

recurrence of disability or whether he developed an emotional condition as a consequence of his accepted employment injury. The Board vacated the Office's January 10 and May 28, 2003 decisions and remanded the case for further development, taking into account that the Office accepted appellant's claim for presumptive pulmonary anthrax (resolved), based on his potential exposure to anthrax at work on October 9, 2001. The facts and the history contained in the prior appeal are incorporated by reference.²

In an October 21, 2001 x-ray of the chest, Dr. Peter Koubeliotes, a radiologist, diagnosed bilateral hila prominence and recommended a computed tomography (CT) scan of the chest. An October 22, 2001 CT scan from Dr. Jeffrey Chalal, a Board-certified diagnostic radiologist, noted that a review of the lung window revealed no peripheral pulmonary nodule, mass or infiltrate. He diagnosed "borderline cardiomegaly with mild enlargement of the main pulmonary outflow segment." Dr. Chalal noted that the remainder of appellant's CT scan was normal. The Office also received progress notes from October 3, 2002, which were unsigned.

In a report dated October 4, 2002, Dr. Robert W. LoPresti, a clinical psychologist, noted that appellant had been in "psychotherapy since September 13, 2002 for post-traumatic stress disorder (PTSD) as a result of inhalation anthrax exposure on [October 9, 2001] at the [employing establishment]." He opined that appellant was traumatized every time he returned to the employing establishment with "chronic disabling stress, anxiety, depression and other medical complications." Dr. LoPresti recommended placing appellant off work until his symptoms could be reduced. In a November 22, 2002 report, he noted treating appellant for PTSD which was the result of anthrax exposure at work. Dr. LoPresti diagnosed PTSD and opined that appellant would need additional treatment.

On May 24, 2004 the Office requested that an Office medical adviser review the record and provide an opinion with regard to appellant's emotional condition and its relation to his presumptive anthrax exposure. In a report dated June 8, 2004, the Office medical adviser indicated that Dr. LoPresti did not explain the one-year delay in the onset of appellant's symptoms. He also noted that appellant had recently undergone gastric bypass surgery and that a follow-up examination revealed that his blood pressure and pulse were normal. Dr. LoPresti indicated that there were no pulmonary function studies and that the information prior to the time that appellant began seeing Dr. LoPresti was insufficient to confirm a causal relationship between the accepted exposure and post-traumatic stress disorder.

In a June 21, 2004 decision, the Office denied modification of its prior decision. It found that the medical evidence did not establish a recurrence of total disability or a consequential emotional condition due to the October 9, 2001 work exposure.

On December 13, 2004 appellant requested reconsideration. On February 11, 2005 the Office denied appellant's request for reconsideration without a merit review of the claim.

² Appellant has not returned to the employing establishment since September 27, 2002. On October 28, 2002 he filed a claim for a recurrence of total disability on September 27, 2002 due to respiratory problems. Appellant returned to full duty on October 29, 2001. On December 18, 2001 he underwent gastric bypass surgery for a nonwork-related condition.

On April 14, 2005 appellant requested reconsideration. In an October 27, 2004 report, Ira Bindman, Ph.D., a clinical psychologist, noted that appellant had been in psychotherapy since January 2004. He diagnosed PTSD resulting from the exposure to inhalation anthrax on October 9, 2001. Dr. Bindman opined that appellant was retraumatized whenever he went to the building, such that he was barely able to function. He indicated that appellant exhibited chronic disabling stress, anxiety and depression, along with strong physical reactions. Dr. Bindman also advised that appellant's psychologist was unable to resolve his fears. Appellant was further traumatized as media discussions of anthrax continued. Dr. Bindman noted that, when appellant attempted to return to work, he was overwhelmed by stress, easily startled, had poor concentration and was continually thinking about the initial traumatic experience. He advised that appellant was traumatized by his treatment during the claims process and the past denial of his claims. Dr. Bindman opined that appellant's problems about working extended far beyond the employing establishment and caused him to be unfit for any employment.

In a July 15, 2005 decision, the Office denied modification of its prior decision.

On January 16, 2006 appellant requested reconsideration. He noted that his claim for disability retirement was accepted. Appellant referred to a decision that was made in that regard, however, he did not provide a copy of the decision. He also referred to information provided by a nurse and alleged that this was support for his claim.

By decision dated April 17, 2006, the Office denied appellant's request for reconsideration without a review of the merits.

In a treatment noted dated April 21, 2006, Dr. Joseph O'Connell, a Board-certified general practitioner and osteopath, noted that appellant alleged that he was an "anthrax survivor" who had a panic attack after hearing something about anthrax on the radio. He noted that the panic attack had resolved; however, appellant wanted it documented for workers' comp[ensation] purposes. Dr. O'Connell diagnosed PTSD disorder and panic disorder.

On July 7, 2006 appellant requested reconsideration and submitted additional evidence. He alleged that the finding regarding his disability retirement was relevant to the claim. The Office received a copy of a December 22, 2005 order from the Merit Systems Protections Board (MSPB) which granted appellant's application for a disability retirement. Appellant also submitted unsigned April 21, 2006 discharge instructions related to a diagnosis of panic disorder and PTSD.

In a June 21, 2006 report, Dr. Leonard J. Schindel, a Board-certified internist, noted that appellant was seen on April 25, 2006 for a recurrence of anxiety and panic attacks and PTSD which arose from the anthrax exposure at the employing establishment in 2001. He explained that appellant was originally seen and admitted to the hospital for inhalation of anthrax. Dr. Schindel noted that, in August 2002, appellant was diagnosed with PTSD after anthrax spores were discovered in a small collection box in Princeton, New Jersey. He advised that appellant experienced severe panic and anxiety attacks brought on by the anthrax situation. Dr. Schindel noted that PTSD was brought on by "a traumatic life [or] death situation," due to the anthrax attack on appellant's place of employment on October 21 to 25, 2001. He also

indicated that appellant had direct contact with two letters that were addressed to United States Senators which were known to have contained anthrax bacteria. Dr. Schindel explained that the disturbance caused “clinically significant distress or impairment in social, occupational or other important areas of functioning. These include delayed onset of symptoms at least six months after stressor.” Dr. Schindel diagnosed chronic, delayed onset PTSD and opined that appellant could no longer work for the employing establishment. On April 21, 2006 appellant heard a radio broadcast about two vials of anthrax samples taken from the employing establishment in 2001 that were missing from the state medical labs. As a result, he experienced acute panic and anxiety attacks and was seen in an emergency room.

By decision dated October 3, 2006, the Office found that appellant had not established a recurrence of disability or an emotional condition due to his accepted exposure.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of the Office’s regulations provides that a 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that a claimant’s claimed condition became apparent during a period of employment nor his or her belief that the condition was aggravated by employment is sufficient to establish causal relationship.⁵

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.⁶

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁴ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁵ *Walter D. Morehead*, 31 ECAB 188 (1986).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for presumptive pulmonary anthrax, which had resolved based on his potential exposure to anthrax at work on October 9, 2001. The record reflects that appellant returned to full duty on October 29, 2001. He filed a recurrence of disability claim October 28, 2002 alleging total disability beginning September 27, 2002. Appellant, however, did not submit sufficient reasoned medical evidence to establish that his present condition was causally related to his accepted injury. For example, he did not submit a medical report in which his treating physician explained why any disability beginning September 27, 2002 would be related to the accepted injury.

In reports dated October 4 and November 22, 2002, Dr. LoPresti noted that appellant had been in "psychotherapy since September 13, 2002 for PTSD as a result of inhalation anthrax exposure on [October 9, 2001] at the [employing establishment]." Appellant also submitted an October 27, 2004 report from Dr. Bindman, who diagnosed PTSD "resulting from his exposure to inhalation anthrax" on October 9, 2001. The physicians diagnosed PTSD and chronic disabling stress, anxiety, depression and other medical complications and opined that appellant was traumatized when he returned to the employing establishment. However, they did not explain how his PTSD disorder arose from his accepted injury of presumptive pulmonary anthrax, which had resolved. They did not offer an opinion that appellant was disabled beginning September 27, 2002 due to his accepted employment condition. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁷

Other reports submitted by appellant do not address a recurrence of total disability on September 27, 2002.

Appellant did not submit any other evidence to support a recurrence of total disability beginning September 27, 2002 with objective findings to support that his recurrence was causally related to the work injury of October 9, 2001. He had the burden of proving that he was disabled for work as a result of his employment injury.⁸ Consequently, appellant has not met his burden of proof to establish that he sustained a recurrence of disability on September 27, 2002 causally related to his October 9, 2001 employment injury. The medical evidence of record does not provide sufficient facts or rationalized medical opinion to support his claim.

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.⁹

⁷ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁹ *See Debra L. Dillworth*, 57 ECAB ____ (Docket No. 05-159, issued March 17, 2006). *See also Albert F. Ranieri*, 55 ECAB 598 (2004).

The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between his diagnosed psychological condition and his October 9, 2001 injury.

Appellant failed to submit any probative medical evidence explaining how his accepted condition caused or contributed to his PTSD. Specifically, he failed to demonstrate how his PTSD arose as a natural consequence of his accepted injury, presumptive pulmonary anthrax, which had resolved, rather than as a result of an intervening cause. The Board finds that the evidence of record is insufficient to discharge appellant's burden of establishing that his PTSD was a consequential injury of the accepted conditions of presumptive pulmonary anthrax. As previously noted, appellant's test results were negative and he returned to full duty prior to the onset of his stress symptoms.

Appellant submitted evidence which included an August 27, 2002 report, in which Dr. Schindel opined that he was "suffering from PTSD due to his exposure to anthrax last year and the events that followed." He also submitted reports dated October 4 and November 22, 2002 in which Dr. LoPresti noted that appellant had been in "psychotherapy since September 13, 2002 for PTSD as a result of inhalation anthrax exposure on [October 9, 2001] at the [employing establishment]." Additionally, appellant included an October 27, 2004 report from Dr. Bindman who noted that appellant had been in psychotherapy since January 2004 and diagnosed PTSD "resulting from his exposure to inhalation anthrax" on October 9, 2001. However, the Board finds that these reports are of limited probative value. This is particularly important in light of Dr. Schindel's earlier findings in his reports dated December 12, 2001 and January 29, 2002 that appellant's "blood cultures were negative for anthrax." Neither Dr. Schindel, Dr. LoPresti nor Dr. Bindman explained how they concluded that appellant's PTSD arose from his exposure to anthrax in light of the negative cultures or the normal CT scans from 2001. Furthermore, as noted by the Office medical adviser in his June 8, 2004 report, they did not explain the one-year delay in the onset of symptoms or offer any explanation related to whether the symptoms may have arisen as a result of other factors including such nonwork-related factors as his gastric bypass surgery. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.¹²

¹⁰ *Id.* See also *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

¹¹ *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

Appellant also submitted an April 21, 2006 report from Dr. O'Connell who noted that appellant had a panic attack after hearing something about anthrax on the radio, which had resolved. Dr. O'Connell diagnosed PTSD disorder and panic disorder. The Board finds that this report does not address the relationship between appellant's accepted condition, presumptive pulmonary anthrax, which had resolved and the diagnosis of PTSD and panic disorder. As noted above, medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.¹³

In a June 21, 2006 report, Dr. Schindel noted that appellant was seen on April 25, 2006 for a recurrence of panic and anxiety attacks and PTSD which arose from the anthrax attack at the employing establishment in 2001. While he noted that PTSD was brought on by the anthrax attack at appellant's place of employment on October 21 to 25, 2001 and included the delayed onset of symptoms at least six months after the "stressor," he did not explain how PTSD could have arisen more than six months after the "stressor" in light of the negative cultures and normal CT scans from 2001. Furthermore, Dr. Schindel did not address appellant's December 18, 2001 gastric bypass surgery. In any event, he did not provide medical reasoning explaining how he arrived at his conclusion on causal relationship. This is particularly important in light of the fact that Dr. Schindel's opinion was formulated more than four years after the incident and after which the contemporaneous medical evidence indicates that appellant's accepted condition had resolved.¹⁴

Appellant also submitted April 21, 2006 discharge instructions related to a diagnosis of panic disorder and PTSD. They appear to be from a nurse. However, nurses are not physicians under the Act and are not competent to render a medical opinion.¹⁵

The Office received a copy of a December 22, 2005 order from the MSPB. In that order, appellant's application for disability retirement was granted. However, the Board has noted that findings of other government agencies are not dispositive with regard to questions arising under the Act.¹⁶ This order would be insufficient to establish that appellant's PTSD arose from his accepted condition.

The Board finds that the evidence of record is insufficient to discharge appellant's burden of establishing that his PTSD was a consequence of his accepted condition.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability beginning September 27, 2002 causally related to the October 9, 2001 employment injury. It further finds that appellant did not meet his burden of proof in establishing that he

¹³ *Id.*

¹⁴ The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. *Conard Hightower*, 54 ECAB 796 (2003).

¹⁵ *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).

¹⁶ *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).

sustained post-traumatic stress as a consequence of his presumptive pulmonary anthrax exposure, which had resolved.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board