism of appellant's original injury would be consistent with injuries to any one of several structures, including thoracic discs, tendons attaching muscles in the area of the thoracic spine, the muscles themselves or the thoracic facet joints. He noted that appellant had been treated for "presumptive" thoracic facet-mediated pain, myofascial pain and possible injury to thoracic discs with secondary thoracic radicular pain and stated that "all of these can be presumed, to a reasonable degree of medical certainty, to be caused by his injury dated August 9, 2001." Dr. Borowsky also opined that appellant developed adjustment disorder with depressed mood as a result of chronic pain. Dr. Borowsky's presumption that the conditions for which appellant has been treated were caused by the August 9, 2001 injury, is unsupported by medical rationale. Moreover, there is no medical evidence to support Dr. Borowsky's opinion regarding appellant's development of adjustment disorder, which is outside of his area of expertise. For these reasons, Dr. Borowsky's reports lack probative value.

Appellant submitted reports from his psychiatrist, Dr. Romero. In an October 30, 2003 report, Dr. Romero opined that appellant was unable to work due to major depressive disorder, recurrent; mood disorder due to medical condition; and middle back and left shoulder pain. However, he did not explain how appellant's diagnosed condition resulted from his accepted 2001 injury. Therefore, the report lacks probative value. In a May 19, 2004 report, Dr. Romero stated that appellant was severely anxious, depressed and overwhelmed by pressures stemming from his multiple illnesses, responsibilities of his father and uncertainty of his employment. He opined that appellant was "disabled to work in his previous job or in any other job for that matter." Dr. Romero did not state with certainty the cause of appellant's diagnosed condition, but rather attributed the condition to several possible factors. Moreover, he did not explain the process by which appellant's newly diagnosed emotional condition could have resulted from the accepted August 9, 2001 employment injury. Accordingly, this report also lacks probative value.

In an October 22, 2004 report, Dr. Linson opined that appellant "may have a typical cervical radicular discomfort from C6-7." In that his opinion is speculative and without explanation, it lacks probative value. In a December 15, 2004 progress note, Dr. Linson referred to a November 23, 2004 MRI scan, which revealed desiccation at C5-6 and C6-7. He noted a small new left disc herniation at C5-6 and a right disc herniation at C6-7, which appeared larger than on a previous July 2000 study. This report is insufficient to establish a causal relationship between appellant's accepted injury and a cervical condition, in that it did not provide a specific

¹² *Merton J. Sills*, 39 ECAB 572, 575 (1988).

diagnosis or any explanation as to how a cervical condition could have resulted from the August 9, 2001 injury. Therefore, the Board finds that Dr. Linson's reports lack probative value.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence a change in the nature and extent of the injury-related condition resulting in his inability to perform the duties of his modified employment. The impartial medical examiner found that appellant was capable of working eight-hour days with restrictions. Appellant has provided absolutely no rationalized opinion evidence establishing either that he was disabled as of December 30, 2002 or that his current conditions are related to his original employment-related injury. As appellant has not submitted any medical evidence showing that he sustained a recurrence of disability due to his accepted employment injury, the Board finds that he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish a recurrence of total disability on December 30, 2002 causally related to his August 9, 2001 injury.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2005 and April 29, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2006
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