

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, DISTRIBUTION &)
PROCESSING CENTER, Atlanta, GA, Employer)

**Docket No. 15-1056
Issued: April 4, 2016**

Appearances:

Jennifer Raymond, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 6, 2015 appellant, through counsel, filed a timely appeal of a January 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her claim should be expanded to accept a consequential condition of aggravation of preexisting bipolar disorder type II.

FACTUAL HISTORY

On May 17, 2011 appellant, then a 44-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2011 she injured the sole of her heel/foot due to pushing heavy containers. OWCP accepted the claim for aggravation of left tibialis and

¹ 5 U.S.C. § 8101 *et seq.*

aggravation of left tendon injury. By letter dated July 14, 2011, it placed appellant on the periodic rolls for temporary total disability, effective June 29, 2011. OWCP authorized foot tendon revision (kidner procedure) which occurred on August 12, 2011.²

On August 6, 2013 counsel requested that OWCP expand acceptance of appellant's claim to include a consequential condition of aggravation of preexisting bipolar disorder type II. Appellant submitted a July 19, 2013 report prepared by Dr. Todd M. Antin, a Board-certified psychiatrist. In this report, Dr. Antin provided medical, psychiatric, and employment injury histories. He related a family history of bipolar and major depressive disorder, as well as a history of post-partum depression since the birth of appellant's first child in 1984. Appellant's mood swings were noted, and that during a manic episode she had spent over \$30,000, leading to bankruptcy. Dr. Antin noted that appellant's anxiety and depression impeded her ability to concentrate and that she was a danger to others when in a manic phase. He reported that, as a result of her May 9, 2011 employment injury, resulting surgery and inability to work, appellant had become deeply depressed and gained excessive weight, which has caused high cholesterol and hypertension and contributed to her anxiety and depressive mood. Dr. Antin opined that appellant's 2011 employment injury exacerbated her mood symptoms and caused increased feelings of worthlessness, irritability, anger, and hostility. He concluded that appellant's preexisting bipolar disorder type II had been aggravated by the 2011 employment injury.

Dr. Antin, in an August 22, 2013 report, provided a medical history of appellant's mental illness, which he opined had been aggravated by difficult school and work experiences. He reported that appellant sustained a left ankle injury in 2009 which caused swelling and significant pain, and rendered her totally disabled for over a year. In 2011 appellant returned to a modified job and sustained an employment-related ruptured left-sided Achilles tendon which required reparative surgery. As a result of this injury, she sustained a deep depression, excessive weight gain, high cholesterol, and hypertension. Dr. Antin concluded that these medical conditions all contributed to her anxiety and depression. According to Dr. Antin, appellant sustained significant mental decompensation as a result of her employment injury-related stress. He noted that appellant reported mood swings and that she experienced situational panic attacks and severe anxiety. The panic attacks occurred when appellant was forced to interact with people. Dr. Antin opined that the May 9, 2011 employment-related Achilles injury exacerbated her preexisting bipolar II disorder and that the resulting symptoms rendered her disabled from work.

By decision dated October 2, 2013, OWCP denied appellant's claim for a consequential injury. It found Dr. Antin failed to provide a rationalized opinion explaining how appellant's bipolar disorder type II was caused or aggravated by the accepted May 9, 2011 employment injury.

On October 28, 2013 appellant requested a review of the written record by an OWCP hearing representative.

² The record reflects that appellant had another prior accepted claim in 1997 under OWCP file number xxxxx961. This claim was accepted for post-traumatic stress disorder after appellant's employing establishment was robbed at gunpoint. Appellant was not diagnosed with bipolar disorder at that time. She was released to return to full duty on July 29, 1998.

By decision dated March 20, 2014, the OWCP hearing representative affirmed the October 2, 2013 decision denying appellant's request for expansion of her claim to include a consequential emotional condition.

By letter dated and received on November 14, 2014, appellant's counsel requested reconsideration of the March 20, 2014 hearing representative's decision.

Subsequent to her reconsideration request, appellant submitted an October 27, 2014 report by Dr. Antin. Dr. Antin provided a history of his treatment and noted the medical records he reviewed going back to 1997, which he opined revealed significant findings of preexisting mental illness and bipolar disorder type II. He noted that in 1995 appellant sustained post-traumatic stress disorder (PTSD) due to having a gun pointed at her head during a workplace robbery, which the doctor asserted "demonstrated a classic association between sufferers of bipolar disorder and PTSD." Next, Dr. Antin reported that appellant sustained "a marked deterioration of stability following" the May 9, 2011 employment injury. He opined that the 2011 Achilles tendon rupture caused physical incapacitation which resulted in her hypertension, weight gain, and high cholesterol. These conditions all aggravated her preexisting bipolar condition as evident by her behavior and mood deterioration, separation and divorce from her husband, and increased impulsive behavior. Dr. Antin opined that appellant's preexisting bipolar condition had been aggravated by the 2011 employment injury which rendered her totally disabled.

By decision dated January 30, 2015, OWCP denied modification of the prior decision. It found that the reports from Dr. Antin were not based upon an accurate history and were not sufficiently rationalized to establish that appellant sustained a consequential injury.

LEGAL PRECEDENT

The general rule regarding consequential injuries is that, when the primary injury is shown to have arisen out of and 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, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.³

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁴

³ See *S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

⁴ *S.H.*, Docket No. 15-0316 (issued June 8, 2015); *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

OWCP accepted appellant's claim for aggravation of left tibialis and aggravation of left tendon injury and authorized foot tendon revision surgery (kidner procedure). By letter dated July 14, 2011, it placed appellant on the periodic rolls for temporary total disability effective June 29, 2011.⁵ Appellant alleges that her preexisting bipolar condition was aggravated by her May 9, 2011 employment injury and should be accepted as a consequential injury. The Board finds that appellant has failed to establish that she sustained a consequential emotional condition from her accepted May 9, 2011 employment injury.

The medical evidence relevant to appellant's claim includes reports dated July 19, 2013 and October 27, 2014 from Dr. Antin who noted a medical history of bipolar disease, depression and post-traumatic stress disorder. Dr. Antin opined that the May 2011 employment injury, resulting surgery, and inability to work caused appellant to become deeply depressed which caused excessive weight gain, high cholesterol, and hypertension. These conditions according to Dr. Antin all contributed to her anxiety and depressive mood and aggravated her preexisting bipolar disorder type II. Dr. Antin noted that the 2011 employment injury exacerbated appellant's mood symptoms and caused increased feelings of worthlessness, irritability, anger, and hostility. While Dr. Antin opined that appellant's bipolar condition had been aggravated by the May 2011 employment injury, he has not provided sufficient explanation for this conclusion. There is no medical explanation as to how appellant's bipolar disorder was a natural consequence of the accepted aggravation left tibialis, aggravation left tendon injury, and foot tendon revision surgery (kidner procedure).⁶ While Dr. Antin related that the accepted lower extremity conditions caused depression, which then caused excessive weight gain, high cholesterol, and hypertension, he has not substantiated his opinion with objective findings.⁷ He noted appellant's own allegations in this regard, but has not shown that his opinion regarding weight gain, high cholesterol, or hypertension was based upon established medical findings.⁸

Given appellant's long history of preexisting depression and bipolar disorder, Dr. Antin has also not explained findings that substantiate that appellant's mental disorders in fact worsened. He notes that her mood symptoms were aggravated by the employment injuries but provided no rationale as to how he arrived at his opinion. Dr. Antin merely attributes these symptoms and conditions to appellant's accepted injury with no supporting objective documentation or rationale. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁹ In view of the lack of rationale provided by Dr. Antin on the issue of causal relationship, the Board finds that his opinion fails to establish

⁵ By decision dated February 14, 2014, OWCP issued a loss of wage-earning capacity decision which reduced appellant's wage-loss compensation based on her ability to earn wages in the constructed position of customer complaint clerk.

⁶ *Supra* note 3.

⁷ *See E.B.*, Docket No. 12-0682 (issued November 8, 2012); *see also Samuel S. Corrado*, 15 ECAB 324 (1963).

⁸ *Id.*

⁹ *See T.M.*, Docket No. 08-975, (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

that appellant's claim should be expanded to include the condition of aggravation of her preexisting bipolar disorder type II.

It is appellant's burden to establish a consequential condition. Appellant failed to provide the necessary evidence to support her claim, and thus has failed to meet her burden of proof.

On appeal counsel argues that medical evidence, represented by Dr. Antin's various reports, is sufficient to establish acceptance of appellant's bipolar condition or that it is at least sufficient to warrant further development of the evidence. As discussed above, Dr. Antin provided conclusory opinions which are insufficient to establish a consequential injury.

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 met her burden of proof to establish that a consequential condition of aggravation of preexisting bipolar disorder type II.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2015 is affirmed.

Issued: April 4, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board