

**United States Department of Labor
Employees' Compensation Appeals Board**

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| C.E., Appellant |) | |
| |) | |
| and |) | Docket No. 13-178 |
| |) | Issued: April 1, 2013 |
| DEPARTMENT OF JUSTICE, FEDERAL |) | |
| BUREAU OF INVESTIGATION, |) | |
| Indianapolis, IN, Employer |) | |
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| <i>Appearances:</i> | <i>Case Submitted on the Record</i> |
| <i>Appellant, pro se</i> | |
| <i>Office of Solicitor, for the Director</i> | |

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 31, 2012 appellant filed a timely appeal from a September 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. In a June 29, 2004 order, the Board remanded the case for OWCP to request additional factual information from the employing

¹ 5 U.S.C. § 8101 *et seq.*

establishment.² In a September 25, 2006 decision, the Board again remanded the case for OWCP to request factual evidence from the employing establishment and to inform it of the consequences for failing to submit evidence under 20 C.F.R. § 10.117(b).³ On November 24, 2008 the Board found that appellant had established as compensable work factors that his window was broken by a bullet or projectile on March 8, 1978, that a coworker threatened to break his kneecaps and that the employing establishment erred in investigating him for wrongdoing, issuing disciplinary action, failing to provide a fitness-for-duty physician with accurate information and downgrading his 1978 performance appraisal.⁴ The Board remanded the case for evaluation of the medical evidence. In a decision dated November 23, 2010, the Board found that the medical evidence was sufficient to warrant further development and remanded the case for OWCP to refer appellant for a second opinion examination.⁵ In an order dated April 26, 2012, the Board set aside an August 29, 2011 decision determining that appellant did not cooperate with OWCP's attempt to develop the medical evidence.⁶ The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On May 31, 2012 OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Mark E. Reynolds, a Board-certified psychiatrist, for a second opinion examination. In a report dated June 28, 2012, Dr. Reynolds reviewed the medical reports of record, appellant's psychiatric history and the statement of accepted facts. He diagnosed chronic and severe post-traumatic stress disorder (PTSD) and a single episode of severe major depressive disorder without psychotic features. In response to OWCP's query whether appellant's divorce and his brother's suicide affected his condition, Dr. Reynolds stated that appellant's 1978 and 1999 divorces "may have resulted in a further exacerbation of the symptomatology; however, it is my opinion that the relation of these events to the severity of the claimant's symptoms is limited." He attributed the diagnosed conditions to "a combination of the six factors described as incidents which occurred in the performance of duty." Dr. Reynolds indicated that the primary factor causing the PTSD and major depressive disorder was "the attack on the claimant's home on March 8, 1978 in which a projectile bullet struck the window of the claimant's home in which his daughter was residing at that time." He further attributed appellant's condition to a coworker threatening to break his kneecaps in December 1978, the March 8 to June 28, 1978 investigation, the employing establishment's failure to provide a fitness-for-duty physician with complete information, receiving disciplinary action in April 1978 subsequently found unreasonable and the employing establishment downgrading his performance rating "without proper substantiation." Dr. Reynolds found that appellant was disabled from at least 1999 onward and possibly earlier.

² *Order Remanding Case*, Docket No. 04-961 (issued June 29, 2004). On March 26, 2001 appellant, then a 57-year-old former special agent, filed an occupational disease claim alleging that he sustained post-traumatic stress disorder as a result of his work duties. He attributed his condition to a shot fired into the window of his house at his children during his investigation of a gambling suspect. Appellant also alleged that his 1978 performance appraisal was downgraded without reason and that he was interrogated nonstop by agents from March 8 to June 28, 1978.

³ Docket No. 06-790 (issued September 25, 2006).

⁴ Docket No. 07-2261 (issued November 24, 2008).

⁵ Docket No. 10-461 (issued November 23, 2010); *Order Denying Petition for Reconsideration*, Docket No. 10-461 (issued June 2, 2011).

⁶ *Order Remanding Case*, Docket No. 12-631 (issued April 26, 2012).

By decision dated September 7, 2012, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that he sustained an emotional condition as a result of compensable work factors. It found that while Dr. Reynolds attributed his PTSD and major depressive disorder to compensable work factors, he also found that appellant's divorce contributed to his condition. OWCP denied appellant's claim as work factors were not the sole factor causing his condition.

On appeal, appellant argues that the report of Dr. Reynolds supports that he sustained an emotional condition causally related to compensable employment factors. He challenges OWCP's finding that his divorces contributed to his condition.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁰

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the claimant¹² and

⁷ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

must be one of reasonable medical certainty¹³ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

In *Beth P. Chaput*,¹⁵ the Board set aside and remanded the case to OWCP stating, “It is not necessary to provide a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that [a work factor] contributed in any way to [the employee’s] condition, such condition would be considered employment related for the purpose of compensation benefits under [FECA].”¹⁶

ANALYSIS

On prior appeal, the Board found that appellant had established as compensable work factors that his window was broken by a bullet or projectile on March 8, 1978, a coworker threatened to break his kneecaps and that the employing establishment erred in investigating him for wrongdoing from March 8 to June 28, 1978, issuing disciplinary action, failing to provide a fitness-for-duty physician with accurate information and downgrading his 1978 performance appraisal. In decisions dated November 24, 2008 and November 23, 2010, it remanded the case for development of the medical evidence.

OWCP referred appellant to Dr. Reynolds to determine whether he sustained an emotional condition arising from the compensable work factors. The Board finds that the June 28, 2012 report from Dr. Reynolds establishes that employment factors caused or contributed to his PTSD and major depressive disorder.

Board precedent provides that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that a work factor contributed in any way to appellant’s condition, such condition would be considered employment related.¹⁷ Dr. Reynolds clearly opined that the accepted employment factors caused the diagnosed emotional conditions. He found that appellant sustained major depressive disorder and PTSD due to a bullet striking his window in March 1978, a coworker telling him he was going to break his kneecaps in December 1978, the employing establishment’s failure to give a fitness-for-duty physician full information, unwarranted disciplinary action in April 1978 and a downgrade to his performance appraisal without reason. Dr. Reynold’s opinion is well rationalized and based on a proper factual and medical background. Consequently, it represents the weight of the evidence and establishes that the diagnosed conditions of PTSD and major depressive disorder are work related.¹⁸

¹³ *Supra* note 11.

¹⁴ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁵ 37 ECAB 158 (1985).

¹⁶ *Id.*; see also *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989).

¹⁷ See *R.L.*, Docket No. 11-115 (issued June 14, 2011).

¹⁸ See *L.C.*, Docket No. 12-1949 (issued January 3, 2013).

OWCP denied appellant's claim after finding that Dr. Reynold's attributed his emotional condition both to his divorces and to the compensable work factors. As discussed, however, if work factors contribute in any way to an employee's condition, it is considered employment related.¹⁹

The evidence establishes that the diagnosed conditions of major depressive disorder and PTSD are work related and covered under FECA; however, the record does not contain a clear medical opinion regarding any periods of disability related to these accepted conditions. The case will be remanded to OWCP for further development of this matter. After such development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2012 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁹ See *R.L.*, Docket No. 11-115 (issued June 14, 2011); see also *Henry Klaus*, 9 ECAB 333, 334 (1957).