United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 12-1640**
	)	**Issued: May 13, 2013**
DEPARTMENT OF VETERANS AFFAIRS, AMERICAN LAKE VETERANS ADMINISTRATION MEDICAL CENTER, Tacoma, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 30, 2012 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) February 28, 2012 merit decision denying his physical injury claim, February 29, 2012 merit decision denying his emotional condition claim and July 17, 2012 nonmerit decision finding that he abandoned his requests for an oral hearing. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that he sustained physical conditions in the performance of duty; (2) whether he sustained an emotional condition in the performance of duty; and (3) whether OWCP's Branch of Hearings and Review properly found that he abandoned his requests for an oral hearing.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that OWCP erred in denying his claim as it ignored the fact that the employing establishment did not dispute his claim and the medical evidence clearly states that his injuries have been exacerbated by his job. He further contends that there is a conflict of interest on the part of OWCP as it has to represent both the employee and employing establishment under FECA.

FACTUAL HISTORY

On October 17, 2011 appellant, then a 52-year-old housekeeping aid, filed an occupational disease claim (Form CA-2) alleging that on October 12, 2011 he first became aware of his condition and realized that it was caused by his federal employment. In an accompanying narrative statement, he alleged repetitive motion syndrome and an exacerbation of his bipolar manic depression, pain in his thoracic spine, right toe, back at L5-S1, pelvic region and thigh, insomnia and positive "PPD," knee arthralgia, right and left Achilles bursitis or tendinitis, plantar fascial fibromatosis, right hip arthritis, bilateral feet osteoarthritis and myalgia were caused by his employment based on an October 7, 2011 letter from Dr. Edward J. Boyko, an employing establishment Board-certified internist, who stated that appellant's job requirements severely exacerbated his disabilities. On October 17, 2011 appellant attempted to give Willie J. Baines, a housekeeping supervisor, the Form CA-2, but he refused to take it, stating that it was an unlawful claim. He further alleged that Mr. Baines' statement was slanderous as he accused him of making a fraudulent claim. It was not Mr. Baines' place to make a determination regarding the validity or legality of his claim. He willfully, deliberately, recklessly and maliciously denied appellant his rights under federal law and to due process. Mr. Baines also denied his request for continuation of pay, which established a pattern by the employing establishment. Appellant noted that on October 17, 2011 Mr. Baines signed his Family and Medical Leave Act (FMLA) form.

On November 9, 2011 the employing establishment, filed a Form CA-2 on behalf of appellant alleging that his repetitive motion syndrome and exacerbation of his conditions were caused by his federal employment.

In an October 7, 2011 medical report, Dr. Boyko a staff physician of the Veterans Administration, advised that appellant suffered from multiple musculoskeletal and psychiatric conditions that severely impaired his ability to work. The conditions were long-standing problems that would worsen overtime. Dr. Boyko stated that the nature, severity and duration of appellant's impairment included severe bilateral ankle pain due to a February 5, 1992 right ankle fracture and a 2000 ruptured left Achilles tendon that required surgical repair. Appellant's ankle pain was chronic and likely would not resolve. He had long-standing severe chronic and permanent foot osteoarthritis that might necessitate hip replacement. Appellant also had long-standing severe and chronic plantar fasciitis that was only partially responsive to treatment. He suffered from lower back pain and moderate right foraminal stenosis at L5-S1. Appellant had a service-connected bipolar/manic disorder. He had difficulty with social interaction and anger management which was exacerbated by his job requirements. Appellant had nephrolithiasis, hypertension, hypothyroidism and hyperlipidemia.

In an October 26, 2011 report, Dr. Patrick W. Clapper, an employing establishment Board-certified psychiatrist, advised that appellant had bipolar and post-traumatic stress

disorders which caused impairment at work. Appellant's symptoms were chronic, due to the long-term nature of his mental illness. His bipolar disorder was service connected. Appellant had extreme difficulty with social interactions and anger management that were exacerbated by his work requirements. He also had symptoms of paranoia, thinking that others were trying to hurt him, which further diminished his ability to function in a work setting. Appellant had been treated with numerous medications, but none resolved his symptoms. Dr. Clapper expected appellant's current problems to remain static or worsen overtime. He set forth activity restrictions which impaired his ability to be supervised, to work cooperatively with others and to work around other employing establishment staff.

Appellant submitted employment records, a leave analysis for the period October 13 to 20, 2011, a job description for custodial worker and housekeeping aid positions and an election of benefits form.

In a November 13, 2011 letter, appellant alleged that he had difficulty filing his claim form through the employing establishment due to lies about the method for filing a claim. He refused to provide the employing establishment with any additional information regarding his claim unless instructed to do so by OWCP.

In a November 15, 2011 memorandum, Mr. Baines stated that on October 17, 2011 he signed a blank paper acknowledging that he received a medical statement from Dr. Clapper requesting that appellant be placed off work for two weeks from October 13 through 31, 2011. He was first made aware of appellant's CA-2 form by Carol R. Johnson, a human resources specialist. Mr. Baines stated that appellant never gave him a CA-2 form on October 17, 2011 and he never refused to fill out the claim. He also did not state that the claim was fraudulent. Mr. Baines never signed a FMLA form on October 17, 2011 and stated that there was no change in appellant's job, only a change in the buildings he had to clean.

In a November 17, 2011 letter, Ms. Johnson noted that appellant's November 13, 2011 letter stated that he was not going to forward anything to the employing establishment related to his claim unless instructed to do so by OWCP.

By letter dated November 28, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional factual and medical evidence, including a rationalized medical opinion from an attending physician, which described his symptoms and specific employment duties and activities. The physician should provide dates of examination and treatment, the results of examination and tests and a diagnosis together with medical reasons on how his work activities caused, contributed to or aggravated his physical and emotional conditions. On November 28, 2011 OWCP also requested that the employing establishment submit factual evidence regarding appellant's claim.

In an October 5, 2009 joint statement, appellant and Neems B. Misaalefua, an employee, contended that on that date Thomas Robinson, an incentive therapy employee, stated that he would either shoot or kill them. In a November 4, 2009 witness statement, appellant related that a Mr. Thompson told him that he had strong ties with gangs and addicts who would do anything for him such as, stab, shoot and damage a vehicle or other property for a $20.00 bag of crack.

Mr. Thompson's sons had ties to gangs and would do anything for him. Appellant reported this incident to his supervisor who allegedly failed to investigate or document the incident.

In a November 25, 2011 letter, appellant contended that Ms. Johnson fraudulently assumed authority on his behalf by completing block number 18 on the November 9, 2011 CA-2 form, which indicated the date he signed the claim form. He revoked all authority she may have acquired by her action. In another November 25, 2011 letter, appellant disputed the information contained in the November 9, 2011 CA-2 form. He contended that it contained misrepresentations, false assertions and lies regarding the relationship between his claimed conditions and employment, the nature of his conditions and his refusal to sign the form.

In a December 20, 2011 letter, appellant contended that he had been reassigned three times due to conflicts with other staff who falsely accused him of theft and misconduct. He was transferred from Seattle, Washington to American Lake because a coworker threatened to kill him. Management subsequently hired the coworker full time. It failed or refused to do anything about the incident and, thus, created a hostile work environment. Appellant experienced stress at work due to coworkers who were two-faced liars and who abused, mistreated and violated veterans. His coworkers also twisted, turned and abused policies and procedures to benefit the agency and deny veterans their rights and benefits. Appellant contended that his supervisor breached his fiduciary duties by not complying with the terms and conditions of the union master labor agreement and the employing establishment's policies and procedures. He filed two claims with the Equal Employment Opportunity Commission (EEOC) claims regarding the above allegations. Appellant continued to have serious conflicts with his supervisor. Management had not done anything to reduce his stress. It created and continued to aggravate appellant. There were frequently staff shortages when employees called in sick. Appellant experienced anxiety and grief when his supervisor added a section of another floor to his workload. He made numerous demands to be taken off his floor but, his supervisor ignored his requests and forced him to continue working on that floor. Appellant contended that his request for reasonable accommodations was ignored by his supervisor. His work duties during an eight-hour shift included grabbing, gripping, holding and releasing brooms and mops. Appellant vacuumed and used other tools to complete all phases of cleaning. These duties required repetitive movements of the hands and wrists to sweep and mop floors, clean sinks, counter-tops, urinals, toilets, stall walls and doors, walls and dust. Changing toilet paper and paper towel rolls required grabbing, gripping and holding paper products, soaps and hand sanitizer and placing them into their respective containers. Appellant had to lift and change bags and replace trash cans. He was required to clean the second and third floors in Building 85 despite his multiple disabilities, which were twice as much the work assigned to other employees. Appellant was given normal breaks at work.

In a May 19, 2011 letter, Paul Duell, an employee, stated that he witnessed several conversations between appellant and Mr. Baines. Appellant made numerous requests to Mr. Baines for accommodation due to his long history of complaints from employees on the second floor in Building 85. He was having a very difficult time dealing with the underhandedness of the employees on this floor. Mr. Duell stated that Mr. Baines did not respond to appellant's requests.

In a December 6, 2011 statement, Mr. Baines related that it could be stressful working on the second floor in Building 85. Staff employees complained about having the restroom cleaned and their offices vacuumed. They also complained about having sufficient toilet paper or paper towels in the restroom. Appellant had a low volume workload as he was required to clean the second floor in Building 6 only at night. Mr. Baines stated that there may have been some time when he was short with appellant when he asked him to cover all of Building 6 and three floors in Building 85. Appellant was able to perform his work duties which required him to wring out a wet mop on his bucket and dust and wet mop the floor at night. This activity involved repetitive use of his hands and wrists about 80 percent of the night. Appellant was moved to Building 6 after he saw Dr. Clapper and was assigned less cleaning work.

In a January 18, 2012 letter, Charles B. Patton, Sr., a housekeeping aid supervisor, stated that he did not know Mr. Thompson. He believed that appellant was referring to Mr. Robinson. Initially, appellant and Mr. Robinson appeared to be friends but, later appeared to have bad feelings toward each other. During the two years that Mr. Patton supervised appellant, he had many disagreements with staff employees. He could not recall any particular details about the disagreements. Appellant requested that Mr. Patton assign him to areas where he would have little or no contact with people. Approximately two years ago, he was transferred to the American Lake Veterans Administration facility and Mr. Patton has had no further direct contact with him since that time. As a supervisor, Mr. Patton took any threats made against his staff seriously and took appropriate action to ensure their safety.

In a January 19, 2012 memorandum, Artis Lewis, director of environmental management service, stated that appellant was not solely responsible for cleaning the second floor of Building 85. He had help from Mr. Duell.

The employing establishment submitted descriptions of the housekeeping aid and custodial worker positions.

In a February 28, 2012 decision, OWCP denied appellant's physical injury claim. It found that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted factors of his employment.

In a February 29, 2012 decision, OWCP accepted the October 5, 2009 incident involving Mr. Robinson as a compensable factor of employment. It found, however, that the medical evidence did not establish that appellant's claimed emotional condition was causally related to the accepted employment factor.

On March 1, 2012 appellant requested an oral hearing before an OWCP hearing representative regarding the February 28 and 29, 2012 decisions.

In a May 9, 2012 letter, OWCP's Branch of Hearings and Review advised appellant that his oral hearing was scheduled for June 22, 2012 at 9:30 a.m. local time at the Federal Building, 300 5th Avenue, 10th Floor, Room 1056, Seattle, Washington, 98104. This notice was mailed to his address of record as listed on the claim form. In another May 9, 2012 letter, OWCP's Branch of Hearings and Review advised appellant that a second oral hearing was scheduled for June 22,

2012 at 10:15 a.m. local time at the same location. This notice was also mailed to his address of record.

In an undated letter received by OWCP on May 24, 2012, appellant stated that he would attend the scheduled hearing.

In decisions dated July 17, 2012 the Branch of Hearings and Review found that appellant failed to appear for the scheduled oral hearings. There was no evidence of record that he contacted the Branch of Hearings and Review prior to or subsequent to the scheduled hearings to explain his failure to appear. The Branch of Hearings and Review found that appellant had abandoned his requests for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish that an injury 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 the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] Neither the fact that appellant's condition became apparent during a

[2] 5 U.S.C. §§ 8101-8193.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *Victor J. Woodhams, supra* note 4 at 351-52.

period of employment nor, his belief that the condition was caused by his employment is sufficient to establish a causal relationship.[6]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant performed repetitive work duties while working as a housekeeping aid. The Board finds, however, that the medical evidence of record is insufficient to establish that his physical conditions were caused or aggravated by the accepted work duties.

Relevant medical evidence of record includes an October 7, 2011 report from Dr. Boyko who found that appellant's physical conditions included long-standing severe chronic and permanent foot osteoarthritis and plantar fasciitis, low back pain, moderate right foraminal stenosis at L5-S1, nephrolithiasis, hypertension, hypothyroidism and hyperlipidemia. He, however, did not provide a medical opinion addressing whether the diagnosed conditions were causally related to the established work duties. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[7] The Board finds, therefore, that Dr. Boyko's October 7, 2011 report is insufficient to establish appellant's physical injury claim.

The Board finds that there is no other rationalized medical evidence of record to establish that appellant sustained a physical condition causally related to the accepted work duties. Appellant did not meet his burden of proof.

On appeal, appellant contended that the medical evidence established that his conditions were exacerbated by his housekeeping aid position. As stated, the medical evidence does not provide a rationalized medical opinion addressing whether his physical conditions were caused by the established employment duties.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.[8] To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[7] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Pamela R. Rice*, 38 ECAB 838 (1987).

disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.[9]

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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[10] 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.[11]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[12] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[13] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[14]

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.[15] 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.[16]

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[9] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[10] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[11] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[12] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[13] *See William H. Fortner*, 49 ECAB 324 (1998).

[14] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[15] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[16] *Id.*

ANALYSIS -- ISSUE 2

Appellant alleged that he sustained an emotional condition causally related to factors of his federal employment. OWCP accepted as a compensable factor, the October 5, 2009 incident in which Mr. Robinson threatened to shoot and kill appellant.

Appellant's allegations regarding processing of his compensation claim,[17] leave,[18] disagreement or dislike of a supervisory or managerial action,[19] denial of reasonable accommodation and filing of a grievance[20] are administrative matters and not compensable absent a showing of error or abuse on the part of the employing establishment. Ms. Johnson merely acknowledged his refusal to forward any information to the employing establishment regarding his claim unless instructed to do so by OWCP. Mr. Duell stated that he observed several conversations between appellant and Mr. Baines, appellant's supervisor, and Mr. Baines did not respond to appellant's requests for reasonable accommodation. However, Mr. Baines stated that, while appellant's job could be stressful, he was given a low volume workload which involved less cleaning work following an examination by Dr. Clapper. He also stated that there was a change regarding the buildings appellant had to clean. Mr. Baines related that appellant was also able to perform his required work duties. The Board finds that the statements from Ms. Johnson and Mr. Duell are insufficient to support error or abuse on the part of the employing establishment in processing appellant's claim and handling his request for reasonable accommodation. Mr. Baines denied appellant's allegations that on October 17, 2011 he gave him a CA-2 form, refused to complete the claim form and signed a FMLA form. He also denied stating that appellant's compensation claim was fraudulent. Mr. Baines first became aware of appellant's CA-2 form when Ms. Johnson, a human resource specialist, informed him about the claim. While appellant filed EEOC claims against the employing establishment regarding the processing of his compensation claim and his supervisor's actions, there was no final EEOC decision finding that the employing establishment committed error or abuse. For the stated reasons, the Board finds that appellant has failed to establish a compensable employment factor with regard to these administrative matters.

Appellant alleged that he was overworked due to a staff shortage. He was assigned to work in a section on another floor in Building 85. Appellant was assigned twice as much work as other employees. The Board has held that overwork is a compensable factor of employment if he submits sufficient evidence to substantiate this allegation.[21] Mr. Lewis stated that appellant was not solely responsible for cleaning the second floor in Building 85 as he had help from Mr. Duell. As noted, Mr. Baines stated that, appellant was given a low volume workload and there was a change regarding the buildings he was assigned to clean. Appellant even stated that he was given normal breaks at work. Based on the statements of Mr. Lewis, Mr. Baines and

[17] *David C. Lindsey, Jr.*, 56 ECAB 263, 270-71 (2005).

[18] *See C.S.*, 58 ECAB 137 (2006); *Lori A. Facey*, 55 ECAB 217 (2004).

[19] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[20] *Michael A. Salvato*, 53 ECAB 666, 668 (2002).

[21] *Bobbie D. Daly*, 53 ECAB 691 (2002).

appellant, the Board finds that appellant's allegation of overwork has not been established as factual.

Appellant generally alleges that he was harassed by his coworkers who were two-faced liars and who abused, mistreated and violated veterans. Actions of a claimant's supervisor or coworker which the claimant characterizes as harassment may constitute a compensable factor of employment. For harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[22] An employee's charges that he or she was harassed or discriminated against, is not determinative of whether or not harassment or discrimination occurred.[23] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[24] Appellant contended that he was reassigned three times due to conflicts with coworkers who falsely accused him of theft and misconduct. He did not submit evidence, such as witness statements, corroborating his allegation of harassment. While Mr. Patton, appellant's supervisor, stated that appellant had many disagreements with coworkers, including Mr. Robinson, he could not recall any details about any of the disagreements. The Board finds that appellant has not established a factual basis for his allegation that he was harassed. Further, the Board notes that his reassignment relates to an administrative matter.[25] Appellant did not submit any evidence establishing error or abuse on the part of the employing establishment in handling this matter. The Board finds that he has failed to establish a compensable factor of employment with regards to his allegation of harassment and the noted administrative matter.

OWCP found that appellant sustained a factor of employment, namely, Mr. Robinson's October 5, 2009 threat to shoot and kill appellant. Appellant's burden of proof, however, is not discharged by the fact that he has established an employment factor. To establish his claim for an emotional condition, he must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted employment factor.[26] The Board finds that, while it is not disputed that appellant may have or have had an emotional condition, the medical evidence does not explain how or why the accepted employment factor caused or contributed to the emotional condition.

Dr. Boyko's October 7, 2011 report found that appellant had service-connected bipolar/manic disorder and difficulties with social interaction and anger management, which were exacerbated by his work requirements. He did not provide a rationalized medical opinion addressing how the accepted compensable employment factor, namely, Mr. Robinson's

[22] *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

[23] *See William P. George*, 43 ECAB 1159 (1992).

[24] *See Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[25] *Lori A. Facey*, *supra* note 18; *see Anna C. Leanza*, 48 ECAB 115 (1996).

[26] *William P. George*, *supra* note 23.

October 5, 2009 threats, caused or aggravated appellant's emotional condition.[27] Although Dr. Boyko generally noted appellant's work environment as an aggravating factor of his emotional condition, he did not specifically reference the accepted employment factor or explain how such factor aggravated appellant's claimed condition. Instead, he generally indicated that appellant's work requirements exacerbated his psychiatric problems, but he did not explain how any particular accepted employment factor caused or aggravated a diagnosed emotional condition. Likewise, in an October 26, 2011 report, Dr. Clapper, found that appellant had a service-connected emotional condition, as well as, post-traumatic stress disorder and paranoia, but failed to reference the accepted October 5, 2009 compensable employment factor and provide medical rationale explaining how the accepted factor exacerbated his psychological conditions and impairment.[28] The Board finds, therefore, that the opinions of Drs. Boyko and Clapper are insufficient to establish a causal relationship between the accepted compensable employment factor and appellant's emotional condition.[29]

The Board finds that appellant has failed to submit any other rationalized medical evidence establishing that his claimed emotional condition is causally related to the accepted compensable employment factor.

Contrary to appellant's contention on appeal that the medical evidence was sufficient to establish that his emotional conditions were exacerbated by his work position, the medical evidence is found to be insufficient to establish a causal relationship between his emotional conditions and the accepted employment factor.

Appellant further contended that there was a conflict of interest on the part of OWCP because it has to represent both the employee and the employing establishment under FECA. The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.[30] While appellant 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.[31] OWCP, in development letters dated November 28, 2011, specifically requested that appellant submit a rationalized medical opinion from an attending physician as to whether the accepted employment factors caused, contributed to or aggravated both his claimed emotional and physical conditions. The Board finds that there is no indication of record of any conflict of interest or impropriety by OWCP in the adjudication of appellant's compensation claim.

[27] *George H. Clark*, 56 ECAB 162 (2004); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *William P. George*, *supra* note 23 at 1167 (1992) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[28] *Id.*

[29] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, *supra* note 4.

[30] *Vanessa Young*, 55 ECAB 575 (2004).

[31] *Richard E. Simpson*, 55 ECAB 490 (2004).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[32] Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[33]

A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days.[34]

Section 10.622(f) of OWCP's regulations provide that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.[35] Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record. Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant has abandoned his or her request for a hearing.[36]

ANALYSIS -- ISSUE 3

Appellant requested oral hearings regarding OWCP's February 28 and 29, 2012 decisions and on May 9, 2012 OWCP's Branch of Hearings and Review advised him that his oral hearings were scheduled for June 22, 2012 at 9:30 a.m. and 10:15 a.m. local time, respectively, at the Federal Building, 300 5th Avenue, 10th Floor, Room 1056, Seattle, Washington 98104. These notices were mailed to his address of record as listed on the claim forms. The record does not reflect that appellant requested postponement of the hearings prior to the scheduled dates of the hearings. Appellant did not appear for either oral hearing. He also did not provide any notification for the failure to appear within 10 days after the scheduled date of the hearings. In

[32] 5 U.S.C. § 8124(b)(1).

[33] 20 C.F.R. §§ 10.616, 10.617.

[34] *Id.* at § 10.616(a).

[35] *Id.* at § 10.622(f).

[36] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

fact, appellant informed OWCP on May 24, 2012 that he would attend the scheduled hearing. His failure to provide any notification, together with his failure to appear at the scheduled hearings, constituted abandonment of his requests for a hearing and the Board finds that OWCP properly so determined.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained physical and emotional conditions in the performance of duty. The Board further finds that OWCP properly determined that he abandoned his requests for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the July 17 and February 28 and 29, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 13, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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