United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 08-1823**
	)	**Issued: August 3, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Lakeland, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 17, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated October 26, 2007 and April 30, 2008, denying her claims. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant suffered a consequential emotional condition causally related to her May 9, 2006 employment injury; (2) whether appellant's claim should be expanded to include lumbar radiculopathy and/or nerve impingement L4-5; and (3) whether appellant was totally disabled after June 21, 2007 as a result of the accepted work injury.

On appeal, appellant, through her attorney, argues that she established the existence of an emotional condition causally related to the accepted work-related automobile accident, noting the March 31, 2008 opinion of Dr. Annette C. Barnes that appellant sustained post-traumatic stress disorder secondary to the motor vehicle accident with additional symptomology of depression and anxiety. Her attorney disagrees with the Office's finding that appellant did not seek

treatment until over one year after the May 9, 2006 automobile accident, noting that she was sent by Dr. Rhett Brandt a psychotherapist, as early as July 2006 and that she had previously expressed emotional problems with her general practitioner, Dr. Bradley A. Tan, who also noted that Dr. Thomas A. DiGeronimo was prescribing antidepressants. Appellant's attorney also notes his disagreement with the Office denial of the claim to expand her claim to include lumbar radiculopathy and/or nerve impingement at L4-5 based on the opinion of an attending physician, Dr. George S. Sidhom. Finally, her attorney appeals the Office's denial of compensation after June 20, 2007.[1]

FACTUAL HISTORY

On May 17, 2006 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim alleging that she sustained injuries to her neck, shoulder and jaw as a result of a May 9, 2006 motor vehicle accident when her postal vehicle was "rear ended by another car." She submitted an emergency room form signed by a physician indicating that appellant was treated for cervical and lumbar strain and temporamandibular joint (TMJ). In a May 25, 2006 medical report, Dr. Tan, a Board-certified internist and cardiologist, listed his impressions as palpitations after a motor vehicle accident, neck injury and prior unremarkable stress testing in echocardiographic evaluation. In a May 31, 2006 workers' compensation form, Dr. Paul Taylor, a Board-certified family practitioner, indicated that appellant was treated for work-related lumbar and cervical strains and pain in her TMJ and placed restrictions on appellant's return to work. In a letter dated June 26, 2006, the Office accepted appellant's claim for sprain of neck; sprain of back (lumbar region); and TMJ internal derangement.

In an October 4, 2006 note, Dr. DiGeronimo, a Board-certified neurologist, discussed appellant's cervical pain. He noted that she denied depression, suicide attempts/plans or anxiety disorders.

In a November 3, 2006 note, Dr. Tan noted anxiety. He indicated that appellant was in a lot of discomfort in her neck and had a lot of psychosocial demands in her life and he prescribed Xanax. Dr. Tan noted that she was very tearful and noted that she has been allowed to work and was lifting heavy objects beyond the recommendation of her specialist. He noted that appellant was "very stressed out at her job environment."

In a November 30, 2006 note, Dr. Brandt, a psychotherapist, stated that he had been seeing appellant since July 2006 and that she met the criteria for anxiety disorder and was also suffering from some symptoms of major depressive disorder. He noted that he was recommending that due to her ongoing anxiety and depressive symptoms that she was in need of medication. Dr. Brandt also noted that he made several recommendations for psychiatrists. In a December 22, 2006 note, he repeated the November 30, 2006 findings and added that appellant's medical diagnosis was sprain of the neck and sprain of the back, lumbar region.

[1] Appellant's attorney notes that he is not challenging the Office's denial of expansion of the claim to include carpal tunnel syndrome.

On December 27, 2006 appellant underwent a myelogram of the spine at multiple levels. These myelograms found, *inter alia*, disc bulging, asymmetric to the right, resulting in mild impression upon the thecal sac and origin of the right L5 nerve root.

On January 20, 2007 Dr. Larry Fishman, a Board-certified neurosurgeon, reviewed the myelogram/C scan. He noted that at C5-6 appellant had a small bulge, which was of no clinical significance. Dr. Fishman noted that in the lumbosacral area she had a very mild abnormality at L4-5, perhaps worse off to her right. He noted, however, that appellant's symptoms were occasional right lower extremity paresthesisas as opposed to pain. Dr. Fishman recommended follow up.

In a February 22, 2007 report, Dr. Philip S. Owen, a Board-certified internist, listed his impressions as PACs and PVCs currently less symptomatic, depression, post-traumatic stress disorder post motor vehicle accident and reserved ejection fraction.

In a June 9, 2007 note, Dr. Brandt indicated that he has seen appellant for evaluation and individual therapy since July 5, 2006 and that her symptoms were consistent with anxiety disorder not otherwise specified, major depressive disorder as well as post-traumatic stress disorder. He also noted that she had some symptoms of obsessive compulsive disorder. Dr. Brandt noted that appellant had several medical conditions as well involving chronic pain, back problems and insomnia. He recommended biweekly therapy for at least nine months as well as medication management and restriction of her duties at work.

In a June 12, 2007 report, Dr. Wayne L. Wittenberg, a Board-certified neurosurgeon, listed his impression as cervical radiculopathy as evidenced by the pain in the neck as well as upper extremity arm pain.

In a medical report dated June 29, 2007, Dr. Sidhom listed his impressions as: chronic neck, bilateral shoulders and bilateral shoulder blade pain; central and left-sided disc protrusion at C4-5; central disc protrusion at C5-6; multilevel cervical disc disease extending from C3-4 to C6-7; multilevel neuroforaminal stenosis bilaterally at C3-4, on the left at C4-5 bilaterally at C5-6 and on the left at C6-7; reversal of normal cervical lordosis, chronic lower back and bilateral lower extremity pain; lumbar disc bulge asymmetric to the right at L4-5 with impingement of right L5 nerve root; lumbar disc bulge L5-S1; and lumbar radiculopathy. He noted that there was no change in work status pending follow-up assessment.

On July 24, 2007 appellant had a nerve block procedure: translaminar lumbar epidural steroid block under fluoroscopy with contrast dye on right; interpretation of epidurogram, lumbar; interaoperative use of fluoroscopy; and transforaminal lumbar epidural steroid block under fluoroscopy with contrast dye on right at levels L5 and S1.

In a July 31, 2007 attending physician's report, Dr. Sidhom indicated that appellant was totally disabled commencing August 4, 2007. He listed his findings as, *inter alia*, central disc protrusion C5-6, multilevel cervical disc disease and C3-4, stenosis bilaterally L4-5, lumbar radiculopathy and lumbar disc bulge at L5-S1 and L4-5. Dr. Sidhom noted that he commenced cervical steroid injections on June 29, 2007.

On August 2, 2007 appellant filed a claim for compensation commencing June 20, 2007 due to the May 9, 2006 injury.

In an August 2, 2007 attending physician's report, Dr. Barnes indicated that appellant had symptoms of post-traumatic stress disorder, depression and anxiety related to her work incident. She noted that appellant was likely to improve if surgery and pain management allow her to resume her preinjury status.

In a note received by the Office on August 7, 2007, appellant indicated that she wanted to expand her claim to include psychiatric treatment. In support thereof she submitted the June 9, 2007 report of Dr. Brandt.

In an August 10, 2007 report, Dr. Sidhom noted that he was continuing lumbar epidural steroid injections as appellant was responding and that she was temporarily totally disabled pending the completion of the lumbar epidural steroid injection series.

In an August 22, 2007 attending physician's report, Dr. Wittenberg, a Board-certified neurosurgeon, diagnosed appellant as having cervical radiculopathy. He noted the history of the May 9, 2006 motor vehicle accident, but when asked whether the condition was caused or aggravated by employment activity, answered, "N/A." Dr. Wittenberg noted that appellant remained disabled prior to surgical intervention.

On September 5, 2007 appellant underwent another lumbar transforaminal epidural steroid injection.

In a September 19, 2007 report, Dr. Barnes, a Board-certified psychiatrist, diagnosed "post-traumatic stress disorder with symptoms of both anxiety and depression that, in my opinion, are secondary to automobile accident while working on May 9, 2006." She also diagnosed, by history, the following conditions: neck injury with cord compression, retinal detachment, leaky heart valves and TMJ issues. Dr. Barnes opined: "In my opinion, even though her [a]nxiety [a]ttack was on June 25, 2007, at the workplace, I think [appellant's] anxiety dates back all the way and is associated with original [d]ate of [i]njury which was May 9, 2006." She noted that appellant needed treatment for both depression and anxiety. Dr. Barnes also noted that it was possible that she was having some side effects from the Cymbalta, which may be aggravating the anxiety. She opined that appellant's degree of anxiety and depression at this point in time was too great to return to work without further deterioration emotionally and recommended that she be off work.

Dr. Barnes noted that it was possible that appellant may never be able to return to her workplace. She stated, "Not only does she have considerable physical damage secondary to the work-related automobile accident but she is also struggling mightily with depression and anxiety which, by itself, might be enough to keep her out of the workforce at the [employing establishment] and perhaps even at any job." However, Dr. Barnes noted that she hoped that if appellant got good results from her surgery and was in less pain she may be less depressed and anxious. She further noted that, even with surgery, appellant would have considerable work to do to adjust to the changes in her life from the automobile accident, including her inability to work in her job as she did previously and her inability to do things at home as she did previously.

In a supplemental report dated September 24, 2007, Dr. Barnes reiterated that her depression and anxiety were part of the original situation of post-traumatic stress disorder from the automobile accident while working. She further noted that appellant's emotional symptoms of anxiety and depression from the post-traumatic stress disorder secondary to the accident were serious enough to keep her from working full time, reliable, at any job, through the employing establishment or other job. Dr. Barnes opined that her claim should be expanded to include treatment of post-traumatic stress disorder due to her motor vehicle accident, which occurred on May 9, 2006.

In a medical opinion dated October 2, 2007, Dr. Sidhom noted that his initial evaluation of appellant was on June 29, 2007. He noted that at that time he recommended epidural steroid injections, the first of which took place on July 24, 2007. Dr. Sidhom recommended at that time that appellant not return to work until the epidural steroid injection series was complete. He opined that the condition of central disc protrusion at C4-5 and C5-6, neuroforaminal stenosis at C3-4, C4-5, C5-6 and C6-7 along with lumbar disc bulge at L4-5 and L5-S1 with impingement of the L5 nerve root and lumbar radiculopathy was related to the injuries she sustained from the May 9, 2006 motor vehicle accident. Dr. Sidhom based his conclusions on a review of appellant's medical reports and objective tests.

In a letter dated October 11, 2007, appellant's attorney argued that her claim should be expanded to include herniated disc at the cervical and lumbar regions. He also argued that appellant's claim should be approved for post-traumatic stress disorder and herniated discs in the cervical and lumbar regions.

In a decision dated October 26, 2007, the Office denied appellant's claim for compensation beginning June 20, 2007. It further denied her claim for cervical surgery, carpal tunnel syndrome and an emotional condition.

On October 31, 2007 appellant requested an oral hearing.

In a decision dated January 31, 2008, the Office accepted appellant's claim for neoplasm of uncertain behavior.

At the hearing held on February 11, 2008, appellant testified that she had no problems with her neck, low back, TMJ, hands or wrists prior to her automobile accident and that her only prior emotional problem was in 1999 when she had postpartum depression for six months. She testified that immediately after the accident she had pain in her neck and lower back and then it proceeded to her jaw and wrist. Appellant noted that she first saw Dr. Brandt for psychiatric care at the recommendation of Dr. DiGeronimo. She testified that immediately after the accident she experienced emotional problems in that she was upset, depressed, anxious, scared, fearful of being on the road and fearful of stop signs. Appellant testified that after the motor vehicle accident she returned to work in a limited-duty capacity. She noted that she started to see Dr. Barnes around June 29, 2007 and that she has helped with her emotional condition. Appellant testified that she experienced emotional problems and specifically noted that she could not drive anywhere, that she panicked at stop signs and that she had difficulty concentrating. She did not believe that she could work because she could not concentrate and suffered from anxiety and depression. Appellant noted that her neck problem had gotten worse.

In a February 21, 2008 report, Dr. Wittenberg noted that on May 9, 2006 appellant was sitting in a motor vehicle at a red light waiting for it to change when she was struck from behind and that the force of this impact pushed her into the vehicle sitting at the light in front of her. He noted that he diagnosed cervical radiculopathy, which was supported by her physical symptoms and his review of her radiology films and appropriate reports. Dr. Wittenberg noted neck pain and bilateral extremity pain and that she needed cervical surgery. He opined that it was consistent with her history of being asymptomatic prior to the May 9, 2006 incident and objective findings and symptomatology to assume that the cumulative force applied during the accident caused her symptoms and the diagnosed condition. Dr. Wittenberg opined that any behavior that would put stress on her neck should be avoided.

On March 11, 2008 appellant underwent a TMJ arthroplasty with lysis of adhesions and partial meniscectomy and reconstruction.

On March 13, 2008 Dr. Brandt reiterated that appellant was suffering from major depressive disorder and panic disorder directly related to the accident she suffered at work. He noted that she had no symptoms prior to the accident and was functioning well in her work, home and social life prior to the accident. Dr. Brandt further opined that it was difficult to say how long appellant will need treatment and what work restrictions were to remain in place. He opined that reduced workloads as well as minimal added stress are a reasonable minimum restriction. Dr. Brandt also suggested nontraditional hours since depression and anxiety may be more pronounced on certain days than on others. He noted that it has been more than six months since he saw appellant.

In a March 31, 2008 report, Dr. Barnes noted that appellant first saw her on July 19, 2007 and that her diagnosis remained post-traumatic stress disorder secondary to automobile accident while working with symptoms of both depression and anxiety. She noted that although appellant returned to work after the accident, she has since retired on disability. Dr. Barnes noted that she has had considerable change in her life physically and emotionally. She noted that, as more time passes since the accident, appellant has become more aware that there are certain things she cannot do as well as she could do previously. Dr. Barnes noted problems with driving, problems getting lost and having anxiety attacks while driving. She noted that appellant even has anxiety attacks as a passenger. Dr. Barnes noted that appellant continues to struggle with ongoing pain and disabilities affecting her everyday life. She opined that, within a reasonable degree of psychiatric probability, it was her opinion that appellant's anxiety, anxiety attacks and depression are all related to the post-traumatic stress disorder from the work-related accident. Dr. Barnes noted that it was clear that the accident fit the criteria of post-traumatic stress disorder as she was involved in an accident that was life threatening and noted that appellant has been unable to do things she could do prior to the accident. She noted that the post-traumatic stress disorder was based on the mental status examination which was done at her initial evaluation plus examinations that she has had since. Dr. Barnes also note that the pain resulting from the accident has made things worse for her emotionally and that it was her option that appellant will require antidepressant and antianxiety medications and medications for sleep and pain. She further noted that should appellant require surgery and her surgery result in less pain and disability, that her depression and anxiety were likely to improve. Dr. Barnes also noted that psychotherapy was helpful. She indicated that, even if surgery alleviated her pain, appellant would continue for a minimum of one year to require such treatment.

In a decision dated May 1, 2008, the Office hearing representative found that appellant's claim should not be expanded to include lumbar radiculopathy and or nerve impingement at L4-5 or an emotional condition. The hearing representative also denied expansion of appellant's claim to include carpal tunnel syndrome. The Office hearing representative affirmed the denial of appellant's claim for disability beginning June 20, 2007. With regard to appellant's cervical condition, the hearing representative remanded the case for further development of the medical evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[5] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.[6]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[7]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (Occupational disease or Illness and Traumatic injury defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[7] *Phillip L. Barnes*, 55 ECAB 426 (2004).

Workers' compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.[8] On the other hand the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[9]

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.[10] This burden includes the submission of a detailed description of the employment factors or conditions, which that claimant believes caused or adversely affected the medical condition or conditions, for which compensation is claimed.[11]

When an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[12]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[13] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of the matter establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.[14]

[8] 5 U.S.C. §§ 8101-8193.

[9] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[10] *Pamela Rice*, 38 ECAB 838, 841 (1987).

[11] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[12] *Bobbie D. Daly*, 53 ECAB 691 (2002).

[13] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[14] *Id.*

ANALYSIS -- ISSUE 1

In the instant case, appellant established a compensable factor of employment, *i.e.*, a motor vehicle accident that occurred on May 9, 2006. The Office denied her claim for a consequential emotional condition, however, because the medical evidence did not establish that she sustained an emotional condition causally related to this incident.

In support of her claim, appellant submitted medical reports by her Board-certified psychiatrist, Dr. Barnes. In reports dated September 19 and 24, 2007, Dr. Barnes diagnosed her with post-traumatic stress disorder with symptoms of both anxiety and depression that her opinions were secondary to the automobile accident of May 9, 2006. In a report dated March 31, 2008, she noted that she began treating appellant on July 19, 2007. Dr. Barnes discussed appellant's automobile accident and indicated that, as more time passed since the accident, appellant became more aware that there were certain things she could not do that she did previously, specifically noting problems with driving and pain and disability. She noted that appellant fit the criteria for post-traumatic stress disorder in that it was life threatening. When discussing her medical history, Dr. Barnes noted that her neurologist prescribed antidepressants for appellant and that she had a diagnosis of post-traumatic stress disorder before her anxiety attack at work on June 20, 2007. She also concluded that, if appellant had surgery which resulted in her having less pain, she would feel better emotionally. These reports diagnose appellant with post-traumatic stress disorder and clearly relate it to her accepted motor vehicle accident.

In addition to the opinion of Dr. Barnes, the record contains other evidence that appellant was seeking treatment for her emotional condition as early as July 2006, two months after her motor vehicle accident. Although these reports may not constitute medical evidence under the Act, they are sufficient to indicate that appellant was seeking treatment and are evidence of bridging symptoms between her June 6, 2006 motor vehicle accident and her diagnosis of post-traumatic stress disorder.

Initially, the Board notes that appellant was also treated by Dr. Brandt, a psychotherapist, since July 2006 or two months after the motor vehicle accident. Dr. Brandt noted in a November 30, 2006 report that she met the criteria for anxiety disorder and was suffering from a major depressive disorder. In a June 9, 2007 note, he noted that appellant's symptoms were consistent with anxiety, major depressive disorder as well as post-traumatic stress disorder. In a June 9, 2007 report, Dr. Brandt again noted symptoms consistent with anxiety disorder, major depressive disorder as well as post-traumatic stress disorder. He also noted medical conditions of chronic pain, back problems and insomnia.

Dr. Brandt's reports are not the only bridging evidence between the May 9, 2006 accident and Dr. Barnes' first report on September 17, 2007. In a November 3, 2006 note, Dr. Tan, a treating internist, noted anxiety. He noted that appellant had a lot of psychosocial demands in her life and gave her Xanax. Dr. Tan specifically noted that she was very tearful and noted that she was "very stressed out at her job environment." Furthermore, in a February 22, 2007 report, Dr. Owen listed his impressions, which included depression and post-traumatic stress disorder post motor vehicle accident.

In reaching her conclusion that appellant's emotional condition was not related to the May 9, 2006 motor vehicle accident, the hearing representative stated that she did not seek care for her anxiety for over one year after the accident when she first saw Dr. Barnes. However, as correctly noted by appellant's attorney, this statement is inaccurate. Appellant sought counseling well before that date and was seeing Dr. Brandt as early as July 2006 or two months after the accident. Even though several of these reports are too brief and not rationalized to provide probative medical evidence, they do provide a record that she was seeking treatment for an emotional condition and Dr. Barnes referred to these reports in reaching her conclusion. The Board also notes that Dr. Tan and Dr. Owen note emotional conditions on November 3, 2006 and February 22, 2007 respectively. The hearing representative dismisses these notations and Dr. Barnes' opinion as being too far after the fact. However, as Dr. Barnes notes, the post-traumatic stress disorder and appellant's symptoms of anxiety and depression worsened over time. The Board notes that the medical evidence indicates that appellant's emotional condition, although caused by the automobile accident, worsened over time as her pain was not resolved and as she tried to get through her life with her symptoms. The Board also notes that there is no evidence that contradicts Dr. Barnes' conclusion that appellant's emotional conditions were causally related to her work-related motor vehicle accident.

The Board finds that the well-rationalized and uncontradicted reports of Dr. Barnes, although insufficient on their own, are sufficient to create a *prima facie* case requiring further development of the evidence as to whether appellant suffered a consequential emotional condition claim related to the accepted employment incident.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that, a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[15] As noted above, to establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete history 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.[16]

ANALYSIS -- ISSUE 2

Appellant, through her attorney, contends that the Office erred in that it did not accept appellant's claim for lumbar radiculopathy and/or nerve impingement at L4-5. The hearing representative based this conclusion on the fact that the medical records from May through October 2006 did not establish that appellant had complaints or symptoms of lumbar impingement or radiculopathy.

[15] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[16] *Leslie C. Moore, supra* note 6.

In an October 2, 2007 report, Dr. Sidhom noted that he first evaluated appellant on June 29, 2007. He opined that, *inter alia*, her lumbar disc bulge along with nerve impingement of the L5 nerve root and lumbar radiculopathy was related to the May 9, 2006 accident. Dr. Sidhom indicated that in reaching this conclusion he reviewed the medical documentation from Dr. DiGeronimo. He also noted that his conclusion was supported by the magnetic resonance imaging (MRI) scan reports dated May 25, 2006 and May 18, 2007 as well as the electromyogram (EMG) and nerve conduction studies dated August 9, 2006.

The Board finds that the uncontradicted reports of Dr. Sidhom are sufficient to require further development of the evidence.[17] Although Dr. Sidhom did not see appellant until June 29, 2007, over one year after the May 9, 2006 automobile accident, he had access to her medical records for the intervening year. He noted that his conclusion was supported by the reports of Dr. DiGeronimo and the MRI scan and EMG. This was sufficient to establish a *prima facie* case requiring further development of the medical evidence.[18] On remand, the Office should further develop the medical evidence and make a new conclusion as to whether appellant's lumbar radiculopathy and/or nerve impingement at L4-5 were causally related to her May 9, 2009 work-related motor vehicle accident.

LEGAL PRECEDENT -- ISSUE 3

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[19] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 supports that conclusion with sound medical reasoning.[20]

ANALYSIS -- ISSUE 3

The Office denied appellant's claim for compensation for total disability beginning June 20, 2007. In light of the Board's disposition of the above issues, a ruling on this issue would be premature. The Office will reevaluate this issue upon completion of further development of the record. Accordingly, this issue is not in posture for decision.

[17] *See John J. Carlone*, 41 ECAB 354 (1989).

[18] *Id.*

[19] *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

[20] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 30, 2008 and October 26, 2007 are remanded for further consideration consistent with this opinion.

Issued: August 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board