United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 09-408**
	)	**Issued: August 26, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Whittier, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 20, 2008 appellant filed a timely appeal from the November 20, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the accepted work incident of July 18, 2006 caused an injury.

FACTUAL HISTORY

On August 4, 2006 appellant, then a 43-year-old letter carrier, filed a claim alleging that he sustained stress and a pulled groin injury on or about July 18, 2006 while in the performance of duty: "While delivering mail then returning to my vehicle was shot at hitting front window." His psychologist, Dr. B. John Shahin, diagnosed post-traumatic stress disorder (PTSD) caused by being shot at twice in the performance of duty. He placed appellant on temporary total disability beginning August 4, 2006 and referred him to a psychiatrist.

Armando Peña, supervisor customer services, reported that appellant called him on July 18, 2006 to report that the windshield of his vehicle was shot at. Appellant explained that he heard "a pop sound" and saw what appeared to be a puff of smoke in the vehicle. "[He] then exited the vehicle thinking that the vehicle might be on fire because of the smoke he claims he saw." When Mr. Peña arrived on the scene, he stated that he could clearly see that the windshield had been hit. "It appeared to be a bb, a small pellet or a small object that hit the windshield." Appellant repeated to Mr. Peña what happened:

> "[Appellant] stated that once he entered the vehicle he heard a pop sound and saw what appeared to be a puff of smoke inside the [vehicle]. He then exited the vehicle thinking that it might be on fire. At this time [a letter carrier] came along to assist [appellant] because of his full tour status. Per [appellant], [the letter carrier] was the one who first noticed the windshield."

Mr. Peña added: "During this time of waiting for the [incident] report, [appellant's] demeanor was that of calmness and in no way did he exhibit any form of anxiety or anguish over the incident that took place. Nor did he say he would not be able to finish up the rest of the route."

The incident report from the L.A. County Sheriff's Department stated that appellant heard two "pops" and then saw smoke on the windshield. About three minutes later, appellant was approached by a woman who identified herself as the manager of the apartment complex. She told appellant that she lived below where the "shooting" came from. She heard two pops and told the investigator that the "pop" sound resembled that from a pellet gun. The sheriff's department was unable to locate any expended casings or pellets.

On September 5, 2006 the investigating detective reported that the two juveniles had individually confessed to shooting a pump action BB rifle at a tree. The detective informed appellant, who did not want the subjects prosecuted due to their ages. Appellant stated that he could understand because he was a kid once. The detective was very concerned, though, believing at the time that appellant was the target of an assault.

The U.S. Postal Service Office of Inspector General (OIG) interviewed appellant on October 3, 2006. Appellant stated that, as he sat in his vehicle and was ready to drive away, he heard a loud pop and the windshield shattered. He then heard a second pop. Appellant stated that he looked around to see where the sound was coming from. He stated that the apartment manger pointed to an apartment window and told him, "They are shooting at you." Appellant stated that he initially thought the noise originated from children throwing a firecracker into his vehicle because the Fourth of July holiday had recently passed and he knew people often had extra fireworks. He told the OIG that he knew the noise was not from a BB gun. The OIG determined that a BB, discharged from a pump action BB gun, struck the windshield of appellant's vehicle, and those two boys, ages 12 and 14, shot the BB. The Office prepared a statement of accepted facts that included the following:

> "After a thorough investigation of the July 18, 2006 incident by receipt of the County of Los Angeles Sheriff's Department, Incident Report dated July 18, 2006. It is accepted that [appellant] completed a mail delivery at Villa

> Scalla Apartments…. He entered his [employing establishment] vehicle and sat down, he heard a loud bang "two pops" and saw a puff of smoke on the windshield of his postal vehicle, he quickly exited the vehicle and realized there was damage to the middle area of the windshield.
>
> "The investigation revealed two boys, ages 12 and 14, shot a BB gun towards a tree, however, the pellets hit the windshield of [appellant's] postal vehicle. [Appellant] denied being struck by any pellets/bullets. [He] declined pressing charges against the juveniles due to their ages."

The Office forwarded the statement of accepted facts to appellant's psychiatrist and asked whether there was any psychiatric diagnosis due to the event of July 18, 2006. It requested an opinion, with medical reasons, on the cause of the diagnosed condition and a detailed explanation of how such exposure contributed to appellant's medical condition.

In a decision dated April 25, 2007, the Office denied appellant's claim for compensation. It accepted that the July 18, 2006 incident occurred in the performance of duty, but appellant's psychiatrist did not submit the requested medical opinion. The Office found that the evidence failed to establish that appellant's emotional condition was causally related to the accepted factor of employment.

Appellant requested reconsideration. He stated there was no evidence that the gun was a BB gun. Appellant noted that the investigating officer stated on page four of the incident report: "We believe that damage (EV-1) was caused by a small caliber weapon or a pellet gun." He also submitted additional medical evidence.

On August 31, 2006 Dr. Novellyn Hitchens Heard, a Board-certified psychiatrist, related a brief history of the July 18, 2006 incident: "Reports on July 18, 2006 [appellant's] vehicle was shot at while working mandatory overtime as a postal worker and patient feels traumatized." She also noted appellant's unhappiness with management. Dr. Heard reported appellant's complaints and findings on mental status examination. She appeared to offer a principal diagnosis of post-traumatic stress disorder.

Appellant also submitted an August 15, 2006 report from Anne Y. Jong, a licensed clinical social worker, who noted that the July 18, 2006 event involved threatened death, threat to physical integrity of self, threat to physical integrity of others. Ms. Jong indicated that appellant responded with helplessness.

In a decision dated November 20, 2007, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Heard offered no opinion on causal relationship and gave no indication whether appellant's condition was due to the July 18, 2006 incident or to his claims of harassment by management. The Office also found that Ms. Jong's report had no probative value because she was not a physician.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, 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. He must also establish that such event, incident or exposure caused an injury.[2]

Causal relationship is a medical issue,[3] 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 of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] 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.[6]

Medical conclusions unsupported by rationale are of little probative value.[7] Medical conclusions based on inaccurate or incomplete histories are also of little probative value.[8] A social worker is not a "physician" within the meaning of the Act and, therefore, is not competent to give a medical opinion.[9]

ANALYSIS

Appellant established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The Office accepted that, on July 18, 2006, while in

[1] 5 U.S.C. § 8102(a).

[2] *E.g., John J. Carlone*, 41 ECAB 354 (1989).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[8] *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[9] *Kurt R. Ellis*, 47 ECAB 505 (1996); *see Ernest St. Pierre*, 51 ECAB 623 (2000) (reports of a social worker do not constitute competent medical evidence).

the performance of his duties, he entered the employing establishment vehicle, sat down, heard a loud pop (or two) and saw what appeared to be a puff of smoke. Appellant then exited the vehicle. He took exception to the Office's determination that the damage to the windshield came from a BB gun fired by two boys, ages 12 and 14, who were shooting at a tree. Appellant contended that there was no evidence the gun was a BB gun. He maintained he was shot at with a small caliber gun.

The record shows otherwise. The manager of the apartment complex reported that the pop sound resembled that from a pellet gun. Mr. Peña, who inspected the windshield that day, stated that it appeared to be a BB, a small pellet, or a small object that hit the windshield. The County Sheriff's incident report indicated a pellet gun could be responsible. However, on September 5, 2006 the investigating detective reported that in separate interviews the two juveniles confessed to shooting a pump action BB rifle at a tree. The Board therefore finds that the Office's statement of accepted facts accurately reflects what happened on July 18, 2006, based on all the factual evidence developed in the case. The question presented is whether appellant suffered an injury on July 18, 2006 when, while seated in the employing establishment vehicle, he heard one or two loud "pops" and saw what appeared to be a puff of smoke.

Appellant's psychologist, Dr. Shahin, diagnosed post-traumatic stress disorder caused by being shot at twice in the performance of duty. His description of the incident is far too brief to establish that he was basing his opinion on a complete and accurate history. Further, Dr. Shahin did not support his opinion with sound medical reasoning. He simply stated that being shot at twice caused post-traumatic stress disorder, without discussing the nature of post-traumatic stress disorder, what signs or symptoms or complaints established the diagnosis in appellant's case or how the accepted incident caused the disorder. For these reasons, the Board finds that his opinion is of diminished probative value and does not establish the required element of causal relationship.

Dr. Heard, appellant's psychiatrist, did not offer any opinion on causal relation. She reported the history appellant related to her, noted his complaints and findings, and appeared to diagnose post-traumatic stress disorder. But Dr. Heard did not offer an opinion on whether the accepted incident on July 18, 2006 was responsible for that diagnosis, much less any medical or psychiatric reasoning to support such an opinion. Her August 31, 2006 report is also of diminished probative value in establishing appellant's claim for compensation.

Ms. Jong, the licensed clinical social worker, is not a "physician" under the Act and is not competent to give an opinion on causal relationship. Her August 15, 2006 report has no bearing on the issue of causal relationship.

On appeal, appellant contends that Dr. Heard used information that was not relevant to the July 18, 2006 incident. Presumably, he means Dr. Heard's reference to his unhappiness with management. Dr. Heard's report suffers from two fundamental defects. She did not provide a complete and accurate history. Dr. Heard merely stated that appellant's vehicle was shot at. She did not address the history as noted in the statement of accepted facts. Dr. Heard did not mention that two kids were playing with a BB gun or that appellant had not been fired upon with bullets. She did not mention the history appellant gave to his supervisor that he did not know what happened until after he left the vehicle and spoke with other people. Based on the smoke

appellant saw, he initially thought the vehicle might be on fire. Subsequently, he thought he was the target of an assault or that some children had thrown a firecracker into his vehicle. There was no mention in Dr. Heard's report that appellant did not notice the shattered windshield, until another carrier brought the windshield to his attention. She also did not discuss appellant's demeanor following the incident, as reported by the supervisor who arrived on the scene.

Dr. Heard also failed to provide a well-reasoned medical opinion on causal relationship. She provided a simple declarative statement that in her opinion, to a reasonable degree of medical certainty, the accepted incident on July 18, 2006 caused appellant to suffer a post-traumatic stress disorder. Dr. Heard did not discuss the nature of that condition and how the diagnosis is established in appellant's case. As noted, she was not provided a full on accurate history of the incident. The medical opinion evidence fails to establish causal relationship. The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.[10] The Board will therefore affirm the Office's November 20, 2007 decision denying modification of the denial of appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the accepted work incident on July 18, 2006 caused an injury. The medical opinion evidence fails to establish causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2009
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

[10] Appellant submitted no medical opinion to support that the July 18, 2006 incident caused a groin injury.