

Dr. David M. Shenker, a Board-certified neurologist selected as an impartial medical specialist.¹ The Board remanded the case to resolve a medical conflict between Dr. Dixon F. Spivy, a Board-certified psychiatrist, and Dr. Charles Turk, a Board-certified neurologist and psychiatrist, regarding whether her claimed emotional condition was causally related to the February 8, 1999 employment injury.² In a decision dated April 13, 2004, the Board affirmed the Office's September 5, 2003 decision finding that the report by the impartial medical examiner, Dr. Nelson Borelli, a Board-certified psychiatrist, established that appellant's emotional condition did not arise out of the 1999 employment injury.³ In a decision dated October 11, 2005, the Board affirmed the Office decisions that found that appellant did not establish that she had any physical disability or emotional condition causally related to her February 8, 1999 employment injury. In the fourth appeal, by decision dated June 7, 2007, the Board set aside the Office's decisions which denied further reconsideration of her claim. The case was remanded to the Office for merit review of the claim.⁴ The facts of this case, as set forth in the Board's prior decisions, are herein incorporated by reference.

Following the Board's October 11, 2005 and June 7, 2007 decisions, appellant repeated her contentions that Dr. Borelli, the impartial medical examiner, acted inappropriately. She submitted copies of a February 8, 1999 report from Northwestern Hospital and a November 18, 2004 police report, both also previously of record, a magazine article an October 22, 2005 Albertsons Health screening information and consent form and an October 24, 2005 report from Operation Diabetes.

In a January 11, 2006 medical report, Dr. Darrell Troupe, a psychiatrist, noted the history of injury and presented his findings on examination. He diagnosed schizoaffective disorder, depressed with psychosis and post-traumatic stress disorder. In a January 19, 2006 note, Dr. Troupe noted appellant's complaints and requested that she be evaluated for treatment.

In a January 24, 2006 report, Dr. Jason Smith, an osteopath and appellant's treating physician, noted the history of injury. He diagnosed an Axis I delusional disorder, an Axis II histrionic personality and several Axis III diagnoses. Dr. Smith stated that appellant's original injuries have been self-sustaining and that she was permanently disabled since February 1999. He explained that the accepted fall from the escalator and her subsequent incapacity was a comorbid condition with her carpal tunnel disease. Dr. Smith stated that a total recovery was not possible given the color of her physical profile (a tendency to develop chronic musculoskeletal processes) coupled with the historical significance of carpal tunnel disease. He also opined that appellant's psychiatric condition was secondary to the evolving nature of her current musculoskeletal symptoms, which now included rheumatic disease. Dr. Smith explained that appellant's physical injuries and psychiatric condition were "precipitation" phenomena in that the originally accepted work injury caused a decomposition of an underlying psychotic mental structure. He

¹ Dr. Shenker resolved the conflict of medical opinion between appellant's treating physician, Dr. Jason Smith, an osteopath, and the Office referral physician, Dr. Julie M. Wehner, a Board-certified orthopedic surgeon.

² Docket No. 02-1542 (issued November 1, 2002).

³ Docket No. 04-242 (issued April 13, 2004), *petition for recon. denied* (issued June 16, 2004).

⁴ Docket No. 07-365 (issued June 7, 2007).

stated that the combined physical injuries (blunt trauma of the dorsal/lumbar, shoulder, neck and head along with the carpal tunnel syndrome) continued to develop acute on chronic, chronic on chronic physiologically concentric interactions. Work restriction forms from Dr. Smith dated February 8 and August 6, 2006 and April 3, 2007 were also submitted.

By decision dated July 24, 2007, the Office denied modification of its previous decisions.

LEGAL PRECEDENT

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits. To establish a causal relationship between any new conditions claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one 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 the claimant.⁷

ANALYSIS

Appellant alleged that Dr. Borelli, the impartial medical examiner, acted inappropriately.⁸ She, however, has not submitted probative evidence to substantiate her contention and the record does not otherwise support such allegation.

Appellant submitted the February 8, 1999 hospital report, a November 8, 2004 police report, an October 24, 2005 report from Operation Diabetes, an October 22, 2005 screening information and consent form from Albertsons Health and January 11 and 19, 2006 notes from Dr. Troupe. As noted causal relationship is a medical issue and must be addressed by probative medical opinion. Some of the submitted documents are not medical evidence complete with an opinion by a physician. The notes of Dr. Troupe do not address the causal relationship between appellant's current physical or emotional conditions and her work-related injury of

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Donna L. Mims*, 53 ECAB 730 (2002).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See William Fidurski*, 54 ECAB 146 (2002) (an impartial medical specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias).

February 8, 1999.⁹ She also submitted a magazine article. The Board, however, has held that excerpts from publications and medical literature are not of probative value in establishing causal relationship as they do not specifically address the individual claimant's medical situation and work factors.¹⁰ These submissions are insufficient to establish appellant's claim.

Appellant also submitted medical reports from Dr. Smith dated January 24, 2006 to April 3, 2007. In its November 1, 2002 decision, the Board affirmed the termination of appellant's accepted multiple contusion conditions based on the special weight accorded to Dr. Shenker, who resolved a conflict of medical opinion of which Dr. Smith was on one side. In its April 13, 2004 decision, the Board found that the causal relationship between appellant's emotional condition and the work injury was not established, based on the impartial medical opinion of Dr. Borelli.

In a January 24, 2006 report, Dr. Smith essentially opined that appellant's ongoing physical conditions and emotional problems were related to her February 8, 1999 work injury and rendered her totally disabled. He explained that the accepted fall from the escalator and appellant's subsequent incapacity was a comorbid condition with her carpal tunnel disease. Dr. Smith stated that appellant's physical injuries and psychiatric condition were part of a "precipitation" phenomenon as the originally accepted work injury caused a decompensation of her underlying psychotic mental structure. He diagnosed carpal tunnel and rheumatic disease. However, Dr. Smith essentially reiterated his prior opinion on causal relationship. He did not adequately cite evidence to support any ongoing disability causally related to the work injury.¹¹ Additionally, Dr. Smith's opinion regarding appellant's ongoing emotional problems is of reduced probative value as he is not a specialist in the appropriate field.¹² He did not sufficiently explain the impact of appellant's preexisting and nonwork-related conditions on causing appellant's emotional condition. Dr. Smith's opinion is insufficient to overcome or create a new medical conflict with that of Dr. Borelli.¹³ Additionally, his work restriction notes of February 8 and August 6, 2006 and April 3, 2007 do not offer an opinion regarding the cause of appellant's condition.

Accordingly, none of the medical reports or evidence submitted by appellant after the termination of her compensation benefits included a rationalized opinion regarding the causal relationship between her current conditions and her work-related injury of February 8, 1999.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹¹ See *Kathryn E. Demarsh*, 56 ECAB 677 (2005) (additional medical evidence from appellant's physician, who was on one side of the conflict resolved by the impartial medical specialist, was insufficient to create a new conflict where he essentially repeated his opinion on continuing disability).

¹² See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinions of physicians also have training and knowledge in a specialized field of medicine have greater probative value concerning questions peculiar to that field than other physicians).

¹³ See *Dorothy Sidwell*, 41 ECAB 857 (1990).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish any physical or emotional condition causally related to her February 8, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2007 is affirmed.

Issued: March 12, 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