

FACTUAL HISTORY

On March 4, 2011 appellant, then a 38-year-old city carrier, filed a traumatic injury claim, alleging that she was attacked by a dog while delivering mail and was bitten on the arm. She was taken to the emergency room where she was diagnosed with laceration and puncture wound of the right arm. Two lacerations were sutured.

On April 12, 2011 appellant filed an occupational disease claim, alleging that she sustained stress due to the March 4, 2011 dog attack. The employing establishment challenged the occupational disease claim. OWCP determined that it was a duplicate of the traumatic injury claim.

On May 20, 2011 OWCP accepted that appellant sustained an open wound of the right upper arm, without complications. In an undated statement, appellant indicated that her stressful condition started when she was attacked by the dog and that, after the attack, it was returned to the owner at the address where the attack occurred but had subsequently been moved to another location. She submitted treatment notes dated March 23 and 28, 2011 noting that she was depressed after being bit by a dog.² On April 5, 2011 Dr. Eduardo Hernandez, Board-certified in internal medicine and cardiovascular disease, advised that appellant had post-traumatic stress associated hypertension related to a dog attack and should have no exposure to the animal.

In an April 14, 2011 letter of controversion, Pulinthitta George, supervisor of customer service, noted that appellant returned to regular duty on March 7, 2011 and worked her regular schedule through March 20, 2011 when she went on leave. Ms. George stated that the employing establishment contacted animal control and was told the dog was quarantined but was not told the dog had been returned to its owner. She stated that, on March 22, 2011, appellant stated that she was not going to deliver her route but was told she had too and that she hesitantly went out to carry the route and returned after delivering the route, upset that the dog was still in the residence. Appellant then went home and did not return to work until April 6, 2011. Ms. George indicated that on March 22, 2011 the postmaster contacted the owner of the dog who assured him that the dog was secure on two leashes and would be kept inside the home between 10:00 a.m. and 1:00 p.m. The owner stated that the dog would be given away on April 1, 2011. Ms. George stated that replacement carriers did not report hazardous dog conditions and the dog was removed permanently on April 2, 2011. She further indicated that, after being approached by a union steward on March 28, 2011 requesting that appellant avoid that portion of the route until the dog was removed, the steward was told that was not normal practice and there was no guarantee the dog would be removed. The union steward was told to inform appellant that another route was up for bid.

On October 28, 2011 appellant filed a Form CA-7, claim for compensation, noting that she worked very little after September 12, 2011. She submitted an October 4, 2011 report from Keanan D. Beierle, a physician's assistant, who noted that appellant was being seen for post-traumatic stress disorder (PTSD). In reports dated November 1 and 15, 2011, Dr. Mohamed Ahmed, a Board-certified psychiatrist, indicated that appellant's PTSD symptom complex

² The signature on the treatment notes is illegible.

included apprehension, chest pain, a choking or smothering sensation, dry mouth, fear of dying, feeling of impending doom, hyperventilation, insomnia, light-headedness, palpitations, paresthesias, increased perspiration, shortness of breath, tachycardia, generalized tension, nervousness, somatic pains, muscle tension, sleep problems with nightmares and recurrent flashbacks reliving the events. He related that she also had panic attacks and was being treated with medication and identified a dog attack as a stressor. Dr. Ahmed diagnosed PTSD and depressive disorder and advised that she should not work.

By decision dated January 12, 2012, OWCP denied appellant's claim for wage loss beginning September 12, 2011. It noted that the only accepted condition was open wound to the upper arm and PTSD had not been accepted.

On February 10, 2012 appellant requested a review of the written record. She asserted that, after returning from vacation in March 2011, she was reexposed to the attacking dog and that this caused an increase in blood pressure. Appellant indicated that on August 25, 2011 she was pinned to a porch by three dogs for approximately 15 minutes and this caused an increase in anxiety and panic attacks. She then was taken to an emergency room and had since been followed by a psychiatrist and psychologist for PTSD, anxiety, panic attacks and depression.

An undated report from San Jacinto Methodist Hospital with an illegible signature advised that appellant could return to work on September 9, 2011. Physician's assistants from Dr. Ahmed's office provided disability slips dated October 4 to December 1, 2011 and January 10 to April 3, 2012, all advising that she could not work. In a January 17, 2012 evaluation, Michael Jones, Ph.D., a clinical psychologist, reported a history that appellant was bitten by a dog on March 4, 2011 and later encountered the dog in the backyard aggressively barking and there were other incidents when she was pinned on porches by dogs while delivering mail. He stated that this caused frequent panic attacks, that her condition had worsened and that she was being treated with counseling and medication beginning in April 2011. Dr. Jones conducted psychological testing and diagnosed PTSD and panic disorder without agoraphobia. He advised that appellant could not return to work, even in a limited capacity.

On March 28, 2012 Arthur Estrello, customer service supervisor, noted that appellant had been seen eating in restaurants and shopping. He indicated that appellant had been offered office work with no outside duties but had not returned to work.

In a May 23, 2012 decision, an OWCP hearing representative affirmed the January 12, 2012 decision.³

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical

³ The hearing representative adjudicated the claim as a recurrence of disability, noting that an emotional condition had not been accepted.

opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁵ 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.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁸ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁹ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹³

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Id.*

⁷ 28 ECAB 125 (1976).

⁸ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 7.

¹⁰ *J.F.*, 59 ECAB 331 (2008).

¹¹ *M.D.*, 59 ECAB 211 (2007).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

The Board finds that this case is not in posture for decision. In this case, appellant alleged that she sustained an emotional condition as a result of an accepted dog bite injury that occurred on March 4, 2011. She filed an occupational disease claim on April 12, 2011, alleging that she sustained stress due to the dog attack and filed a claim for disability compensation beginning September 12, 2011. By decision dated January 12, 2012, OWCP denied appellant's claim for monetary compensation, noting that an emotional condition had not been accepted. The January 12, 2012 decision was affirmed by an OWCP hearing representative on May 23, 2012. The Board must, thus, initially review whether the incidents and conditions of employment alleged by appellant to have caused her condition are covered employment factors under FECA.

The record indicates that, after appellant filed the stress claim on April 12, 2011, rather than developing that claim, OWCP merely found her occupational disease claim a duplicate and did not send out a development letter or further develop the occupational disease claim, as required by its procedures.¹⁴ Even though OWCP did not properly develop her stress claim, a review of her claim indicates that she has established two compensable factors of employment. As noted above and in OWCP's procedures, when an employee experiences emotional stress or has fear and anxiety regarding his or her ability to carry out these duties, a resulting disability is considered to have arisen out of and in the course of employment, as long as the medical evidence showed that it caused the claimed condition. This is also true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹⁵ It is clear from the record in this case that appellant was performing her usual duties of delivering mail when she was bitten by the dog in March 2011 and when she additionally encountered dogs that she perceived as threats in the summer of 2011. These are therefore compensable factors of employment as described in the *Cutler* case. OWCP should have developed the factual element of her occupational emotional condition claim but did not.

Dr. Hernandez advised that appellant had post-traumatic stress associated hypertension related to a dog attack. Dr. Ahmed diagnosed PTSD and identified a dog attack as a stressor. Lastly, Dr. Jones stated that the March 4, 2011 dog bite and later incidents when appellant encountered dogs while delivering mail caused frequent panic attacks.

As appellant established her reactions to being bit by a dog and further interactions with dogs while delivering mail as compensable factors of employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7-9 (June 2011).

¹⁵ *Lillian Cutler*, *supra* note 7; Federal (FECA) Procedure Manual, *id.* at *Performance of Duty*, Chapter 2.804.17(a) (January 1997).

analyze and develop the medical evidence.¹⁶ After such further development as deemed necessary, OWCP shall issue an appropriate decision on the merits of this claim.

CONCLUSION

The Board finds that, as appellant established compensable employment factors, this case is not in posture for decision regarding whether she established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 23 and January 12, 2012 are set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 11, 2013
Washington, DC

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

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

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

¹⁶ *Tina D. Francis*, 56 ECAB 180 (2004).