

FACTUAL HISTORY

On November 5, 1990 appellant, then 43-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in the performance of duty on November 5, 1990. On the claim form, she stated that a dog came at her and, while backing up, she fell on her buttocks. The claim was initially accepted for a ruptured cervical disc. Appellant underwent cervical disc surgeries on December 20 and 27, 1990. A statement of accepted facts (SOAF) notes that the claim was also accepted for cervical degenerative disc disease and a consequential adjustment reaction.²

Appellant returned to work in a light-duty position at four hours a day on August 18, 2003. In a report dated October 1, 2003, Dr. Lawrence Dickinson, a neurosurgeon, stated that she was tolerating the light-duty position.

By decision dated February 24, 2004, OWCP determined that appellant's actual earnings in the position represented her wage-earning capacity. It found that she was a full-time employee when injured, but found the medical evidence showed she could only work part time. OWCP determined appellant's LWEC and reduced her compensation for wage loss.

The record indicates that appellant stopped working on August 7, 2006. In a report dated August 14, 2006, Dr. Thomas Powers, a psychiatrist, stated that appellant had been hospitalized. He reported that a day prior to hospitalization she had been confronted with a new job description that she had been forced to sign. Dr. Powers diagnosed acute stress reaction, major depression "by history work related" and anxiety disorder with panic attacks "work aggravated."

In a report dated August 15, 2006, Dr. Dickinson noted that appellant had a "breakdown" at work on August 7, 2006. He stated that she had neck pain with radicular arm pain and numbness in the right arm. Dr. Dickinson reported that appellant had cervical spondylosis and a chronic pain disorder. In a report dated December 18, 2006, Dr. Ravi Panjabi, a Board-certified anesthesiologist, reported that appellant had multiple problems, with neck pain, weakness in the upper extremity, low back and leg pain with weakness in both legs. He opined that appellant was totally disabled.

On March 20, 2007 appellant filed a claim for compensation (Form CA-7) commencing August 8, 2006. In a form report (Form CA-20) dated March 7, 2007, Dr. Panjabi diagnosed post lumbar and cervical laminectomy syndromes and checked a box "yes" the conditions were employment related. The history of injury noted was a January 2006 knee injury and the period of disability commenced August 8, 2006.

In a report dated July 13, 2007, Dr. Robert Wu, an otolaryngologist, stated that appellant had problems every month or so with a sudden blockage of her throat, which he related to the prior cervical surgeries. He stated the breathing problems began in 1995.

² The record indicates that appellant has filed other claims: a 1986 back injury, accepted for lumbar strain and lumbar herniated disc, a 1986 claim for sleep deprivation, a January 6, 2006 claim for knee injuries, accepted for a knee contusions and strains and a left knee torn meniscus and a claim for an emotional condition resulting from August 1, 2006 incidents.

By decision dated December 6, 2007, OWCP denied the claim for compensation commencing August 8, 2006. It found that the evidence was insufficient to warrant modification of the February 24, 2004 LWEC determination.

In a report dated January 2, 2008, Dr. Panjabi stated that appellant had developed right vocal cord paralysis as a result of the 1990 anterior cervical discectomy and fusion. OWCP referred the case for a second opinion examination by Dr. Barry Baron, an otolaryngologist. In a report dated February 27, 2008, Dr. Baron diagnosed a right vocal cord paralysis and opined that it was causally related to the cervical surgeries.

By report dated April 30, 2008, Dr. Powers stated that he continued to treat appellant for a psychiatric condition “which is a work-related illness caused by a work injury.” He noted that she was being treated for breathing problems as well.

In a decision dated August 18, 2008, OWCP’s hearing representative affirmed the December 6, 2007 decision. The hearing representative found the evidence was not sufficient to warrant modification of the February 24, 2004 LWEC.

Appellant underwent throat surgery on August 26, 2008, described by Dr. Wu as a laryngoscopy with vocal cord stripping.

By letter dated November 19, 2011, counsel argued that the LWEC determination should be modified based on appellant’s accepted psychiatric condition. Appellant submitted a November 8, 2011 report signed by Dr. Powers and a family therapist. The report provided a history and diagnosed major depressive disorder, severe without psychotic features, panic disorder without agoraphobia and generalized anxiety disorder. The history noted the November 5, 1990 incident and stated that appellant had been harassed by her supervisor. Dr. Powers stated, “Some sequelae from [appellant’s] throat surgery and other recent events have made [appellant’s] life more difficult,” also noting a May 2011 motor vehicle accident. He stated that appellant’s current symptoms were “much the same as they have been since she began treatment in 2007,” but remained chronic and perhaps exacerbated by recent circumstances. Appellant’s injuries and pain had overwhelmed her ability to cope and thrown her into a depression. Dr. Bowers found that appellant’s Global Assessment of Functioning (GAF) was 38. In light of this and the severity of her psychiatric symptoms, appellant was unable to work. Dr. Powers stated that in light of the fact that her physical injuries were severe and longstanding, and that she had been acknowledged to suffer employment-related psychiatric injuries for a number of years, “it would appear that the only reasonable conclusion would be that this lady is no longer able to work at all since at least August 8, 2006, when she was admitted to the inpatient psychiatric unit of Eden Hospital.”

With respect to appellant’s physical condition, OWCP referred the case for a second opinion examination regarding a proposed cervical surgery. In a report dated May 17, 2012, Dr. Mohinder Nijjar, a Board-certified orthopedic surgeon, opined that the surgery was appropriate for the employment-related condition.

By decision dated June 6, 2012, OWCP determined that, with respect to the accepted consequential adjustment reaction, there was no material worsening that warranted modification

of the February 24, 2004 LWEC determination. It found that the medical evidence was insufficient to establish modification.

Appellant requested a review of the written record on July 6, 2012. On July 27, 2012 OWCP received a July 26, 2012 report from Dr. Nijjar, stating that she had been totally disabled from August 26, 2008, the date of the throat surgery performed by Dr. Wu. In a memorandum dated August 26, 2012, OWCP determined that appellant was entitled to compensation for total disability as of August 26, 2008.

By decision dated October 22, 2012, OWCP's hearing representative affirmed the June 6, 2012 decision. The hearing representative also found that the accepted consequential conditions should not be expanded to include major depressive disorder, panic disorder and generalized anxiety disorder.

LEGAL PRECEDENT -- ISSUE 1

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

A medical opinion must be of reasonable medical certainty and supported by medical rationale to be of probative value.⁵ Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background and supported by medical rationale explaining the basis for the opinion offered.⁶

ANALYSIS -- ISSUE 1

As to the first issue, the Board notes that on appeal appellant's representative states that the issue is moot, because OWCP modified the LWEC as of August 26, 2008. The representative also refers to disability prior to the modification. The claim for total disability commencing August 8, 2006 indicates that the issue of modification of the LWEC is still pertinent, as appellant must show a modification was warranted as of August 8, 2006 to be entitled to compensation for total disability as of that date. The Board also notes that the decisions on appeal with respect to this issue were limited to whether there was a material worsening of appellant's consequential emotional condition. Appellant's November 19, 2011 letter did not argue that the February 24, 2004 LWEC determination was erroneous, or discuss a material change in an orthopedic condition as of August 8, 2006. The issue presented is whether

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ *D.I.*, 59 ECAB 158 (2007).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

appellant has established a material change in the nature and extent of the employment-related consequential adjustment reaction arising from the November 5, 1990 injury.

In this regard the medical evidence does not establish a material change in the accepted adjustment reaction on or about August 8, 2006. The August 14, 2006 report from Dr. Powers refers to a recent incident involving an administrative matter with appellant's supervisor. The claim for compensation regarding alleged employment incidents in early August 2006 is not before the Board on this appeal. Dr. Powers did not discuss the November 5, 1990 injury, the accepted adjustment reaction, or provide an opinion as to a material change in that condition. In an April 30, 2008 report, Dr. Powers referred briefly to treatment for a "work-related illness" without further detail or explanation.

The November 8, 2011 report does provide a history of the November 5, 1990 injury and the cervical surgeries, but also includes allegations of harassment by a supervisor. The report does not specifically discuss the accepted adjustment reaction as a consequence of the November 5, 1990 injury. The diagnoses provided did not include the accepted consequential injury. Dr. Powers concluded that appellant was disabled since August 8, 2006. There was no medical rationale with respect to causal relationship between any disability and the consequential adjustment reaction. There is a general reference to physical injuries and psychiatric injuries, without any specific discussion of the consequential adjustment reaction, the job appellant had been performing and a rationalized opinion that there was a material change in the employment-related condition that caused disability for the light-duty job on or about August 8, 2006.

It is, as noted above, appellant's burden of proof to establish modification of the existing LWEC determination on or about August 8, 2006. With respect to a consequential emotional condition, the Board finds the evidence does not establish a material change causing disability as of August 8, 2006. Appellant may request modification of an LWEC determination, supported by new evidence or argument, at any time before OWCP.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of an 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.⁷ If a subsequent injury is the direct and natural result of a compensable primary injury, it is compensable.⁸

ANALYSIS -- ISSUE 2

The November 8, 2011 report from Dr. Powers diagnosed major depressive disorder, severe without psychotic features, panic disorder without agoraphobia and generalized anxiety disorder. Appellant argued that the diagnoses should be accepted under the current claim. The November 8, 2011 report does not, however, provide a rationalized medical opinion explaining

⁷ See *T.N.*, Docket No. 12-1056 (issued December 18, 2012).

⁸ *Debra L. Dillworth*, 57 ECAB 516, 519 (2006).

how the diagnosed conditions were a direct and natural result of the accepted injuries. Dr. Powers refers to incidents of harassment, a motor vehicle accident and “recent events.” These potentially independent intervening causes must be adequately discussed with respect to any opinion on causal relationship. To establish the diagnosed conditions as consequential injuries, there must be a rationalized medical opinion addressing how the emotional conditions were a direct and natural result of the November 5, 1990 employment injuries, rather than an intervening cause.⁹

On appeal, appellant acknowledges that the November 8, 2011 report indicates factors other than the November 5, 1990 injury contributed to her condition, but argued that OWCP was requiring there must be a significant contribution from the employment injury. It is not a question of improper apportionment of the injury. A consequential injury must be shown to be the direct and natural result of the compensable injury. Dr. Powers did not provide an opinion that each of the diagnosed conditions was the direct and natural result of the November 5, 1990 employment injury, with supporting medical rationale discussing the other incidents noted.

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 has not established that the February 24, 2004 LWEC determination should be modified as of August 8, 2006 due to a material worsening of a consequential emotional condition. The Board further finds that the medical evidence did not establish additional emotional conditions as a consequence of the November 5, 1990 injury.

⁹ See S.S., 59 ECAB 315 (2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2012 is affirmed.

Issued: May 9, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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