



May 18, 2003 that was accepted for aggravated low back strain and lumbar herniated disc. He returned to a light-duty position, stopped working in October 2003, returned briefly to work in February 2004 and then again stopped working. Appellant received compensation for temporary total disability. The record indicated that appellant underwent back surgery on May 6, 2004.

Appellant filed a notice of recurrence of disability (Form CA-2a) on November 4, 2004, checking a box for “medical treatment only.” He stated that he was having anxiety attacks. In a report dated December 13, 2004, Dr. Glenn Marks, a psychologist, diagnosed adjustment disorder with anxious features. He stated that appellant experienced panic attacks following surgery, but these had subsided and the current diagnosis was adjustment disorder. Dr. Marks stated: “It is highly probable that [appellant] experienced panic attacks as a result of his inability to cope with the emotions associated with his diminished work capacity, but the underlying contributing factor is difficulty adjusting to his medical condition.”

By decision dated December 23, 2004, the Office found that appellant had not established an emotional condition causally related to the May 18, 2003 employment injury.

Appellant requested a review of the written record and submitted additional evidence. In a report dated February 15, 2005, the attending family practitioner, Dr. Rinly Gecosala, provided diagnoses that included anxiety, depression and panic attacks caused by chronic low back pain and appellant’s “industrial claim.” He also stated that appellant’s psychiatric condition was brought about by “uncertainty of his career as a result of his industrial injury.”

By decision dated May 6, 2005, the Office hearing representative affirmed the December 23, 2004 Office decision. The hearing representative found that the medical evidence did not contain a rationalized medical opinion establish a consequential emotional condition.

On September 2, 2005 appellant submitted a July 27, 2005 report from Dr. Marks, who stated: “In [appellant’s] situation, the difficulty arose, not out of being terminated from his position, but as a result of sustaining an injury in which it is no longer possible for him to work in the industry in which he had been employed for over 30 years. This coupled with the ongoing pain and uncertainty regarding his medical prognosis, contributed to experiences of panic and heightened anxiety.” He further stated that appellant had a long-standing history of anxiety and as he was predisposed towards anxiety, when faced with the above-mentioned circumstances he responded with atypically high levels of anxiety. Dr. Marks discussed the diagnostic criteria for adjustment disorder and stated that appellant met the criteria.

Appellant submitted additional medical reports from Dr. Gecosala. With respect to an emotional condition, Dr. Gecosala included a diagnosis of anxiety and depression and stated that it was secondary to the employment injury.

The Office found that the evidence was sufficient to require further development of the evidence. Appellant was referred for a second opinion examination by Dr. Hunter Yost, a psychiatrist. In a report dated April 21, 2006, Dr. Yost provided a history and results on examination. He diagnosed anxiety disorder. Dr. Yost opined that the anxiety appeared to be related to frustration in “dealing with the red tape and bureaucratic processes related to his seeking entitlements” from the Office and Social Security Administration. In a report dated

June 15, 2006, Dr. Yost reviewed the results of psychological testing, stating that the results confirmed appellant's tendency to anxiety and vulnerability to substance abuse.

Dr. Yost was asked by the Office to submit a supplemental report. In a report dated July 14, 2006, he stated that appellant had an underlying predisposition to anxiety, which was "aggravated by his employment due to the fact that he reports he did not like the light duty that he was given and he preferred more active duties." Dr. Yost also opined that the condition was exacerbated by dealings with appellant's supervisor regarding obtaining benefits.

The Office again requested that Dr. Yost clarify his opinion regarding an emotional condition and the employment injury. In a report dated August 23, 2006, Dr. Yost opined that appellant's anxiety disorder was not a direct and natural result of the accepted back injury. He stated that appellant had a preexisting anxiety disorder and noted his previously mentioned factors such as dealing with appellant's supervisors, but found that the anxiety disorder was not a direct and natural result of injuries to his back.

By decision dated August 31, 2006, the Office reviewed the case on its merits and denied modification. The Office found that the weight of the evidence was represented by Dr. Yost.

### **LEGAL PRECEDENT**

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>2</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>3</sup>

The Federal Employees' Compensation Act provides that, if there is a 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 the examination.<sup>4</sup> The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup>

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<sup>2</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

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

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> 20 C.F.R. § 10.321 (1999).

## ANALYSIS

Appellant has alleged that he sustained an emotional condition as a consequence of his accepted herniated disc and aggravated low back strain on May 18, 2003. Dr. Gecosala's reports are of limited probative value in this regard as he generally offered only a brief statement that appellant had depression and anxiety related to the employment injury, without further explanation.<sup>6</sup>

The psychologist Dr. Marks, however, provided a more detailed medical opinion. He diagnosed adjustment disorder and explained why he believed it was causally related to the employment injuries. Dr. Marks opined that appellant's condition was causally related to his inability to continue working in the airline industry, ongoing pain and uncertainty regarding his medical prognosis. His report constitutes a rationalized medical opinion on the issue.<sup>7</sup>

On the other hand, the second opinion psychiatrist, Dr. Yost, opined that appellant's anxiety disorder was not causally related to the employment injury. He noted other factors that are not related to the specific claim in this case and he offered an unequivocal opinion based on a complete background that the emotional condition was not the direct and natural result of the employment injury.

The Board finds that a conflict exists in the medical evidence with respect to the issue presented. The case will be remanded to the Office to resolve the conflict in accord with 5 U.S.C. § 8123(a). After such development as the Office deems necessary, it should issue an appropriate decision.

## CONCLUSION

The case will be remanded for resolution of a conflict in the medical evidence on the issue of whether appellant sustained an emotional condition as a consequence of his May 18, 2003 employment injuries.

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<sup>6</sup> See *Debra L. Dillworth*, 57 ECAB \_\_\_\_ (Docket No. 05-159, issued March 17, 2006) (opinions from a physician briefly stating that appellant's depression was caused in part by an employment-related knee injury were not considered rationalized medical evidence).

<sup>7</sup> See, e.g., *Bobbie D. Daly*, 53 ECAB 691 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' dated August 31, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 4, 2007  
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