

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

D.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 12-1889
Issued: January 23, 2013**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2012 appellant, through his attorney, filed a timely appeal from a September 5, 2012 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 over the merits of this case.

ISSUE

The issue is whether OWCP should expand appellant's claim to include an emotional condition.

FACTUAL HISTORY

On February 26, 1997 appellant submitted an occupational disease claim alleging a right thumb injury. OWCP initially accepted his claim for right thumb tendinitis. Appellant was awarded a schedule award for a 12 percent permanent impairment of the right arm.

¹ 5 U.S.C. § 8101 *et seq.*

On December 21, 2011 OWCP referred appellant to Dr. John Douthit, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion as to whether he had continuing residuals from his accepted injury. In a January 16, 2012 report, Dr. Douthit diagnosed osteoarthritis and traumatic arthritis of the metacarpophalangeal joint of the right thumb, which he opined was causally related to the accepted injury. He also opined that appellant suffered residuals from the injury, including reactive depression. Noting that he had a flat affect, Dr. Douthit opined that appellant had a mood disorder.

In a letter dated January 26, 2012, appellant, through counsel, requested that his claim be expanded to include reactive depression pursuant to Dr. Douthit's January 16, 2012 report.

Appellant was treated for his thumb condition by Dr. Rock Navarakal, a treating physician. On February 8, 2012 Dr. Navarakal referenced an April 2, 1998 report from Dr. Gary Martz, a Board-certified psychiatrist, who diagnosed appellant with a mood disorder that developed as a result of his accepted work injury.

The record contains follow-up letters from appellant's representative dated February 9 and 12 and April 19, 2012 requesting a decision on the request to expand the claim to include reactive depression.

On April 23, 2012 OWCP expanded appellant's claim to include traumatic arthropathy and generalized osteoarthritis of the right thumb. In a separate letter of that date, it informed counsel that it had expanded the claim and placed appellant on the periodic rolls. OWCP explained, however, that in order to expand the claim to include a psychological condition, appellant would have to submit supporting medical evidence establishing a causal relationship between the condition and the accepted work injury.

In a letter dated May 6, 2012, counsel urged OWCP to adjudicate appellant's request to expand the claim to include reactive depression, based upon the report of its second opinion examiner.

In a letter decision dated September 5, 2012, OWCP denied appellant's request to expand his claim to include an emotional condition. Noting that Dr. Douthit was an orthopedic surgeon, the claims examiner stated that it was up to appellant's treating physician to refer him to another doctor to establish that he had an emotional condition causally related to the accepted work injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.² To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee

² *Jaja K. Asaramo, 55 ECAB 200 (2004).*

must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.³

The medical evidence required to establish a causal relationship includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁵

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.⁶ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner and to obtain an evaluation which will resolve the issue involved in the case.⁸

ANALYSIS

The Board finds that the case is not in posture for a decision as to whether appellant's claim should be expanded to include an emotional condition.

OWCP referred appellant for a second opinion to determine whether he had residuals related to his accepted injury. In a report dated January 16, 2012, Dr. Douthit, an OWCP referral physician, diagnosed osteoarthritis and traumatic arthritis of the metacarpophalangeal joint of the right thumb, which he opined was causally related to the accepted injury. He also opined that appellant suffered residuals from the injury, including reactive depression. Noting that he had a flat affect, Dr. Douthit opined that appellant had a mood disorder. Based on Dr. Douthit's report, OWCP expanded his claim to include traumatic arthropathy and generalized osteoarthritis of the right thumb and placed him on the periodic rolls. In its September 5, 2012 decision, however, it denied appellant's request to include reactive depression as an accepted condition, primarily on the grounds that Dr. Douthit was not qualified to make such a diagnosis or render an opinion in this regard.

³ *Jennifer Atkerson*, 55 ECAB 317 (2004).

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

⁵ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *Vanessa Young*, 55 ECAB 575 (2004).

⁷ *Richard E. Simpson*, 55 ECAB 490 (2004).

⁸ *See Melvin James*, 55 ECAB 406 (2004). *See also Mae Z. Hackett*, 34 ECAB 1421 (1983).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, it shares responsibility to see that justice is done.⁹ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.¹⁰ In response to OWCP's request, Dr. Douthit raised the issue of appellant's emotional condition, which he opined arose as a consequence of the accepted injury. Once raised, OWCP had an obligation to further develop the issue by referring appellant to an appropriate specialist. Accordingly, the case will be remanded to OWCP. After such referral and any other development deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether OWCP's appellant's claim should be expanded to include an emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated September 5, 2012 is set aside and remanded for action consistent with this decision.

Issued: January 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ See *supra* note 7.

¹⁰ See *supra* note 8.