



wage-loss compensation effective October 18, 2002 based on the reports of Dr. Karen Kinney, a Board-certified psychiatrist and appellant's treating physician, who opined that appellant had no continuing psychiatric disability due to her accepted depression. The Board found that appellant did not meet her burden of proof to establish that she had any injury-related disability after October 18, 2002 causally related to the December 1, 1994 employment injury. However, the Board set aside a May 20, 2005 Office decision finding that it improperly refused to reopen appellant's case for further review of the merits. The Board remanded the case to the Office for a merit review. The facts and history of the case are contained in the prior appeal and are incorporated herein by reference.

In a December 7, 2004 report, Dr. Gerald S. Fredman, a Board-certified psychiatrist, opined that appellant was totally disabled. He diagnosed major depressive order, recurrent, severe and noted that appellant had medically documented evidence of a persistent, continuous syndrome characterized by anhedonia or pervasive loss of interest in almost all activities. Dr. Fredman described sleep disturbance, psychomotor agitation, decreased energy, feelings of guilt or worthlessness, difficulty concentrating and thoughts of suicide. He advised that these findings resulted in marked restriction of activities of daily living, social functioning and difficulties in maintaining concentration and persistence in activities. Dr. Fredman noted that there were repeat episodes of decompensation requiring inpatient care. Because appellant's disorder was greater than two years duration, it had caused more than a minimal limitation in her ability to do basic work activities. Dr. Fredman opined that the residual disease process from the affective disorder resulted in a marginal adjustment such that even a minimal increase in mental demands would cause appellant to decompensate. He diagnosed post-traumatic stress disorder (PTSD) and explained that appellant had recurrent and intrusive recollections of the traumatic experience (in the work environment), which were a source of marked distress. This resulted in marked restriction of activities of daily living and marked difficulties in maintaining social functioning. Dr. Fredman opined that as result of the combination of the major depressive order and PTSD appellant had limitations interacting with the public, potential coworkers and potential supervisors. He also added that appellant was limited to adapting to changes in the workplace as a result of these combined psychiatric diagnoses. Regarding specific employment factors rendering appellant totally disabled, he noted that they included that she endured a hostile work environment due to harassment by her supervisor from 1989 to 1996. Dr. Fredman indicated that this was "overwhelming medical evidence of psychiatric impairment."

On a March 2, 2005 Dr. Fredman noted that appellant had a depressed mood most of the day, markedly diminished interest or pleasure in almost all activities, insomnia, fatigue or loss of energy nearly everyday and feelings of worthlessness. Appellant also had inappropriate feelings of guilt as well as diminished ability to think or concentrate. Dr. Fredman diagnosed major depressive order, recurrent, severe and PTSD. He related the diagnoses to work-related factors that took place during appellant's employment and noted that her mood disorder, as well as the PTSD were still present and caused major impairment. Dr. Fredman advised that appellant's prognosis was guarded. Appellant demonstrated slight improvement since the onset of treatment, but continued to demonstrate serious symptoms of impairment. Dr. Fredman opined that appellant could not perform the essential duties of a position similar to the one from which she retired as there would be significant risk of regression and more serious symptom formation. He explained that the risk would be that of injury to herself, as she had a previous suicide attempt.

By decision dated December 1, 2006, the Office denied modification of its previous decision.

In a January 18, 2007 report, Dr. Fredman noted that he was addressing the issue of whether appellant had disability after October 18, 2002. He had treated appellant since March 24, 2004, following treatment by Dr. Kinney. Dr. Fredman advised that, in 2002, appellant was going to get married and was pursuing outside activities. He noted, however, that she did not get married and was not pursuing outside activities of any kind of consistent basis. Once appellant's compensation benefits were terminated, she became suicidal and was hospitalized and continued to have symptoms of anxiety and depression. Dr. Fredman stated that "[w]hile the April 2002 report from Dr. Kinney and subsequent loss of workers' compensation benefits certainly contributed to [appellant's] psychiatric impairments; there are other reasons for her ongoing disturbance and serious symptoms. These reasons relate to her earlier employment with the [employing establishment]. [Appellant] began experiencing symptoms of anxiety and depression in the early 1990s and prevailed in harassment suit against the employing establishment." Dr. Fredman opined that appellant was overwhelmed and unable to find effective remedies and had trust issues. He opined that while Dr. Kinney treated appellant and subsequently assessed her as reaching maximum psychiatric improvement, "it is the realm of psychiatric probability that there can be later decompensation to serious symptoms of both mood disorder and [PTSD] disorder." Dr. Fredman opined that it was "more likely than not that this later decompensation had its origin from the original work injury of December 1, 1994."

By letter dated January 23, 2007, appellant's representative requested reconsideration contending that appellant's condition had reactivated since its cessation in April 2002. He also alleged that while the loss of wage compensation played a part in appellant's decompensation, there were certainly other work-related factors that also contributed to her decompensation.

By decision dated March 26, 2007, the Office denied modification of its previous decisions.<sup>2</sup>

### **LEGAL PRECEDENT**

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>3</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, must be one

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<sup>2</sup> The Office noted that appellant remained entitled to medical treatment for her accepted work-related injuries.

<sup>3</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>4</sup>

### ANALYSIS

Following the termination of compensation, appellant requested reconsideration and submitted additional reports from Dr. Fredman.

On December 7, 2004 Dr. Fredman diagnosed major depressive disorder and PTSD and opined that appellant was totally disabled. He noted that she had recurrent and intrusive recollections of the traumatic experience (in the work environment), which were a source of marked distress. Dr. Fredman explained that this resulted in marked restriction of activities of daily living and marked difficulties in maintaining social functioning. He opined that as result of the combination of the major depressive disorder and PTSD, appellant had limitations interacting with the public, potential coworkers and potential supervisors. Regarding specific employment factors rendering appellant totally disabled, Dr. Fredman noted that they included that she endured a hostile work environment due to harassment by her supervisor from 1989 until 1996. He indicated that this was “overwhelming medical evidence of psychiatric impairment.” The Board initially notes that appellant stopped work on September 20, 1996 and did not have any further exposure to the employing establishment. The Board also notes that she was found to have reached maximum medical improvement by Dr. Kinney, her treating physician on April 19, 2002. Dr. Kinney found that there were no limitations regarding returning to full duty. Additionally, the second opinion physician, Dr. Morris, opined that appellant could return to work but specified that she should not return to her old-duty station. Dr. Fredman did not adequately explain how appellant continued to be disabled in light of these findings and the fact that she was no longer exposed to any factors of her employment. To establish causal relationship, a claimant must submit a physician’s report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.<sup>5</sup>

On March 2, 2005 Dr. Fredman noted appellant’s present symptoms and related her diagnoses to work-related factors that took place during her employment and noted that her mood disorder, as well as PTSD were still present and caused major impairment. Furthermore, he opined that appellant could not perform the essential duties of a position similar to the one from which she retired as there would be significant risk of regression and more serious symptom formation. Dr. Fredman explained that the risk would be that of injury to herself, as she had a previous suicide attempt. The Board notes that a fear of future injury is not compensable under the Federal Employees’ Compensation Act.<sup>6</sup> Additionally, Dr. Fredman did

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> *D.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-27, issued April 6, 2007); *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007).

<sup>6</sup> *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

not explain how he arrived at his conclusion; in light of the previous findings that appellant had reached maximum medical improvement and could return to full duty. Thus, this report is insufficiently rationalized regarding appellant has any continuing disability causally related to her accepted employment injuries.

In a January 18, 2007 report, Dr. Fredman addressed whether appellant “began to experience work-related factors that were a cause of her disability after October 18, 2002.” He noted that Dr. Kinney determined that appellant reached maximum psychiatric improvement and was ready to return to full employment status. Dr. Fredman also indicated that, at that time, appellant was going to get married and was again pursuing outside activities. However, the marriage did not occur and that she was not pursuing outside activities. After her compensation benefits were terminated, she became suicidal and was hospitalized and continued to experience symptoms of both anxiety and depression. Dr. Fredman indicated that Dr. Kinney’s report and the loss of workers’ compensation benefits contributed to her psychiatric impairments but that there were other reasons for her ongoing disturbance and serious symptoms. He explained that while Dr. Kinney determined that appellant had reached maximum medical improvement, he opined that “it is the realm of psychiatric probability that there can be later decompensation to serious symptoms of both mood disorder and [PTSD].” He further added that it was “more likely than not that this later decompensation had its origin from the original work injury of December 1, 1994.” However, these opinions are couched in terms of probability and speculation. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>7</sup> The Board also notes that Dr. Fredman alleges that appellant’s condition appears to have stemmed from the termination of her compensation benefits. However, the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant’s day-to-day or specially assigned duties.<sup>8</sup> Dr. Fredman also indicated that other factors contributed to her conditions, which were not work related, such as the marriage which did not occur. This report is insufficient to establish ongoing disability after October 18, 2002 causally related to her accepted employment injury.

Thus, the reports received from Dr. Fredman subsequent to the termination of appellant’s compensation are insufficient to establish ongoing disability causally related to her accepted employment injury. Consequently, appellant has not established that her disability on and after October 18, 2002 was causally related to her accepted employment injury.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability after October 18, 2002 causally related to the December 1, 1994 employment injury.

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<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>8</sup> *See George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2007 and December 1, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 13, 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