United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 06-2179**
	)	**Issued: June 20, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 25, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's June 22, 2006 decision finding that he did not sustain an injury in the performance of duty on February 11, 2005. 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 his burden of proof in establishing that he sustained an injury in the performance of duty on February 11, 2005.

FACTUAL HISTORY

On February 17, 2005 appellant, then a 49-year-old sales and service associate, filed a traumatic injury claim alleging injury to his back, shoulder, feet and ankles after a coworker assaulted him on February 11, 2005. He stopped work on February 12, 2005. In a witness statement, Postmaster Robert VanDerClock advised that he was talking to appellant when a coworker, William Schamber, slightly bumped him on the side, which caused appellant to move

backwards and bump into Mr. VanDerClock. He indicated that no hands were used and that the action caused both of them to become slightly off balance, but neither fell. Mr. VanDerClock indicated that an altercation occurred but he did not agree completely with appellant's statement.

In a February 17, 2005 statement, appellant asserted that Mr. Schamber slammed into him from behind on February 11, 2005, which he described as a "full body slam." He also alleged that Mr. Schamber kicked him in the feet. Appellant stated that he was knocked into the arms of Mr. VanDerClock, who prevented him from falling. He stated that Mr. VanDerClock restrained Mr. Schamber who was yelling "I'll finish him!" "Do you want me to finish him off?" and "I'm going to kill him." Appellant stated that 15 minutes prior to the altercation, Mr. Schamber had disappeared from the window where they had been working together. He went to look for him when a customer joined the line with several packages to be mailed. Appellant noted that another employee indicated that Mr. Schamber was in the employee break room, which was adjacent to the men's restroom. He stated that he went near the door and loudly yelled "Come on back." Mr. Schamber then yelled from the bathroom, "Come in here and I'll break your f*cking head against the tiles … I'll f*cking kill you." Appellant stated that he returned to work. He saw Mr. Schamber with Mr. VanDerClock, telling the postmaster that he was going to kill appellant and that he could not work with him. Appellant stated that, when he saw Mr. VanDerClock, he was told that he and another coworker were putting stress on the other employees by being out from work. He replied that Mr. Schamber had just stated that he was going to kill him and inquired as to what was going to be done. Appellant alleged that Mr. Schamber had strangled an employee and frightened another. He returned to the window unit where he was attacked a few minutes later. On at least four occasions, the latest being August 13, 2004, appellant had reported to management that someone had put screws in his tires and did other vandalism. Statements from Mr. VanDerClock and Mr. Schamber, providing their accounts of the February 11, 2005 incident were received together with statements from coworkers, which indicated that appellant walked around the workroom floor on February 17, 2005 in no apparent discomfort.

In a February 16, 2005 disability slip, Dr. Gaetano Buttitta, a chiropractor, advised that appellant was totally disabled from February 12 to 19, 2005 "due to injuries sustained in the assault." In a March 7, 2005 work capacity evaluation form, he noted that appellant had complaints of lower, middle back and shoulder pain.

In a March 3, 2005 note, Dr. Moti Peleg, a licensed clinical psychologist, stated that appellant was under his care for emotional distress related to his traumatic stress at work on February 11, 2005. He advised that appellant would not be able to return to work for at least 30 days. Dr. Peleg subsequently diagnosed dysthymia in a treatment note.

In a March 30, 2005 letter, the Office advised appellant of the factual and medical evidence needed to establish his claim. Appellant was also advised as to the limitations on treatment as probative medical evidence under the Federal Employees' Compensation Act.

Appellant reiterated his allegation that Mr. Schamber slammed into him from behind and also threatened to kill him on February 11, 2004. He noted that he was unable to obtain a copy of the employing establishment's investigation and that his charges of assault and terrorist threats

were dismissed. Copies of materials regarding appellant's criminal action against Mr. Schamber in the Municipal Court of Waldwick were submitted.

In a March 17, 2005 report, Dr. Peleg advised that appellant was evaluated and diagnosed on February 28, 2005 with post-traumatic stress disorder and dysthymia, following a reported traumatic assault at work.

By decision dated October 17, 2005, the Office denied the claim on the grounds that fact of injury was not established. The Office found that the medical evidence was insufficient to support that a medical condition occurred as a result of the February 11, 2005 incident.

On November 16, 2005 appellant requested an oral hearing, which was held on April 20, 2006. In a May 18, 2006 letter, the employing establishment provided comments to the hearing transcript. It submitted copies of information relating to an investigation completed by postal inspectors on March 7, 2005. The investigative report noted that Mr. VanDerClock witnessed Mr. Schamber physically bump into appellant, who then fell toward the dispatch buckets and slightly bumped the postmaster knocking him off balance. Mr. VanDerClock had Mr. Schamber come into his office during which time Mr. Schamber stated "I'll finish him off now." The report indicated that the incident resulted from both employees accusing each other of being nonproductive. The report also noted that a coworker's statement, who had observed part of the altercation between appellant and Mr. Schamber, indicated that Mr. VanDerClock tried to hold appellant up and approached Mr. Schamber and told him not to do that again. The coworker stated that she heard Mr. Schamber state "Get him out of here or I will finish him off."

The employing establishment submitted documents pertaining to appellant's removal, effective December 21, 2005, from the employing establishment for being absent without leave and for failure to follow official instructions concerning the Family Medical Leave Act. Appellant's step 2 grievance of his proposed removal was denied.

By decision dated June 22, 2006, the Office hearing representative affirmed the October 17, 2005 decision as modified to reflect that causal relationship had not been established between the February 11, 2005 incident and any medical conditions.

Appellant appealed to the Board and requested oral argument, which was scheduled for April 11, 2007. He did not appear for the scheduled oral argument.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] When an employee

[1] 5 U.S.C. §§ 8101-8193.

[2] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[3]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[4] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[5]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[6]

ANALYSIS

The Office accepted that appellant was a federal employee and that he timely filed his claim for compensation benefits. The Office also accepted that on February 11, 2005, appellant was bumped from behind by a coworker with sufficient force to move him forward into Mr. VanDerClock and cause him to lose his balance. The Office found that the coworker had initiated the physical contact and, after such physical contact, had verbally threatened to "finish him off" which reasonably could be interrupted as a threat. The record supports that this event occurred as alleged.[7] The Office also found that, prior to this incident, the evidence did not establish that the coworker had used profanity and threatened to kill appellant when he requested that the coworker return to work. There is no evidence or witness statement in the record to

[3] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term injury as defined by the Act refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[4] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[5] *John W. Montoya*, 54 ECAB 306 (2003).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] There is no evidence that the animosity between Mr. Schamber and appellant was imported into the workplace from appellant's private life. *See Yvonne D. McCrary*, 56 ECAB ___ (Docket No. 04-1154, issued July 27, 2005) (when the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment).

corroborate appellant's version of these allegations. The Office properly found that these events did not occur in the manner alleged.[8] As the evidence supports that physical contact occurred on February 11, 2005 and that a verbal threat was made immediately after the contact, appellant has established that these incidents occurred as alleged.[9] Appellant must, however, submit probative medical evidence on the issue of causal relationship between a diagnosed condition and the established employment incidents of February 11, 2005.

The evidence presented does not contain a well-rationalized medical opinion establishing that the established employment incident of February 11, 2005 caused or aggravated appellant's diagnosed conditions. Appellant submitted reports from Dr. Buttitta, a chiropractor, regarding his physical condition. However, section 8101(2) provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10] A chiropractor is not considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence.[11] Dr. Buttitta did not diagnose a subluxation as demonstrated by x-ray. Thus, he is not a physician as defined under the Act and his reports are of no probative value to establish that a physical injury occurred as a result of the February 11, 2005 incident.[12]

Appellant also submitted medical reports from Dr. Peleg.[13] In an undated partial form report, Dr. Peleg failed to provide an opinion as to the causal relationship of appellant's dysthymia. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] In a March 3, 2005 note, Dr. Peleg advised that appellant was treated for emotional distress related to his reported traumatic stress at work on February 11, 2005. On March 17, 2005 he diagnosed post-traumatic stress disorder and dysthymia as a result of the traumatic assault at work. However, his notes of March 3 and 17, 2005 do not provide any detailed history of the February 11, 2005 incident. Medical evidence predicated on an incomplete factual or medical history is of diminished probative value.[15] Additionally, those

[8] *See T.G.*, 58 ECAB ___ (Docket No. 06-1411, issued November 28, 2006).

[9] *See Anna C. Leanza*, 48 ECAB 115,122 (1996) (the Board has recognized the compensability of physical threats and verbal aggression in certain circumstances).

[10] 5 U.S.C. § 8101(2); *see also Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] The Office's regulation, at 20 C.F.R. § 10.5(bb), defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See Mary A. Ceglia, supra* note 10.

[12] *Isabelle Mitchell*, 55 ECAB 623 (2004).

[13] Section 8101(2) of the Act provides that the term "physician" includes "clinical psychologists" within the scope of their practice as defined by state law. Dr. Peleg is a licensed clinical psychologist in New Jersey and meets the New Jersey State Board of Psychologist Examiners' rules for being a practicing psychologist.

[14] *Michael E. Smith*, 50 ECAB 313 (1999).

[15] *See Bilile C. Rae*, 43 ECAB 192 (1991).

reports also fail to provide a detailed, well-rationalized opinion explaining how appellant's condition is causally related to either the "traumatic stress" or the "traumatic assault" appellant experienced at work on February 11, 2005.[16] The brief narrative provided by Dr. Peleg does not contain any discussion of appellant's medical history, the results of any diagnostic testing or sufficient explanation for his stated conclusions and diagnoses. The Board finds that his reports are of diminished probative value to support that appellant sustained an emotional condition causally related to the employment incident of February 11, 2005.

The record contains insufficient rationalized medical opinion pertaining to appellant's physical or emotional conditions. The Office informed appellant of the deficiencies in his claim and what was needed to establish his claim in a letter dated March 30, 2005. Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is no probative medical evidence addressing how appellant's claimed conditions which the record established were caused or aggravated by the employment incident of February 11, 2005. Appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty on February 11, 2005.

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on February 11, 2005.

[16] In order to be considered rationalized medical evidence, a physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Steven S. Salah*, 55 ECAB 169, 172 (2003). The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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