

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

_____)
S.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
AMERICAN LAKE MEDICAL CENTER,)
Tacoma, WA, Employer)

_____)

**Docket No. 11-1727
Issued: April 5, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 19, 2011 appellant filed a timely appeal from a July 1, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease 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 has established that he sustained an emotional condition in the performance of duty.

On appeal, appellant contends that the record is sufficient to establish causal relationship.

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¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 10, 2011 appellant, then a 41-year-old program specialist, filed a traumatic injury claim Form CA-1 alleging that a June 11, 2008 incident in which he was nearly struck by a runaway truck while in the performance of duty caused a permanent aggravation of preexisting, combat-related post-traumatic stress disorder (PTSD).²

In a May 20, 2011 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including his physician's rationalized opinion as to how the June 11, 2008 incident caused, contributed to or aggravated the claimed emotional condition. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted disciplinary letters and performance appraisals which he asserted showed that the June 11, 2008 incident precipitated a severe decline in his functioning. He also provided June 11, 2008 employing establishment police reports relating to the truck incident. The police officers noted that immediately prior to the crash, appellant was sitting in a gazebo adjacent to a parking lot, reading a newspaper. A truck traveling at a high rate of speed drove through a grassy area into the parking lot, struck three parked vehicles and continued speeding toward the gazebo. Appellant leaped from the gazebo to avoid being struck. The truck came to a stop approximately five feet from the gazebo. The police officers described "severe damage and debris scattered about the roadway."

In a July 17, 2008 report, Dr. Steven Eraker, an attending Board-certified internist and Paul Spataro, a nurse practitioner, noted that the onset of PTSD in 1991 following intense infantry combat in Iraq. Appellant described "recently start[ing] to have nightmares about two to three times per week associated with sweating since he was nearly struck by a truck that was out of control and hit several other cars." In treatment notes from August 1, 2008 to April 22, 2011, Dr. Eraker noted continued PTSD with intrusive memories, psychologic and physiologic reactivity, avoidance of associated stimuli and hypervigilance. He opined in a July 21, 2010 report that appellant's functional decline and worsened PTSD were a "continuation of difficulties precipitated by witnessing a motor vehicle accident in 2008."

In a November 12, 2010 report, Dr. Allan M. Warner, a Board-certified psychiatrist, performed a disability rating examination for the employing establishment, noted treating appellant for combat-related PTSD beginning in 1997. He reviewed the employing establishment's psychiatric treatment records commencing 1997. Dr. Warner related appellant's account of being "nearly run down by an out of control automobile" when arriving at work, with a subsequent increase in "anxiety symptoms including exacerbation of his PTSD hypervigilance and the like." He opined that the motor vehicle incident "clearly increased the severity of his PTSD, anxiety-type symptoms."

In a May 24, 2011 report, Dr. Thomas Lampe, an attending Board-certified psychiatrist, provided a history of PTSD following infantry combat duty in 1991 and 1992. He opined that

² Appellant was rated as 50 percent disabled by Veteran's Administration due to combat-related PTSD. The employing establishment had actual notice of the accident on the date it occurred, as demonstrated by employing establishment police reports.

appellant's "condition became acute following the events of June 11, 2008. [Appellant] witnessed (and came close to injury) a motor vehicle accident that occurred on the grounds of [the employing establishment]. He responded to this emergency in a way that generated a dissociative episode of reexperiencing his actions" in combat. The June 11, 2008 incident "set in motion a decline in [appellant's] condition and functioning."

By decision dated July 1, 2011, OWCP denied appellant's emotional condition claim on the grounds that causal relationship was not established. It accepted that the June 11, 2008 incident occurred in the performance of duty and that the claim was timely filed. However, OWCP found that the medical evidence did not establish that the accepted incident aggravated appellant's PTSD.

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. 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

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.⁴ 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.⁵

ANALYSIS

Appellant alleged that he sustained an aggravation of preexisting PTSD due to an accepted June 11, 2008 incident in which he was nearly struck by a truck. The record supports that the June 11, 2008 incident occurred as alleged in the performance of duty. In support of his

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

⁴ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁵ *Id.*

claim, appellant submitted reports from Dr. Eraker, an attending Board-certified internist. On July 17, 2008 Dr. Eraker noted the onset of nightmares following the June 11, 2008 incident. He submitted treatment notes through April 22, 2011 noting appellant's decreased function after almost being hit by the truck. Dr. Eraker opined that on October 6, 2010 the worsening of appellant's PTSD and decline in functioning were "precipitated by witnessing a motor vehicle accident in 2008."

Dr. Warner, a Board-certified psychiatrist performing an examination for the employing establishment, opined on November 12, 2010 that the June 11, 2008 incident "clearly increased the severity of [appellant's] PTSD" and anxiety. Dr. Lampe, an attending Board-certified psychiatrist, explained in a May 24, 2011 report that the June 11, 2008 truck incident caused a "dissociative episode of [appellant's] reexperiencing his actions" in combat, causing his PTSD to become acute and leading to a "decline in [his] condition and functioning."

The Board finds that, while the opinions of Dr. Eraker, Dr. Warner and Dr. Lampe are not sufficiently rationalized⁶ to meet appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are of sufficient quality to require further development of the case by OWCP.⁷ The case will be remanded to OWCP for preparation of a statement of accepted facts and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether appellant sustained an emotional condition due to the accepted June 11, 2008 incident. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, appellant contends that the record is sufficient to establish causal relationship. As stated above, the case will be remanded to OWCP for additional development on the medical issue of causal relationship.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to OWCP for additional development and issuance of an appropriate decision.

⁶ See *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2011 is set aside and the case remanded to OWCP for further action consistent with this decision.

Issued: April 5, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board