



## **FACTUAL HISTORY**

Appellant's July 28, 1998 traumatic injury claim (File No. xxxxxx889) was accepted for lumbar and left shoulder strain and rotator cuff sprain.<sup>2</sup> She returned to part-time light-duty work on November 2, 2010. The current appeal concerns OWCP's denial of appellant's request to expand her claim to include an emotional condition as a consequence of her accepted injury.

This is the fourth time this case has been before the Board. On February 14, 2006 the Board set aside OWCP's August 10, 2005 decision denying appellant's request for reconsideration of an April 19, 2004 denial of a wage-loss request as untimely and remanded the case for a determination of the date that reconsideration was requested.<sup>3</sup> By decision dated December 26, 2006, the Board set aside OWCP's May 1, 2006 decision denying her request for reconsideration as untimely and failing to present clear evidence of error, finding that the request was timely filed.<sup>4</sup> In an order dated November 30, 2007, the Board remanded the case for consolidation of appellant's claims.<sup>5</sup>

Appellant submitted an August 6, 2010 report from Larry Washington, a licensed professional counselor, who diagnosed chronic pain disorder and major depression, which he opined were causally related to her accepted conditions. Mr. Washington referred appellant to Dr. Manoochahr Khatami, a Board-certified psychiatrist, for treatment.

In an October 27, 2010 report, Dr. Khatami provided a history of injury and examination findings. He noted that appellant had experienced chronic back and shoulder pain since sustaining her accepted injury. On examination, appellant exhibited signs and symptoms of depression. A depression test revealed a score of 10. Dr. Khatami diagnosed chronic pain syndrome and major depressive disorder, which he opined were secondary to her accepted injury.

OWCP referred appellant to Dr. Tarakumar Reddy, a Board-certified psychiatrist, for a second opinion examination and an opinion as to whether her current psychiatric condition was caused, worsened, precipitated or accelerated by her employment. In a November 17, 2010 report, Dr. Reddy provided a medical history that included arthritis, obesity, chronic pain syndrome, bilateral carpal tunnel syndrome and hypertension. He noted appellant's report that she had been depressed for over a year due to her life situation. On examination, appellant's mood was depressed, her recent memory was impaired and concentration was poor. Dr. Reddy diagnosed major depression, single severe chronic and chronic pain syndrome and opined that her depression was secondary to her situation of lack of funds and medical conditions. Noting

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<sup>2</sup> Appellant's March 21, 2001 occupational disease claim (File No. xxxxxx995) was accepted for temporary aggravation of lumbar strain. Her February 23, 2004 claim (File No. xxxxxx765) was accepted for bilateral carpal tunnel syndrome. These cases were consolidated with File No. xxxxxx889 and File No. xxxxxx889 serving as the master file.

<sup>3</sup> Docket No. 05-1857 (issued February 14, 2006).

<sup>4</sup> Docket No. 06-1825 (issued December 26, 2006).

<sup>5</sup> Docket No. 07-1469 (issued November 30, 2007).

that appellant had injuries “way back in 2001 and 2004,” he stated, “I do not believe that the employment factors were contributing factors for her depression.”

OWCP found a conflict in medical opinion between Dr. Reddy and Dr. Khatami and referred appellant, together with the medical record and a statement of accepted facts to Dr. Andrew Brylowski, a Board-certified psychiatrist, to resolve the conflict. Dr. Brylowski was asked to provide a current psychiatric diagnosis and an opinion as to whether the condition was caused worsened, precipitated or accelerated by employment factors. He was also asked to opine as to whether other factors were responsible for her psychiatric condition. In a February 5, 2011 report, Dr. Brylowski provided a history of injury, examination findings and test results. Beck Depression and Anxiety Inventories revealed moderate depression or multiple other possibilities. Clinical syndromes included anxiety, somatoform issues, dysthymia and severe clinical syndromes included major depression. Temperament was woeful, hostile and apathetic. Internal representations were immature, vexatious and pernicious consistent with significant internal conflict with lack of capacity to evolve mental-emotional resolution. Dr. Brylowski stated that appellant’s current psychiatric diagnosis was “global assessment of functioning indeterminate.” He opined that “in reasonable medical probability, any psychiatric conditions were not caused by, worsened by or precipitated by any factors of employment.” Noting that appellant had experienced various relatively benign musculoskeletal sprain/strains, Dr. Brylowski indicated that objective neuropsychiatric measures were consistent with significant symptom over-reporting of somatic complaints and psychiatric complaints. He also stated that there appeared to be significant family issues that may be responsible for her emotional illness.

By decision dated February 15, 2011, OWCP denied appellant’s request to expand her claim, finding that “nothing was received to support that the consequential condition of depression and chronic pain was related to the accepted condition.”

### **LEGAL PRECEDENT**

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.<sup>6</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>7</sup> 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.<sup>8</sup>

Proceedings under FECA are not adversarial in nature; nor is FECA a disinterested arbiter.<sup>9</sup> While the claimant has the burden to establish entitlement to compensation, OWCP

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<sup>6</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>7</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers’ Compensation* § 10.01 (2005).

<sup>8</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>9</sup> *Vanessa Young*, 55 ECAB 575 (2004).

shares responsibility in the development of the evidence and has the obligation to see that justice is done.<sup>10</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>11</sup>

### ANALYSIS

Appellant asserts that her diagnosed psychiatric condition developed as a consequence of chronic pain associated with her accepted condition. The Board finds this case is not in posture for decision due to an unresolved conflict in medical evidence.

Dr. Khatami, appellant's treating physician, diagnosed chronic pain syndrome and major depressive disorder, which he opined were secondary to her accepted injury. Dr. Reddy, OWCP's second opinion physician, was asked to provide an opinion as to whether her current psychiatric condition was caused worsened, precipitated or accelerated by employment factors. In his November 17, 2010 report, he diagnosed major depression, single severe chronic and chronic pain syndrome and opined that appellant's depression was secondary to her situation of lack of funds and medical conditions. Noting that appellant had injuries "way back in 2001 and 2004," Dr. Reddy stated, "I do not believe that the employment factors were contributing factors for her depression." OWCP found a conflict in medical opinion between Dr. Reddy and Dr. Khatami as to whether she developed a consequential psychiatric condition as a result of her accepted back and shoulder injury and referred her to Dr. Brylowski for an impartial medical opinion in order to resolve the conflict. The Board finds, however, that there was no conflict in medical opinion between Dr. Reddy and Dr. Khatami on the relevant issue.

Dr. Khatami's opinion that appellant's depression was secondary to her accepted injury and Dr. Reddy's opinion that her major depression was secondary to her situation of lack of funds and medical conditions are consistent with, if not identical to, one another. Dr. Reddy also opined, in response to OWCP's inquiry, that employment factors did not contribute to appellant's depression. The Board notes that the issue of whether an emotional condition is due to a compensable employment factor is a legal issue, to be determined by OWCP. As there was no conflict in medical opinion between Dr. Reddy and Dr. Khatami, the Board finds that Dr. Brylowski's February 5, 2011 report constitutes a second opinion report.

Dr. Brylowski provided a history of injury, examination findings and testing results, stating that appellant's current psychiatric diagnosis was "global assessment of functioning indeterminate." He opined that any psychiatric conditions were not caused by, worsened by or precipitated by any factors of employment or various relatively benign musculoskeletal sprain and strains she experienced. Dr. Brylowski indicated that objective neuropsychiatric measures were consistent with significant symptom overreporting of somatic complaints and psychiatric complaints. He also stated that significant family issues may be responsible for appellant's emotional illness. Dr. Brylowski's diagnosis and opinion are at variance with those of Dr. Khatami, who diagnosed chronic pain syndrome and major depressive disorder, which he opined were secondary to appellant's accepted injury.

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<sup>10</sup> *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>11</sup> *Melvin James*, 55 ECAB 406 (2004).

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. The Board finds that there is unresolved conflict of opinion between appellant's attending psychiatrist and that of Dr. Brylowski, whose report serves as a second opinion report, regarding whether her psychiatric condition is a consequence of the July 1988 accepted injury.

The case will be remanded to an impartial medical specialist to resolve the conflict. On remand, OWCP shall provide the impartial specialist as with a statement of accepted facts and the medical record. Following such other development deemed necessary, it shall issue an appropriate decision on the issue of whether appellant's diagnosed emotional condition is causally related to the accepted employment injury.

**CONCLUSION**

The case is not in posture for a decision regarding whether appellant's claimed psychiatric condition is a consequence of her accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 15, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: December 14, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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