



## **FACTUAL HISTORY**

On April 4, 1994 appellant, then a 47-year-old problem resolution officer, filed an occupational disease claim alleging that she sustained an emotional condition due to sexual harassment and reprisal at the employing establishment. She stopped work on February 5, 1994 and has not returned to work. After development of the case record, the Office accepted appellant's claim for post-traumatic stress disorder and a single episode of depression.

By letter dated December 28, 2000, the Office requested that Dr. Arnold J. Frank, appellant's Board-certified psychiatrist, address whether she had any continuing residuals or disability causally related to the accepted employment injury. In a January 16, 2001 letter, Dr. Frank responded that it was more likely than not that appellant's current clinical condition was still significantly impacted by the original injury. He opined that she was not currently employable, even for four hours a day and that she could not participate in a vocational rehabilitation program because she could not sustain sufficient focus, emotional stability or effort to engage in meaningful work. Dr. Richard Adamson concluded that he planned to continue to treat appellant on a weekly basis.

The Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Sharon Romm, a Board-certified psychiatrist, for a second opinion medical examination. In a May 8, 2001 medical report, she stated that appellant experienced significant stress related to her husband's illness and her aging father. Dr. Romm indicated that appellant did not meet the criteria for post-traumatic stress disorder and that the effects of the accepted employment factors had been lessening. She opined that appellant was able to return to her date-of-injury job, but was tremendously preoccupied with the full-time care of her aging and ailing husband, her belief that her coworkers were talking behind her back and her alcohol abuse. Appellant could work four hours a day if she could arrange care for her husband. Dr. Romm concluded that vocational rehabilitation and treatment of appellant's emotional condition would not necessarily improve her situation without the treatment of her alcohol abuse. In an accompanying work capacity evaluation, she reiterated that appellant could not work full time due to her caretaking responsibilities but she could work four hours a day in a position other than her date-of-injury position.

The Office determined that a conflict existed in the medical opinion evidence between Dr. Frank and Dr. Romm. To resolve the conflict the Office, by letter dated August 27, 2001, referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Daniel Sherman, a Board-certified psychiatrist, for an impartial medical examination.

In a September 19, 2001 medical report, Dr. Sherman stated that appellant's psychiatric problems began prior to the incidents that occurred at the employing establishment. He noted her physical problems included hypothyroidism due to Hashimoto's thyroiditis. Dr. Sherman noted that appellant last worked in February 1994 and that she subsequently performed volunteer work, which ended due to conflicts with a supervisor and coworkers. Appellant's husband was extremely ill with a heart condition and Parkinson's disease. Dr. Sherman reported his findings on mental examination and noted appellant's current environmental stressors, which included her husband's and father's illnesses, her lack of gainful employment and her thyroid condition.

Additional stressors, which occurred during the past 10 years of her life included an on and off again extramarital relationship, the care of her now deceased mother and problems with a foster child and in the workplace from 1989 to 1994. Dr. Sherman diagnosed a history of childhood emotional and possible sexual abuse, depression, anxiety and alcohol abuse on Axis I, all of which were due to familial history, childhood trauma, hypothyroidism and environmental stressors. He was not able to provide a definitive diagnosis on Axis II. On Axis III, Dr. Sherman diagnosed a history of lower back laminectomy, thyroiditis with hypothyroidism, a heart murmur due to the use of fe-phen, a diet supplement, menstrual irregularities, status post facelift, uterine myomectomy and sinus surgery and allergies to pollen, sulfa, fruits and nuts. He diagnosed a severe stress level related to the serious illness of her spouse and father and her claim on Axis IV. Finally, on Axis V, he determined that appellant had a global assessment of function of 45. Dr. Sherman opined that she could not resume work and that her current depression and anxiety were “more likely than not” related to other factors noted above, rather than factors of her working conditions from 1989 to 1994. In a work capacity evaluation dated September 18, 2001, Dr. Sherman indicated that appellant could not work 8 hours a day due to her emotional symptoms of which she had a 20-year history and that her thyroid condition had not stabilized despite 8 years of treatment.

By letter dated October 16, 2001, the Office issued a notice of proposed termination of appellant’s compensation based on Dr. Sherman’s September 19, 2001 report. The Office provided 30 days in which appellant could respond to this notice. She did not respond within the allotted time.

In a decision dated November 29, 2001, the Office terminated appellant’s compensation effective that date. It accorded special weight to Dr. Sherman’s September 19, 2001 report as an impartial medical specialist in finding that appellant no longer had any residuals or total disability causally related to her employment-related emotional condition. By letter dated December 21, 2001, appellant requested an oral hearing before an Office hearing representative.

On September 16, 2002 a hearing representative reversed the November 29, 2001 decision on the grounds that Dr. Sherman’s impartial medical opinion was not sufficient to support the termination of appellant’s compensation. He found that the Office did not ask Dr. Sherman whether the accepted factors of appellant’s employment contributed in part to her current emotional condition and disability. Instead, he was only asked to determine whether her current emotional condition was caused by the accepted work factors. Appellant’s compensation was reinstated retroactive to the date of termination. The hearing representative instructed the Office to obtain a supplemental report from Dr. Sherman, which addressed the stated deficiency.

The Office received Dr. Frank’s October 16, 2002 report, which found that appellant’s primary diagnosis continued to be post-traumatic stress disorder, which was further complicated by her husband’s death.

In a letter dated November 13, 2002, the Office requested that Dr. Sherman provide a supplemental medical opinion as to whether the accepted employment factors directly caused or partially contributed to appellant’s current emotional condition.

Dr. Sherman submitted a December 20, 2002 report, which found that all examinations revealed that appellant continued to experience some measure of mental disability. He agreed with Dr. Romm that there was not sufficient justification to conclude that her current condition as of September 18, 2001 resulted from the accepted employment injury. Dr. Sherman opined that “[appellant’s] current psychiatric condition/disability is not directly caused or in part contributed to by accepted factors of employment, on a more likely than not basis.” He stated that she had a preexisting emotional condition for which she was treated in 1979, then again beginning in 1980 and continuing until 1994. This treatment addressed an apparent childhood trauma. Dr. Sherman noted that the accepted work factors exacerbated appellant’s condition and resulted in an accepted condition. He noted that, at the time of his examination, she had not worked in seven years and she was not under any of the direct stressors accepted by the Office. Dr. Sherman stated, however, that she was exposed to new nonwork-related stressors of considerable magnitude that “most likely” exacerbated her preexisting condition. They included an extramarital relationship which resulted in legal action, managing her chronic thyroid condition, her father’s serious illness, problems with a foster child and her husband’s life-threatening health conditions.

In a June 13, 2003 letter, the Office authorized Dr. Jacqueline Jaspan, a psychiatrist, to become appellant’s new attending physician. The Office advised to complete a medical following the initial examination.

By letter dated June 23, 2003, the Office issued a notice of proposed termination of appellant’s compensation based on Dr. Sherman’s December 20, 2002 medical report. The Office provided 30 days in which appellant could respond to this notice.

In a June 25, 2003 letter, appellant’s attorney disagreed with the proposed termination on the grounds that Dr. Sherman’s report was insufficient to support the termination of benefits. Counsel alleged leading questions and noted that Dr. Sherman had not seen appellant in more than two years. Alternatively, counsel argued that if it was determined that Dr. Sherman’s report was valid then he should be regarded as a second opinion physician rather than an impartial medical specialist because Dr. Romm was asked the same question that an Office hearing representative found to be deficient. He contended that the Office failed to wait 10 days to receive Dr. Jaspan’s response to its June 13, 2003 letter before issuing the notice of proposed termination of compensation and that Dr. Jaspan should be provided an opportunity to review and respond to Dr. Sherman’s report.

On August 8, 2003 the Office terminated appellant’s compensation effective that date. It accorded special weight to Dr. Sherman’s impartial medical opinion. In an August 20, 2003 letter, appellant, through counsel, requested an oral hearing. He submitted Dr. Jaspan’s August 18, 2003 report, which recommended that appellant’s compensation not be terminated. She stated that the elapsed time between Dr. Sherman’s initial report in September 2001 and his second report in December 2002, constituted an unacceptable professional practice. Regarding the December 20, 2002 report, Dr. Jaspan contended that there was no evidence in the record establishing that appellant was diagnosed with having post-traumatic stress disorder and sought treatment of this condition prior to the accepted work incidents. She questioned Dr. Sherman’s statement that the issues outlined in the statement of accepted facts apparently exacerbated appellant’s emotional condition, which was accepted by the Office, as he did not consider

whether these issues caused her emotional condition. Dr. Jaspan opined that there was a clear connection between the issues and the symptoms that followed. She noted that, other than appellant's thyroid condition, the stressors in her life were real and present. Dr. Jaspan provided examples of how these stressors impacted appellant's behavior and activities. She diagnosed post-traumatic stress disorder and opined that appellant was totally disabled and that it was more probable than not that her symptoms were caused by harassment at work. Dr. Jaspan recommended further psychiatric treatment.

In an April 26, 2004 report, Dr. Jaspan reiterated her April 18, 2003 opinion. She first treated appellant on June 9, 2003 and regularly saw her on a weekly basis. Dr. Jaspan identified the symptoms exhibited by appellant that were consistent with the diagnosed condition. She noted that appellant's major depressive disorder, which developed following her husband's death had been treated and she no longer met the criteria for this condition. Dr. Jaspan stated that appellant was ready to move on with her life and was frustrated and held back by her symptoms. Her prognosis was guarded and she was unable to return to work due to her symptoms. Dr. Jaspan concluded that appellant continued to need psychiatric treatment to deal with impairments caused by harassment at work.

By decision dated July 19, 2004, a hearing representative affirmed the Office's August 8, 2003 decision. He found that Dr. Sherman's December 20, 2002 report was entitled to special weight accorded an impartial medical specialist in finding that appellant no longer had any residuals or disability causally related to her work-related emotional condition.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup>

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>3</sup>

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

defect in his original report.<sup>4</sup> However, when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board notes that a conflict in the medical opinion evidence was created between Dr. Frank, an attending physician and Dr. Romm, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her employment-related emotional condition. Dr. Frank opined that appellant continued to have residuals and disability due to the accepted employment injury. Dr. Romm opined that the accepted employment injury resolved to the point where appellant was capable of returning to her date-of-injury position at least part time.

The Office referred appellant to Dr. Sherman, selected as the impartial medical specialist. In a September 19, 2001 medical report, he found that appellant sustained physical and emotional conditions. Dr. Sherman opined that she was totally disabled and that her emotional condition was “more likely than not” related to current nonwork-related environmental stressors, which included her husband’s and father’s illnesses, her lack of gainful employment, her thyroid condition and to prior stressors, which included a terrorist attack on the United States, an on and off again extramarital relationship, the care of her now deceased mother and problems with a foster child, rather than to problems she experienced in the workplace from 1989 to 1994. The Office requested a supplemental report from Dr. Sherman based on a hearing representative’s September 16, 2002 decision, finding that his September 19, 2001 report was deficient as he only addressed whether the accepted work factors caused appellant’s current emotional condition. He was asked to provide a rationalized medical opinion, which addressed whether the accepted employment factors directly caused or partially contributed to appellant’s current emotional condition and disability.

In a report dated December 20, 2002, Dr. Sherman noted appellant’s preexisting emotional condition and psychological treatment. He opined that it was “more likely than not” that her current emotional condition and disability were not caused or partly contributed to by the accepted factors of her employment. Dr. Sherman explained that she had not worked in seven years and she was not under any of the direct stressors accepted by the Office. He reiterated the new nonwork-related stressors set forth in his September 19, 2002 report and opined that they “most likely” exacerbated appellant’s preexisting emotional condition.

The Board finds that Dr. Sherman’s December 20, 2002 report is equivocal and speculative as to a causal relationship between appellant’s current emotional condition and disability and the accepted factors of her employment. The Board has held that speculative and

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<sup>4</sup> *Raymond A. Fondots*, 53 ECAB 637, 641 (2002). *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

<sup>5</sup> *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

equivocal medical opinions regarding causal relationship have no probative value.<sup>6</sup> Dr. Sherman did not unequivocally find that appellant's emotional condition and disability were not caused or partly contributed to by the accepted employment factors as he stated it was "more likely than not" and "most likely" that they were caused by new nonwork-related stressors. Further, he did not provide sufficient rationale in support of his stated conclusion on causal relationship. Other than indicating that appellant had not worked for the past seven years and, thus, she was not exposed to the accepted work factors, Dr. Sherman did not adequately explain why the accepted employment factors no longer caused or contributed to her emotional condition and disability.<sup>7</sup> In addition, his opinion regarding causal relationship was essentially repetitive of his September 19, 2001 opinion. The Board, therefore, finds that Dr. Sherman's December 20, 2002 report has little probative value and is insufficient to resolve the conflict in the medical opinion evidence regarding the issue of whether appellant has any continuing residuals or disability causally related to her accepted employment-related emotional condition. As an unresolved medical conflict existed at the time the Office terminated benefits, the Office did not meet its burden of proof in terminating appellant's compensation benefits.

### CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation effective August 8, 2003 because an unresolved conflict exists in the medical opinion evidence as to whether she has any continuing residuals or disability causally related to the accepted employment-related emotional condition.<sup>8</sup>

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<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>7</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>8</sup> In light of the Board's disposition of this issue, the issue of whether appellant established any continuing employment-related residuals or disability after August 8, 2003 is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 19, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 13, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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