

employment related. The Office accepted the claim for aggravation of bilateral patellar tracking dysfunction.

In a report dated December 29, 1998, Dr. Grant G. Haven, a treating Board-certified psychiatrist, noted that he was treating appellant for depression. With respect to the cause of her depression, he opined that it was “in part related to [appellant’s] knee injury and pain.”

Dr. Haven, in an April 1, 1999 report, indicated that he began treating appellant in November 3, 1998 for major depression, “with a Beck score of 38 suggesting severe clinical depression.” She related that she had been depressed for years. Dr. Haven opined that the pain and disability from her knee injury “contributed in part to perpetuating the depression.”

In a letter dated November 13, 2001, the Office informed appellant that the evidence submitted was insufficient to support a consequential injury and advised her as to the medical and factual evidence required. The Office gave her 30 days to submit evidence to support her claim.

By decision dated February 5, 2002, the Office denied appellant’s claim that her depression was a consequence of her accepted bilateral knee injury.

In a letter dated March 5, 2002, appellant requested an oral hearing which was held on October 22, 2002.

By decision dated February 7, 2003, the Office hearing representative vacated the February 5, 2002 decision and remanded the case for further medical development.

In an undated report, Dr. Elaine Roe, a treating Board-certified family medicine physician,¹ noted that appellant had “severe knee pain resulting from malalignment of her knees, hips and legs” which she opined “likely contributed to the severity of her depression.”

In a letter dated March 4, 2003, the Office requested that Dr. Haven explain how appellant’s accepted aggravation of a preexisting patellar tracking dysfunction contributed to her depression. The Office requested that he provide the information within 21 days. No response was received. On March 4, 2003 the Office also requested appellant to “obtain copies of all treatment records for your depression and post-traumatic stress disorder.” The Office afforded 30 days to provide the requested information. Appellant did not submit any treatment records, but stated she would sign a release form for the Office to obtain the medical records related to her depression and post-traumatic stress disorder.

By decision dated April 10, 2003, the Office denied appellant’s claim for a consequential psychiatric condition. Appellant, through counsel, disagreed with the denial of her claim and requested an oral hearing. On June 15, 2003 she filed a claim for a schedule award, which the Office denied in a merit decision dated November 7, 2003.

¹ The Board notes that Dr. Roe indicated that she was signing the report on behalf of Dr. Pham.

A hearing was held on February 9, 2004 at which appellant was represented by counsel. At the hearing, she noted that she had not been treated for her depression and was unaware that Dr. Haven had left his practice. Appellant had not received any treatment from him for several years.

By decision dated May 6, 2004, the Office hearing representative set aside the decisions dated April 10 and November 7, 2003 and remanded the case for further development of the evidence. The hearing representative indicated the basis for remanding the consequential injury claim was the Office's March 4, 2003 letter to Dr. Haven only allotting him 21 days to respond to its inquiry for further medical opinion regarding how appellant's accepted aggravation of preexisting patellar tracking dysfunction caused the claimed depression.

On June 4, 2004 the Office hearing representative set aside the May 6, 2004 remand order and affirmed the denial of appellant's consequential injury claim. The Office hearing representative noted that Dr. Haven had been provided more than 21 days to provide the requested information and that the case record had been held open for more than a year in order to allow appellant time to provide medical evidence in support of her consequential injury claim. The hearing representative directed the Office to further develop the schedule award claim.

LEGAL PRECEDENT -- ISSUE 1

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.² The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.³ 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.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between her depression and post-traumatic stress disorder and the accepted condition of aggravation of bilateral patellar tracking dysfunction. The evidence relevant to her depression consists of reports dated December 29, 1998 and April 1, 1999 by Dr. Haven and an undated report by Dr. Roe. Dr. Haven indicated that appellant's work-related bilateral knee condition gave rise, in part, to her depression, but did not provide any medical rationale explaining how her accepted bilateral knee condition caused or contributed to depression. Dr. Roe diagnosed "severe knee pain resulting from malalignment of her knees, hips

² *Albert F. Ranieri*, 55 ECAB ____ (Docket No. 04-22, issued July 6, 2004).

³ *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

⁴ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

and legs” which she opined “likely contributed to the severity of her depression” without supporting rationale. The Board finds that this opinion is speculative and insufficient to establish the claim.⁵ The Board notes that, while the Office informed appellant she had 21 days to supply the requested evidence, she actually had more than 30 days to supply additional medical evidence but submitted no medical evidence relevant to her claim for a consequential emotional condition. Moreover, appellant acknowledged at the February 9, 2004 hearing that she had not been treated for her depression for several years and was not aware of Dr. Haven’s departure from the practice. The Board, therefore, finds that the evidence of record is insufficient to discharge her burden of establishing that her depression and post-traumatic stress disorder were consequential injuries of the accepted aggravation of bilateral patellar tracking dysfunction.

LEGAL PRECEDENT -- ISSUE 2

Section 8128 of the Federal Employees’ Compensation Act provides that the Secretary of Labor has the discretion to review an award for or against payment of compensation at any time on her own motion or on application.⁶ The Board has upheld the Director’s discretion to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁷

ANALYSIS -- ISSUE 2

In a May 6, 2004 decision, the Office hearing representative remanded the case for further development of the medical evidence regarding appellant’s claimed consequential conditions of depression and post-traumatic stress disorder. However, on June 4, 2004 the hearing representative issued a decision setting the remand instruction aside and denying the consequential injury claim.

The Board finds the Office hearing representative did not abuse her discretion by affirming the denial of appellant’s consequential condition claim. Contrary to appellant’s contention, the Office has the authority to review a claim at any time pursuant to section 8128(a). Furthermore, Board precedent supports the Office’s authority to reopen a claimant’s case for review at any time.⁸ The only limitation is that such a review is supported by the evidence of record.⁹ In the June 4, 2004 decision, the Office hearing representative reviewed the evidence and found the basis for her remanding the case was not correct. She had based the remand on the fact that Dr. Haven was not given 30 days to respond to the Office’s request for additional information. However, the Office hearing representative noted that the record had been kept open for more than 30 days from March 4, 2003, the date the Office requested the information,

⁵ See e.g., *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004); *Samuel Senkow*, 50 ECAB 370 (1999).

⁶ 5 U.S.C. §§ 8101-8193, 8128.

⁷ *John W. Graves*, 52 ECAB 160 (2000).

⁸ *Eli Jacobs*, 32 ECAB 1147 (1981); 20 C.F.R. § 10.610.

⁹ See *id.*

until April 10, 2003, the date the Office denied appellant's consequential injury claim. Based upon this evidence, the hearing representative determined that the Office had complied with its regulations as it had provided more than 30 days in which the information could be provided.¹⁰ As appellant and Dr. Haven had more than 30 days to provide the requested information, the Board finds that the Office complied with its regulations and the hearing representative properly set aside the remand and proceeded with a decision on the merits of the claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that her depression was a consequence of her accepted condition of aggravation of bilateral patellar tracking dysfunction. The Board also finds that the Office hearing representative did not abuse her discretion in setting aside her May 6, 2004 remand order.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2004 is affirmed.

Issued: March 17, 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

¹⁰ See 20 C.F.R. § 10.121. When the submitted evidence does not meet a claimant's burden of proof, the Office will allot a claimant at least 30 days to submit the required evidence.