

from OWCP about my original claim and using all of my leave I started having a lot of depression and anxiety.”

Appellant submitted a March 4, 2008 report from the Department of Veterans Affairs that diagnosed acute stress disorder due to his war experiences. Lester Weiss, a clinical social worker, noted that appellant’s current symptoms included depression, anxiety and sleep deprivation, which were attributable to his recent injury, his physical limitations and the Office’s handling of his claim.

In a letter dated March 24, 2008, the Office requested additional factual and medical information from appellant and allowed 30 days for a response. Appellant submitted a recurrence of disability claim dated January 15, 2008. He stated that in May 1995 he sustained a back injury and that on December 13, 2007 he sustained a recurrence of disability due to this condition. Appellant submitted a narrative statement describing the processing of his physical injury claim by the employing establishment and Office. He alleged that he sustained an injury on December 13, 2007 while moving parcels. On January 7, 2008 appellant stopped work due to his back pain and completed a recurrence of disability claim. He asked about continuation of pay on January 10, 2008. On January 14, 2008 appellant sought medical treatment and filed a claim for compensation. He sought medical treatment on January 18 and 22, 2008. On February 5, 2008 appellant determined that he should have filed a traumatic injury claim, which he completed on February 13, 2008. He attempted to return to light-duty work on February 21 through 29, 2008, but contended that the work was outside his abilities. Dr. James P. Burke directed appellant to stop work on March 20, 2008. Appellant alleged that he did not receive compensation benefits for 81 days and that he was treated like a criminal by the employing establishment.

Dr. Burke completed a report addressing appellant’s physical condition. On July 18, 2008 he reported that he performed a left L5-S1 microdiscectomy on appellant.

By decision dated September 10, 2008, the Office denied appellant’s claim finding that he failed to establish a factor of employment as causing or contributing to his emotional conditions.

Appellant, through his attorney, requested an oral hearing, which was held on January 15, 2009. His attorney contended that appellant had developed a consequential injury of depression and anxiety.

By decision dated April 3, 2009, the hearing representative affirmed the September 10, 2008 decision finding that appellant had not established a compensable factor of employment.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence

establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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 specific employment factors identified by the claimant.¹

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 the Federal Employees' Compensation Act.² 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.³

ANALYSIS

Appellant alleged that he developed an emotional condition due to his federal employment. In support of his claim, he submitted a report dated March 4, 2008 from Mr. Weiss, a licensed clinical social worker. It is well established that competent medical opinion evidence must be from a qualified physician.⁴ A registered nurse, licensed practical nurse, physician's assistant and licensed clinical social worker are not physicians as defined under the Act. Their opinions are of no probative value.⁵ There is no other medical evidence in the record diagnosing an emotional condition. Dr. Burke addressed appellant's disability due to his physical condition. He did not address appellant's emotional conditions claim. The Board finds that appellant failed to submit medical evidence sufficient to establish a *prima facie* claim.⁶

CONCLUSION

The Board finds that appellant did not submit any medical evidence diagnosing an emotional condition and therefore failed to meet his burden of proof to establish a *prima facie* claim for an injury under the Act.

¹ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387, 390-91 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁴ *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

Merton J. Sills, 39 ECAB 572, 575(1988).

⁵ *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

⁶ *A.C.*, 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2009
Washington, DC

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

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

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