

FACTUAL HISTORY

On March 25, 2010 appellant, then a 42-year-old letter carrier, filed a traumatic injury (Form CA-1) claiming that he sustained an emotional condition and unspecified physical injuries when he leaned far back in his postal vehicle.² In a March 12, 2010 note, a provider whose name is illegible noted that appellant had been seen that day for a diagnosis of adjustment disorder with anxiety.

In an April 14, 2010 letter, OWCP advised appellant of the type of additional evidence needed to establish his claim, including a detailed statement from his attending physician explaining how and why the identified work factors would cause the claimed injuries. It noted that some of the evidence he submitted was not legible. Appellant was afforded 30 days in which to submit such evidence. In response, he submitted a March 29, 2010 note from Dr. Reinaldo E. Kianes, an attending psychiatrist, noting that appellant had an appointment with him that day.

By decision dated May 19, 2010, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that he did not explain how he was injured.

In a June 1, 2010 letter, appellant requested an oral hearing, later changed to a review of the written record. He submitted a legible copy of the March 25, 2010 claim form and a November 17, 2010 statement, explaining that on March 12, 2010 while delivering mail a car stopped in front of his postal vehicle and began exchanging gunfire with a car adjacent to appellant's vehicle. A bullet shattered appellant's driver's side window on the right side of the vehicle. Glass from the shattered window struck his face and body. Appellant threw himself backward forcefully in his seat, put his vehicle in reverse and almost crashed into a fence. He asserted that he injured his head, neck, back, left shoulder and legs. Appellant also submitted police reports confirming the March 12, 2010 shooting incident.

Appellant submitted a March 12, 2010 emergency room report, noting his presence at a shooting while at work that day. His supervisor accompanied him to the hospital. In an Emergency Room form, a Dr. Medina noted that the right side window of appellant's postal vehicle was shot out and that shards of glass sprayed his face and body. He diagnosed an emotional reaction and prescribed medication.

Dr. Luis E. Faura Clavell, an attending psychiatrist, provided March 19 and May 31, 2010 reports, diagnosing a left shoulder injury, acute cervicodorsal and lumbosacral muscle sprains and an aggravation and exacerbation of preexisting cervical and lumbosacral radiculopathy. He held appellant off work through June 19, 2010 and prescribed medication.

In a May 27, 2010 report, Dr. Kianes, a psychiatrist, held appellant off work from May 31 to June 17, 2010 due to an emotional condition. On October 25, 2010 he diagnosed post-traumatic stress disorder and generalized anxiety disorder and listed several prescribed medications. Dr. Kianes noted that, prior to the March 12, 2010 incident, he had treated appellant since 1997 for post-traumatic stress disorder and generalized anxiety disorder. In a

² The scanned claim form is largely illegible.

November 1, 2010 note, he stated that appellant had been disabled for work since September 27, 2010 due to an emotional condition. Appellant was “involved in a traumatic incident while at work (March 12, 2010), which worsened his emotional condition.” Dr. Kianes recommended voluntary psychiatric hospitalization.

In a March 31, 2010 note, Dr. Felipe Fontanez Sullivan, an attending orthopedic surgeon, held appellant off work from March 31 to May 31, 2010. Appellant returned to work intermittently from mid-May through September 27, 2010, again stopped work and did not return.³

By decision dated December 29, 2010, an OWCP hearing representative vacated the May 19, 2010 decision and remanded the case for further development of the factual and medical evidence. After a review of the evidence, by decision dated May 25, 2011, OWCP accepted that the March 12, 2010 shooting incident occurred in the performance of duty at the time, place and in the manner alleged. However, it denied the claim on the grounds that causal relationship was not established. OWCP found that the medical evidence did not contain sufficient explanation of how the accepted employment factor would cause the claimed emotional condition and physical injuries.

In a June 23, 2011 letter, counsel requested a telephonic hearing. By decision dated January 4, 2012, an OWCP hearing representative found that the case was not in posture for a hearing as OWCP had not obtained a translation of the medical evidence prior to adjudicating the claim. On remand, OWCP obtained a translation of the medical evidence. Appellant submitted March 31, April 29 and June 24, 2010 appointment slips.

By decision dated May 1, 2012, OWCP denied the claim on the grounds that causal relationship was not established. It found that the medical evidence did not explain how and why the March 12, 2010 shooting would cause the claimed emotional condition and physical injuries.

In a May 8, 2012 letter, counsel requested a telephonic hearing, which was held on August 6, 2012.⁴ At the hearing, he reiterated appellant’s account of the March 12, 2010 shooting. Following the hearing, counsel submitted an August 20, 2012 report from Dr. Kianes, noting that appellant had been under psychiatric treatment from 1997 to September 17, 2008. Dr. Kianes noted that on March 29, 2010 examination appellant described a March 12, 2010 shooting incident, when occupants of two vehicles adjacent to his postal vehicle exchanged gunfire, shattering his right door window. Appellant complained of “sleep disturbances, nightmares, anxiousness, body and neck pain.” With treatment and medication, he was able to return to work from May 27 to September 27, 2010, when he stopped work due to increased symptoms. Appellant had a psychiatric hospitalization in September 2011 and was granted

³ On January 11, 2011 appellant claimed a recurrence of total disability commencing September 27, 2010. As the claim was not accepted, OWCP did not conduct separate development on the recurrence claim.

⁴ Appellant and a human resources specialist with the employer submitted statements explaining that they tried to call into the telephonic hearing but could not establish a connection. The employer requested that the hearing be rescheduled.

Social Security disability benefits in 2011. On examination, Dr. Kianes noted anxious mood, pressured speech, restless leg movements and irritability. He diagnosed post-traumatic stress disorder with depressive features, aggravated by the March 12, 2010 incident. Dr. Kianes opined that appellant was totally and permanently disabled from gainful employment.⁵

By decision dated and finalized September 26, 2012, an OWCP hearing representative denied appellant's claim on the grounds that causal relationship was not established. The hearing representative found that Dr. Kianes did not explain how and why the shooting incident would cause or aggravate appellant's post-traumatic stress disorder.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her 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.⁶ 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.⁷

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

⁵ Appellant also submitted photographs of his postal vehicle showing a shattered driver's side window and smudges across the back of his uniform shirt. (Physical evidence in envelope attached to docket file, not imaged into case record).

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained neck, left shoulder, back and leg injuries in the performance of duty on March 12, 2010 when the occupants of two vehicles adjacent to his delivery vehicle exchanged gunfire, shattering his driver's side window. In a May 25, 2011 decision, OWCP accepted the March 12, 2010 incident as factual. However, it denied the claim on the grounds that causal relationship was not established. Pursuant to a June 23, 2011 and May 8, 2010 hearing requests, OWCP affirmed its denial by decisions dated May 1 and September 26, 2012.

Appellant submitted March 19 and May 31, 2010 reports from Dr. Clavell, an attending physiatrist, diagnosing a left shoulder injury, paraspinal sprains and an exacerbation of preexisting cervical and lumbosacral radiculopathy. Dr. Sullivan, an attending orthopedic surgeon, held appellant off work from March 31 to May 31, 2010. However, neither physician attributed the diagnosed injuries or a period of disability to the accepted March 12, 2010 shooting incident. Therefore, their opinions are insufficient to meet appellant's burden of proof.¹⁰

The Board notes that OWCP advised appellant in an April 14, 2010 letter of the need to submit a report from his attending physician setting forth the specific cause of the claimed injuries and medical reasoning explaining how that incident would cause those injuries. However, appellant did not submit such evidence. He failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Where disability results from an employee's 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.¹¹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹² This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.¹³

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.¹⁴ If a claimant implicates a factor of employment, OWCP should

¹⁰ *Id.*

¹¹ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹³ *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384 (1992).

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.¹⁵

ANALYSIS -- ISSUE 2

Appellant claimed that he sustained post-traumatic stress disorder and generalized anxiety disorder due to the March 12, 2010 shooting incident. In a May 25, 2011 decision, OWCP accepted the March 12, 2010 incident as factual. Appellant has established a compensable factor of employment in this regard.¹⁶ However, OWCP denied the claim on May 25, 2011 and May 1 and September 26, 2012 on the grounds that causal relationship was not established. As appellant established a compensable factor of employment, the Board will review the medical evidence to determine if he has met his burden of proof in establishing causal relationship.

In support of his emotional condition claim, appellant submitted a March 12, 2010 emergency room report from a Dr. Medina, noting the shooting incident earlier that day. Dr. Medina diagnosed an emotional reaction and prescribed medication. However, he did not provide a definite diagnosis or explain how and why the shooting incident would cause an emotional condition. Dr. Medina's opinion is therefore insufficient to establish causal relationship.¹⁷ Appellant also provided reports dated from March 29, 2010 to August 20, 2012 from Dr. Kianes, an attending psychiatrist, who treated appellant previously for post-traumatic stress disorder with generalized anxiety disorder from 1997 through September 2008. Dr. Kianes opined that the March 12, 2010 shooting incident worsened and aggravated preexisting post-traumatic stress disorder and generalized anxiety disorder, permanently disabling appellant for work from September 27, 2010 onward. However, he did not provide a clear history of the preexisting conditions or set forth his reasons explaining why the March 12, 2010 incident would worsen or aggravate those conditions. In the absence of such rationale, Dr. Kianes' opinion is insufficient to meet appellant's burden of proof in establishing causal relationship in this case.¹⁸

On appeal, appellant asserts that OWCP's September 26, 2012 decision was "contrary to fact and law." As stated above, the medical evidence does not contain a sufficient explanation of causal relationship to meet his burden of proof for either the physical or psychiatric claims.

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.

¹⁵ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁶ *L.H.*, Docket No. 10-1717 (issued May 24, 2011).

¹⁷ *Deborah L. Beatty*, *supra* note 9.

¹⁸ *Id.*

CONCLUSION

The Board finds that appellant has not established that he sustained physical injuries or an emotional condition in the performance of duty as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2012 is affirmed.

Issued: February 3, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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