

depressive reaction condition.² Appellant elected workers' compensation benefits effective February 1, 2001 and was placed on the periodic compensation rolls beginning June 16, 2002.

In February 19 and March 26, 2004 letters, OWCP requested that Dr. William C. Freeman, a Board-certified psychiatrist, provide an opinion as to whether appellant was capable of returning to full-time work as a pharmacist eight hours a day, five days a week. In the March 26, 2004 letter, it provided him with the job description of a pharmacist. On February 26 and March 30, 2004 Dr. Freeman advised that appellant was capable of returning to work as a pharmacist full time. In the March 30, 2004 letter, he also indicated that appellant should work at the Montgomery campus. Dr. Freeman noted that appellant had been away from his job as a pharmacist with temporary disability due to a back injury, recurrent back pain and a major depressive episode that arose primarily out of his back pain and inability to work.

On April 12, 2004 appellant returned to work in a modified-duty capacity, as a telephone health-line assistant or patient services assistant.

By decision dated June 10, 2004, OWCP terminated appellant's wage-loss benefits effective June 13, 2004 on the grounds that the medical evidence of record established that he no longer had any disability from the October 1, 1999 work injury. Appellant remained entitled to medical benefits. On March 6, 2005 he was selected for a pharmacist position.

On February 2, 2007 appellant filed a Form CA-2a notice of recurrence claiming that he experienced a recurrence of disability on October 26, 2006 and that he stopped work on February 2, 2007.³ He stated that his major depressive episodes continued. Appellant stated that work was stressful and he felt he was in a hostile work environment, which made coping difficult despite mediation and bimonthly doctor visits. He mentioned several incidents from October 26, 2006 to which he attributed his depressive episodes.⁴

Effective September 15, 2007, appellant received disability retirement.

In a February 1, 2008 report, Dr. Freeman, appellant's attending psychiatrist, indicated that appellant's current diagnoses were major depressive episode, recurrent, moderate to severe and attention deficit disorder. He noted the history of injury and indicated that appellant initially returned to work in a clerical position in June 2004 and was returned to the pharmacy when there

² This was based on the following factor of employment: In the summer of 1999, appellant was assigned to the outpatient pharmacy window where he had to work alone with no assistance. In October 1999, he injured his back but continued to work the outpatient window alone which required a great deal of standing. Sometime later, an assistant registered pharmacist was assigned to the outpatient window, but she was not instructed to remain at the window and help with patient requests.

³ On a June 4, 2011 Form-CA-7, appellant also claimed wage-loss compensation from March 28, 2007 to the present.

⁴ As appellant had accepted a different work position than the position held when the claim was accepted, OWCP adjudicated a new claim under File No. xxxxxx975. It found that the claimed employment factors arising on and after October 26, 2006 were not compensable, which the Board affirmed in May 8, 2009 and August 11, 2010 decisions. Docket No. 08-2015 (issued May 8, 2009) and Docket No. 10-109 (issued August 11, 2010). Claim File No. xxxxxx975 is not before the Board on the present appeal.

was an available opening in March 2005. Dr. Freeman noted that since that time appellant had gradual but recently escalating return of depressive symptoms. He described several incidents of concern to appellant since his return to work in the pharmacy. Dr. Freeman opined that the recurrent depressive episodes appeared to have been as much a cause of appellant's prior workers' compensation absence as his back injury. Old concerns from his previous episodes reemerged and intensified in the last several months prior to appellant again leaving his job and filing for worker's compensation. Dr. Freeman opined that the second workers' compensation claim was directly and unequivocally connected to the first claim and represented one continuous episode of mental illness that remitted sufficiently to allow appellant to return to work briefly before the events in the fall 2006. Therapist progress notes from March 2008 and continuing were submitted.

In a September 12, 2010 report, Dr. Freeman opined that since the original injury of October 1999, appellant had not returned to his normal baseline and continued to have moderate depression and anxiety symptoms. At the time of the second series of events in October 2006, appellant had a significant exacerbation of those symptoms again related to work stress. Also, he had a significantly lowered stress tolerance that contributed to the exacerbation of the original injury and exacerbation of his existing medical and emotional illness. Appellant opined that his depression and anxiety rendered him unable to work as a pharmacist.⁵

Appellant refilled his recurrence claim on January 30, 2011. In an April 29, 2011 letter, OWCP advised that the recurrence claim filed on January 30, 2011 represented a duplicative claim alleging the same date and work factors of the recurrence claim filed on February 2, 2007 from which a new case was created under claim File No. xxxxx975.⁶ Following numerous correspondence between appellant's attorney and OWCP, it advised appellant on December 12, 2011 of the evidence needed to support his claim for recurrence/consequential injury due to his employment-related condition.

OWCP received evidence that included a March 15, 2007 report from Dr. Freeman, who stated that appellant would not be returning to work due to his medical condition. In a March 26, 2007 report, Dr. Freeman mentioned numerous incidents that allegedly occurred since appellant returned to the pharmacist position. He stated that while he could not comment on the veracity of appellant's beliefs and suspected there was some misinterpretation, he was convinced that there have been intended actions to harass, embarrass, demean and single him out for disciplinary action. Dr. Freeman stated that those events and beliefs have contributed strongly to a relapse of appellant's depression and anxiety symptoms and his inability to work. He noted that while appellant was able to return to the pharmacy, he began to reexperience symptoms within a year of his return and those symptoms persisted and increased despite medication

⁵ In September 24, 2010 and March 27, 2011 letters, counsel requested that OWCP adjudicate appellant's recurrence claim. He noted that while the events surrounding appellant's reported recurrence may not have constituted a new injury, appellant's reaction and increased symptomatology were either made possible by or greatly exacerbated by the prior work injury which had not resolved. He argued that appellant's disability from his worsening symptoms was consequential to the accepted injury and compensable. OWCP responded to the arguments and explained why appellant did not qualify for a consequential injury decision.

⁶ See *supra* note 4.

changes and increased frequency of visits. Also submitted was a March 2, 2007 treatment note from Dr. B.J. Dunn, a social worker, who opined “his symptoms are the result of current work[-] related stressors.”

By decision dated February 8, 2012, OWCP denied appellant’s recurrence claim. It found there was new exposure to the work environment that allegedly caused the illness, as well as intervening factors that broke the chain of causation from the original injury and the alleged recurrence.

LEGAL PRECEDENT

OWCP’s regulations define the term recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷ When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁸ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁹ An award of compensation may not be based on surmise, conjecture or speculation or on appellant’s unsupported belief of causal relation.¹⁰ OWCP’s procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.¹¹

ANALYSIS

OWCP accepted that appellant sustained a depressive reaction due to an October 1999 back injury and his continued work at the outpatient pharmacy window with no assistance. On April 12, 2004 appellant returned to work in a modified-duty capacity as a telephone health-line assistant or patient services assistant. By decision dated June 10, 2004, OWCP terminated his wage-loss compensation benefits as Dr. Freeman’s opinion established that appellant could

⁷ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Phillip L. Barnes*, 55 ECAB 426 (2004).

⁸ *Carl C. Graci*, 50 ECAB 557 (1999); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ *Maurissa Mack*, 50 ECAB 498 (1999).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

return to work full time as a pharmacist at the Montgomery campus and there was no continuing disability from the work injury. Effective March 6, 2006 appellant began working full time as a pharmacist. He stopped work February 2, 2007 and received disability retirement effective September 15, 2007. Appellant claimed a recurrence of disability commencing October 26, 2006. As noted, the claim was initially adjudicated as a new claim under case File No. xxxxxx975 as new or intervening work factors were involved.¹²

Appellant has not alleged a change in the nature and extent of his light-duty job requirements and the record indicates that he returned to regular duties before the onset of the claimed recurrence of disability. Instead, he attributed his recurrence of disability to a change in the nature and extent of his employment-related conditions. Appellant must provide medical evidence to establish that he was disabled due to a worsening of his accepted work-related conditions. The Board finds that he has not met his burden of proof in establishing his claim.

Appellant submitted medical reports from Dr. Freeman attributing his psychiatric symptoms to workplace incidents arising on or after October 26, 2006 when he was working as a pharmacist. In his February 1, 2008 report, Dr. Freeman described several incidents of concern to appellant since his return to work in the pharmacy. He noted that old concerns from appellant's previous episodes reemerged and intensified prior to appellant's stopping work and claiming disability. Dr. Freeman opined that the second workers' compensation claim was directly and unequivocally connected to the first claim and represented one continuous episode of mental illness that remitted sufficiently to allow appellant to return to work briefly before the events in the fall 2006. However he did not provide medical rationale supporting a spontaneous change in the accepted emotional condition.¹³ Rather Dr. Freeman opined that the subsequent occupational incidents caused the return of psychiatric symptoms, breaking the chain of causation from the October 1999 incident. He did not explain how there was a spontaneous change in his accepted condition. Thus, Dr. Freeman's opinion is insufficient to meet appellant's burden of proof.

In his March 26, 2007 note, Dr. Freeman mentioned incidents that allegedly occurred since appellant returned to the pharmacist position and from which appellant was convinced that he was targeted for harassment and discipline. He opined that those events and beliefs contributed strongly to a relapse of appellant's depression and anxiety and his disability. Dr. Freeman did not provide rationale relating appellant's disability to the events of 1999; rather he relates his emotional condition to the alleged intervening events since his return to the pharmacist position. Thus, his opinion is insufficient to meet appellant's burden of proof.¹⁴ In his September 12, 2010 report, Dr. Freeman opined that since the original injury of October 1999 appellant had not returned to his normal baseline and continued having depression and anxiety. While Dr. Freeman opined that appellant's depression and anxiety symptoms rendered him unable to work as a pharmacist, he did not provide reasoning to explain how the disability was

¹² See *supra* note 4.

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ *Bryant F. Blackmon*, 56 ECAB 752 (2005).

the result of a spontaneous change in his accepted condition. In his March 15, 2007 note, Dr. Freeman stated that appellant would not be returning to work due to his medical condition. However, he did not specifically address how appellant's disability was due to a spontaneous change in the accepted emotional condition. Thus, Dr. Freeman's opinion is insufficient to meet appellant's burden of proof.

Appellant also provided as March 2, 2007 treatment note from Dr. Dunn, a social worker. However, this report is not competent medical evidence as a social worker is not a "physician" as defined by FECA.¹⁵ Appellant presented no other medical evidence from a physician explaining the reasons why his claimed recurrence of disability was causally related to his accepted injury that started in 1999.

Appellant did not submit sufficient rationalized medical evidence to establish the claimed recurrence of disability. Therefore, OWCP properly denied his claim.

On appeal, counsel contends the medical record establishes that the accepted emotional condition caused by the October 1, 1999 accepted incident was not affected by subsequent intervening work factors. As set forth above, appellant's physician did not support a spontaneous change in the accepted emotional conditions as of October 26, 2006. Rather, Dr. Freeman generally indicated that subsequent occupational incidents caused the return of psychiatric symptoms, breaking the chain of causation stemming from the October 1999 incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a recurrence of disability commencing October 26, 2006 causally related to his accepted emotional condition.

¹⁵ *K.W.*, 59 ECAB 271 (2007). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 8, 2012 is affirmed.

Issued: November 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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