

**United States Department of Labor
Employees' Compensation Appeals Board**

P.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Lexington, KY, Employer**

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**Docket No. 08-2525
Issued: July 27, 2009**

Appearances:
Matt Housh, Esq., for the appellant
No appearance, for the Director

Oral Argument June 4, 2009

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2008 appellant filed a timely appeal from a January 18, 2008 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she had any continuing employment-related disability after June 26, 2002. On appeal, through her representative, she argues that her emotional condition is a consequence of her employment-related back condition.

FACTUAL HISTORY

This case has been before the Board on three prior occasions.¹ By decision dated November 26, 2001, the Board affirmed the Office's determination that appellant's employment-related PTSD had ceased by November 6, 1999. The Board, however, found that the case was not in posture for decision with respect to her orthopedic conditions, due to an unresolved conflict in the medical opinion evidence.² In January 2002, the Office referred appellant to Dr. Gary T. Bray, a Board-certified orthopedic surgeon, for an impartial medical evaluation regarding her orthopedic conditions and by decision dated May 16, 2002, the Office credited the opinion of the physician and terminated her compensation benefits effective that day.

Appellant also requested reconsideration with the Office of the portion of the November 26, 2001 decision that found that her employment-related PTSD had resolved and in a decision dated March 28, 2002, the Office found the evidence and arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim. On June 26, 2002 an Office hearing representative modified the termination of her orthopedic conditions to become effective that day. Appellant filed an appeal of the March 28, 2002 decision with the Board and in a January 6, 2003 decision, the Board affirmed the March 28, 2002 Office decision.³ She also appealed the June 26, 2002 decision and in a June 16, 2004 decision, the Board affirmed the June 26, 2002 decision, finding that the Office met its burden of proof to terminate her compensation benefits due to her orthopedic conditions, effective June 26, 2002 and that she failed to establish that she continued to be disabled after that date.⁴ The law and the facts as set forth in the previous Board decisions are incorporated herein by reference.

Appellant then requested reconsideration on five occasions. By decision dated September 23, 2004, the Office denied her reconsideration request. By decisions dated September 2, 2005 and January 24, 2007, it denied modification of the prior decisions. On September 4, 2007 the Office again denied appellant's request for reconsideration. In a merit decision dated January 18, 2008, it again denied modification. With these requests, appellant submitted additional medical evidence including a July 27, 2004 procedure note for an epidural injection, August 16, 2004 and January 4, 2005 reports from Dr. M. Mazloomdoost, Board-certified in anesthesiology, an October 22, 2004 magnetic resonance imaging (MRI) scan of lumbar spine that demonstrated degenerative changes, an October 26, 2004 history and physical report from Dr. Daniel Shedid, a November 3, 2004 report from Dr. Mark T. Nolden, a

¹ On August 8, 1988 appellant, then a 46-year-old registered nurse, sustained an employment-related lumbosacral strain and subluxation. The accepted condition was later expanded to include post-traumatic stress disorder (PTSD).

² Docket No. 00-2712 (issued November 26, 2001). The Board credited the opinion of the second-opinion examiner, Dr. Robert P. Granacher, Jr., a Board-certified psychiatrist, who provided a July 26, 1999 report in which he diagnosed major depression, recurrent, with severe personality disorder but no evidence of PTSD. Dr. Granacher advised that appellant's depression preexisted her 1988 injury and that, while the injury may have aggravated the PTSD, the work-related effects had ceased. He concluded that appellant's current emotional condition was totally independent of any injury she received at work. The accepted back conditions were lumbosacral strain and subluxation.

³ Docket No. 02-1144 (issued March 28, 2002).

⁴ Docket No. 04-532 (issued June 16, 2004).

Board-certified orthopedic surgeon, a February 22, 2005 report from Dr. Douglas E. Vick, a May 13, 2005 report from Dr. Harold H. Rutledge, Board-certified in anesthesiology and family medicine, reports dated June 6, 2005 and August 29, 2007 from Dr. Melvyn M. Nizny, a Board-certified psychiatrist, a February 2, 2006 report from Dr. William E. Ackerman, III, Board-certified in anesthesiology and March 6, 2006 and June 20, 2007 reports from Dr. Thomas Menke, Board-certified in orthopedic surgery.

LEGAL PRECEDENT

To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.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 submitted a number of medical reports with her reconsideration requests regarding her claim for continuing disability after June 26, 2002 including a July 27, 2004 procedure note for an epidural injection, an October 22, 2004 MRI scan of lumbar spine, an October 26, 2004 history and physical report from Dr. Shedid, August 16, 2004 and January 4, 2005 reports from Dr. Mazloomdoost, a November 3, 2004 report from Dr. Nolden, a December 8, 2004 note from Dr. Vick, and a May 13, 2005 report from Dr. Rutledge. None of these reports, however, provide an opinion on the cause of appellant's condition and the Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

Dr. Vick also provided a February 22, 2005 report, in which he noted that appellant had been his patient for seven years and diagnosed musculoskeletal myofascial strains and somatic dysfunctions that matched her mechanism of injury. He had, however, stated this opinion in reports dated October 4, 1999 and June 24, 2002, previously reviewed by both the Office and the Board. Furthermore, Dr. Vick had been on one side of the conflict in medical evidence resolved

⁵ *D.D.*, 57 ECAB 734 (2006).

⁶ *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007).

⁷ *D.D.*, *supra* note 5.

⁸ *Willie M. Miller*, 53 ECAB 697 (2002).

by Dr. Bray. After an impartial specialist resolves a medical conflict, additional cumulative reports submitted by a physician who was on one side of the conflict that the impartial specialist resolved, are generally insufficient to overcome the opinion of the impartial specialist or to create a new medical conflict.⁹

In his June 6, 2005 report, Dr. Nizny noted that he had reviewed medical evidence, including reports from Drs. Granacher and Bray and appellant's report that she suffered a work-related back injury in 1988. He advised that he had completed psychological testing and that appellant's emotional condition did not meet the criteria for PTSD. Dr. Nizny stated that he would diagnose adjustment disorder with atypical features under DSM-III, which was in effect at the time of her 1988 injury and that under DSM-IV, which went into effect in 1994, he would diagnose a mood disorder due to a general medical condition, *i.e.*, her back injury and pain disorder associated with both psychological factors and a general medical condition. In his August 29, 2007 report, he reviewed a July 21, 1999 report from Dr. Robert L. Keisler and took issue with his findings and conclusions. Dr. Keisler, a Board-certified orthopedic surgeon, had provided a second-opinion examination for the Office and was on one side of the conflict in medical evidence resolved by Dr. Bray, who provided the referee examination regarding appellant's orthopedic conditions. A report of a physician whose specialty is not in a germane area of medicine is entitled to lesser weight.¹⁰ Dr. Nizny is a psychiatrist, not an orthopedic surgeon, and the Board further finds that he did not provide a rationalized explanation in either of his reports as to why appellant continued to be disabled from the August 8, 1988 employment injury. His reports are therefore insufficient to meet appellant's burden.¹¹

In his February 2, 2006 report, Dr. Ackerman noted that appellant had sustained an employment injury and opined that she was permanently impaired and that her injury prevented her from returning to gainful employment. He, however, exhibited no knowledge of the specifics of the 1988 employment injury, provided no diagnoses or otherwise explained how he reached his conclusion. Medical conclusions based on inaccurate or incomplete histories are of little probative value and are insufficient to satisfy a claimant's burden of proof.¹² The medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.¹³ Dr. Ackerman's report is too brief and vague to be of probative value and is therefore insufficient to establish that appellant continued to be disabled due to the August 1988 employment injury.

Finally, the Board notes that the accepted conditions in the case were lumbosacral strain, sUBLUXATION and PTSD. None of the reports submitted with appellant's reconsideration requests specifically addresses the accepted orthopedic conditions and by its June 16, 2004 decision, the Board affirmed the July 26, 2002 decision terminating her compensation benefits for her

⁹ *Michael Hughes*, 52 ECAB 387 (2001).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

¹² *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *Beverly A. Spencer*, *supra* note 10.

orthopedic conditions. The Board again notes that the Office has not issued a decision on appellant's claim that she suffers a consequential emotional condition due to her orthopedic conditions, and thus the Board does not have jurisdiction over this issue.¹⁴ As appellant has submitted insufficient medical evidence to establish that she continues to be disabled due to her accepted conditions, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she continued to be disabled after June 26, 2002 due to her August 8, 1988 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2008 is affirmed.

Issued: July 27, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ The Board's jurisdiction is limited to review of final decisions of the Office. 20 C.F.R. § 501.2(c).