

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

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**JAY L. GOODMAN, Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION,  
Los Angeles, CA, Employer**

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**Docket No. 06-635  
Issued: July 6, 2006**

*Appearances:*  
*Jay L. Goodman, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On January 23, 2006 appellant filed a timely appeal of a January 4, 2006 decision of the Office of Workers' Compensation Programs' hearing representative denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability for the period December 18, 2003 to February 11, 2004 causally related to the accepted employment injury of September 12, 2003.

**FACTUAL HISTORY**

On September 12, 2003 appellant, then a 44-year-old air traffic control specialist, filed a traumatic injury claim alleging a stress-related condition that date when he had a radar situation with two Cessna 172 aircrafts. He noted the possible loss of separation and nonassistance of

another controller with whom he had a past history. By letter dated November 21, 2003, the Office accepted appellant's claim for an acute stress disorder (single episode). Appellant received continuation of pay from September 15 through October 12, 2003. The Office noted that the aircraft-related incident was a compensable factor. He returned to light-duty administrative work on October 13, 2003.

On October 29, 2004 appellant filed a recurrence of disability claim for the period December 18, 2003 to February 11, 2004. The employing establishment indicated that following the accepted injury appellant was provided full-time administrative duties in the facility's airspace and procedures department. The employing establishment advised that appellant had also filed an occupational disease claim in the same case, which the Office denied under file number 132099797.

In an undated statement, appellant indicated that he was seen by Dr. Jeffery C. Warren, a licensed clinical psychologist, on a regular basis for outpatient psychotherapy. He had recommended that he be transferred to a less stressful facility. Dr. Warren noted that the employing establishment had assigned him light-duty administrative work and that, during late November 2003, he was informed that he would be returned to duty in the same area as the September 12, 2003 incident. Appellant stated that he saw Dr. Warren on December 11, 2003 for anxiety due to returning to his original position at the same facility and in the same area. On his first day of retraining on December 17, 2003, appellant stated that he could not perform the same job in the same area and he became depressed and considered suicide. Appellant called in sick on December 18, 2003 and got an emergency appointment with Dr. Warren on December 19, 2003. Appellant contended that some of the administrative actions taken in his return to work were inappropriate or incorrect and appeared to have a malicious intent.

In a letter dated November 10, 2004, the employing establishment controverted appellant's claim. The employing establishment advised that appellant had a history of poor performance prior to the incident of September 12, 2003 and was issued a notice of unsatisfactory performance on June 18, 2003. Prior to the conclusion of the 90-day timeframe contained within the letter, appellant was involved in two operational errors which caused him to fail the provisions of the June 18, 2003 letter. The employing establishment provided a chronological list of appellant's performance issues prior to and including the operational error of September 12, 2003. It contended that the filing of the claim was based on appellant's reaction to the employing establishment addressing his performance deficiencies as an air traffic controller rather than the operational error/incident of September 12, 2003.

In reports dated September 17, 2003 to October 27, 2004, Dr. Warren noted that appellant had returned to light-duty work at the employing establishment and was on medication management for increased blood pressure and would continue to work light duty until cleared for regular duties. As appellant's blood pressure had recently been reduced to within normal limits, he could return to regular duties. Dr. Warren advised that appellant would remain in outpatient psychotherapy and seen on an as needed basis. He recommended that the employing establishment consider the possibility of transferring appellant to another facility within his specified area where he would work in a tower position. On December 23, 2003 Dr. Warren stated that appellant was placed on medication on December 19, 2003 for increased symptoms of

depression and advised that appellant was totally disabled for the next 30 days from either light or regular duty.

In a November 5, 2003 medical report, Dr. Renee Lim, a Board-certified family practitioner, noted that appellant received psychiatric care since the September 12, 2003 incident. He was provided medication for elevated blood pressure on October 1, 2003 and developed pneumonia on October 26, 2003. Dr. Lim opined that appellant's pneumonia could be attributed to the significant stress he had been under at work.

In medical reports dated March 4 to November 17, 2004, Dr. Namir F. Damluji, a Board-certified psychiatrist, provided a diagnosis of acute stress disorder, major depressive disorder and generalized anxiety disorder. She noted appellant's progress in psychotherapy. Dr. Damluji identified appellant's stressors as being occupational difficulties, stressful work conditions, and discord with coworkers and supervisors and opined that such stressors were moderate.

In a December 21, 2004 letter, appellant advised the Office that he wished to pursue his case as a multiple traumatic injury claim and to withdraw his request for a hearing on his occupational disease claim on file number A13-2099797. This letter was written following a telephone discussion with a claims examiner regarding his claims before the Office.

By decision dated January 18, 2005, the Office denied appellant's claim for a recurrence of disability commencing December 18, 2003 on the basis that the evidence did not support a spontaneous return of disability but instead supported that appellant had experienced new work factors.

In a letter dated February 14, 2005, appellant requested an oral hearing, which was held October 25, 2005. Appellant argued that his disability beginning December 18, 2003 was a recurrence of his September 12, 2003 injury. He contended that he did not experience any intervening work factors, but noted the necessary administrative procedures to return him to a certified controller position. Appellant contended that since the Office had accepted some medical expenses incurred after December 18, 2003, it accepted that he had a continuing condition related to the September 12, 2003 work injury.

In an April 14, 2005 report, Dr. Warren advised that appellant was followed in outpatient psychotherapy on a regular basis after he returned to work following the accepted claim of September 2003. He noted that appellant was instructed not to work live air traffic as he had been decertified and understood that the employing establishment would require him to go through a rigorous recertification process of at least 90 days or longer. Dr. Warren noted that appellant could have been returned to light duty but elected to return to regular duty given the above certification situation. After several weeks, appellant began to experience significant difficulties at work which resembled the initial diagnosis of post-traumatic stress disorder, acute. Dr. Warren noted that appellant also had major depression at that time and experienced panic while at work "simply with the idea of moving toward working live air" and his condition worsened in early December 2003. He opined that appellant's spontaneous increase of disability was due to the accepted injury. Appellant remained in a difficult state for approximately two months and was once again confronted and exposed to his work detail with significant and

recurrent memories and intrusive distressing recollections of the September 12, 2003 trauma. He advised that, at this time, appellant was removed from all regular duties and told he would be hospitalized should his condition worsen. Dr. Warren noted that appellant's perceptions were skewed during this time frame and opined that he had not fully recovered from the traumatic episode of September 12, 2003. He discouraged appellant from filing an occupational disease claim as he viewed appellant's condition as a traumatic injury only.

By decision dated January 4, 2006, an Office hearing representative affirmed the January 18, 2005 decision, finding that appellant did not establish that he sustained a recurrence of disability. The Office hearing representative found that the evidence clearly indicated that the disability from December 18, 2003 to February 11, 2004 occurred after an intervening injury or new exposure to the work environment which both appellant and Dr. Warren addressed.

### **LEGAL PRECEDENT**

As used in the Federal Employees' Compensation Act,<sup>1</sup> the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>2</sup> A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.<sup>3</sup> If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.<sup>4</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. 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 light-duty job requirements.<sup>5</sup> This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup> An award of compensation may

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>3</sup> 20 C.F.R. § 10.5(x) (1999); *see also Cecelia M. Corley*, 56 ECAB \_\_\_\_ (Docket No. 05-324, issued August 16, 2005); *Bryant F. Blackmon*, 56 ECAB \_\_\_\_ (Docket No. 04-564, issued September 23, 2005); *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.<sup>8</sup> Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained an acute stress disorder arising from the aircraft-related incident of September 12, 2003. Appellant returned to light-duty administrative work on October 13, 2003 and stopped work on December 18, 2003. He returned to light-duty work on February 11, 2004. On October 29, 2004 appellant claimed a recurrence of disability for the period December 18, 2003 to February 11, 2004. In order to prevail, appellant must establish either a worsening of his accepted condition as of December 18, 2003 or a change in the nature and extent of his light-duty job requirements such that he could no longer perform the position.<sup>10</sup>

Appellant has not alleged a change in the nature and extent of his light-duty administrative job requirements. He attributed his recurrence of disability to a change in the nature and extent of his employment-related condition which concerned his return to his air controller position in the same area and at the same facility in December 2003 and the administrative procedures and process involved in returning him to a certified controller position. On December 17, 2003 appellant stated that he realized that he could not go back to the same facility and do the same job in the same area and he became depressed. He further stated that, when he had returned to the employing establishment in October 2003, he was under severe pressure from the administrative actions and procedures involved in returning him to air traffic controller duties. These assertions, however, pertain to a claim for a new injury, not a spontaneous recurrence of disability.<sup>11</sup> He must provide medical evidence establishing that he

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<sup>7</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>8</sup> *Conard Hightower*, 54 ECAB 796 (2003).

<sup>9</sup> *Albert C. Brown*, *supra* note 5.

<sup>10</sup> *See supra* note 8.

<sup>11</sup> The Board notes that the Office indicated that appellant's occupational disease claim under file number 13-2099797 had alleged events or incidents which occurred after appellant returned to work on October 13, 2003 and had advised appellant that he could pursue his claim for disability by exercising his appeal rights in that claim. As previously stated, the Board does not have jurisdiction over the issues involved under file number 13-2099797. *See id.*

was disabled during the period claimed due to a worsening of his accepted work-related condition arising from the accepted September 12, 2003 aircraft incident.

The medical reports of record are not sufficient to establish a recurrence of disability causally related to the September 12, 2003 accepted injury. Dr. Warren's report of November 4, 2003 noted that appellant was working full time and indicated that outpatient psychotherapy would continue on an as needed basis. On December 23, 2003 Dr. Warren advised that appellant was placed on medication on December 19, 2003 for increased symptoms of depression and anxiety and placed on total disability for 30 days. In an April 14, 2005 report, Dr. Warren explained that appellant had returned to regular duty, but could not work live air traffic as he was decertified and would have to be recertified. He stated that appellant had increased panic several weeks later about returning to work at live air. Dr. Warren stated that appellant's perceptions of his work environment and others at work were skewed during this time. Although Dr. Warren opined that appellant experienced a recurrence of disability, his statements in conjunction with appellant's description of his return to work indicate an intervening injury or new exposure regarding working live air again and his perceptions of his work environment and the people at work during that time. Dr. Warren's reports are insufficient to support appellant's burden of proof in establishing a recurrence of disability causally related to the accepted work injury of September 12, 2003.

The medical reports from Dr. Damluji and Dr. Lim, while noting the September 12, 2003 incident and some of appellant's increased symptoms or other medical ailments, fail to provide medical rationale specifically relating any period of recurrent disability beginning around December 2003 to appellant's accepted condition. A medical opinion not addressing the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>12</sup>

Consequently, the medical evidence is insufficient to establish that appellant sustained a recurrence of disability beginning December 2003. The Office properly found that appellant submitted insufficient evidence to meet his burden of proof in establishing the claimed recurrence of disability for the period December 18, 2003 to February 11, 2004.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition for the period December 18, 2003 to February 11, 2004 causally related to his accepted September 12, 2003 employment injury.

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<sup>12</sup> *Conard Hightower, supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 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