

a result of an altercation with her then supervisor.² On October 25, 1999 she resumed work at a different facility so as to avoid contact with her previous supervisor. Five months later, appellant stopped work following an incident involving Ed Loffredo, an attendance control supervisor.

On March 24, 2000 appellant asked Mr. Loffredo to sign a note she had written to remind herself which forms she needed to submit for her workers' compensation claim. He refused to sign the note. Appellant alleged that Mr. Loffredo yelled at her and waved his arms in a threatening manner. Mr. Loffredo also allegedly told her that he did not care whether her paycheck was correct. Appellant thought Mr. Loffredo was going to physically hurt her. Mr. Loffredo indicated that he kept his hands in his pockets and used a soothing voice as he explained to appellant why he would not sign her note. OWCP accepted that Mr. Loffredo refused to sign appellant's personal note. However, appellant failed to establish that he waved his arms and yelled at her.

A few hours after the March 24, 2000 incident, appellant was treated in the emergency room for acute anxiety reaction. She did not report for work on March 25, 2000, and has not since returned. Appellant filed various claims for wage-loss compensation beginning March 25, 2000.

OWCP has adjudicated the March 24, 2000 incident as both a new traumatic injury and an occupational disease claim (xx-xxx9296).³ The claim was also adjudicated as a recurrence of appellant's July 12, 1999 employment injury, and most recently, as a consequential injury of her employment-related PTSD.

When the case was last on appeal, the Board affirmed OWCP's May 16, 2011 decision denying compensation.⁴ At the time, counsel argued that the March 24, 2000 incident with Mr. Loffredo reawakened or triggered appellant's memory of the July 12, 1999 altercation with her prior supervisor, and thus, aggravated her PTSD. The Board previously recognized PTSD as a compensable consequential injury under circumstances where a certain triggering event had been medically demonstrated to have caused a reawakening or exacerbation of PTSD symptoms,⁵ but in appellant's case, she failed to establish a causal relationship between her original injury and the claimed consequential injury. At least two physicians described the March 24, 2000 incident as a trigger of the July 12, 1999 employment incident. However, the

² Appellant's supervisor, Kristine L. Prusak, yelled at her, used profanity and was verbally abusive and threatening.

³ The incident with Mr. Loffredo was one of 11 workplace events that were factually established, but not considered to be directly related to appellant's duties. The other events included appellant having felt pressure to return to work on October 25, 1999, stress from completing and filing required OWCP forms, supervisors having lost or failed to submit her timecards, having been shorted on four paychecks between October 1999 and January 2000, the employing establishment failing to process her continuation of pay and claims for compensation, inadequate training for new assignments and management changing appellant's work schedule.

⁴ Docket No. 11-1670 (issued August 16, 2012).

⁵ *Charlet Garrett Smith*, 47 ECAB 562 (1996); *K.S.*, Docket No. 13-221 (issued April 18, 2013).

Board did not find their respective opinions particularly persuasive.⁶ The Board's August 16, 2012 decision is incorporated herein by reference.

On January 14, 2013 appellant's counsel requested reconsideration and submitted additional medical evidence. This included the November 21, 2012 deposition of Dr. Randolph W. Pock, a Board-certified psychiatrist and OWCP-referral physician, who previously examined appellant in April 2010.⁷ In his latest deposition, Dr. Pock indicated, *inter alia*, that appellant's interaction with Mr. Loffredo triggered her March 24, 2000 panic attack, which was a symptom of PTSD. He explained that the incident with Mr. Loffredo evoked memories of appellant's initial injury, and thus, she suffered a consequential injury.

Counsel also submitted the December 7, 2012 deposition of Dr. Carole S. Kornreich, a psychiatrist, who first treated appellant in January 2006. Dr. Kornreich indicated that the incident with Mr. Loffredo was one of several workplace events that reminded appellant of her prior injury. She explained that when appellant returned to work her original injury had not been optimally resolved, and then it was constantly aggravated to the point where she just decompensated profoundly.

OWCP also received additional treatment notes for appellant's therapist, Virginia H. Poor, a licensed clinical social worker.

By decision dated April 23, 2013, OWCP denied appellant's request for reconsideration. Merit review was unwarranted because the evidence submitted was found to be cumulative.

LEGAL PRECEDENT

OWCP has the discretion to reopen a case for review on the merits.⁸ An application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹

⁶ The Board noted various inconsistencies and mischaracterizations. Also, neither physician adequately explained how an ostensibly nonthreatening interaction with a supervisor on March 24, 2000 resembled or symbolized the July 12, 1999 traumatic event involving Ms. Prusak. The Board found that, absent such an explanation, the medical evidence was insufficient to establish that the otherwise benign March 24, 2000 incident with Mr. Loffredo triggered the July 12, 1999 incident, thus aggravating appellant's PTSD.

⁷ In an April 23, 2010 report, Dr. Pock diagnosed PTSD and found appellant totally disabled. However, he did not find a March 24, 2000 consequential injury. Appellant's counsel subsequently deposed Dr. Pock, at which time he concluded that several of the employment incidents OWCP found noncompensable had, in fact, contributed to appellant's March 24, 2000 panic attack and subsequent disability. In his July 21, 2010 deposition, Dr. Pock did not specifically comment on whether appellant sustained a consequential injury on March 24, 2000.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

When an application for reconsideration meets at least one of the above-noted requirements, OWCP will grant reconsideration and reopen the case for review on the merits.¹⁰

ANALYSIS

OWCP determined that merit review was unwarranted because the evidence submitted on reconsideration was cumulative. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim,¹¹ but contrary to OWCP's finding, Dr. Pock's November 21, 2012 deposition is not cumulative. While the record already included a previous report and deposition from Dr. Pock, his latest deposition elaborated on earlier findings and specifically addressed whether the March 24, 2000 incident with Mr. Loffredo was a triggering event. Also, Dr. Pock answered a series of questions posed by counsel in response to specific concerns raised by the Board in its August 16, 2012 decision.¹² As such, Dr. Pock's November 21, 2012 deposition included information previously not part of the record. Similarly, Dr. Kornreich's December 7, 2012 deposition included new information regarding causal relationship.¹³ Accordingly, the Board finds that the recent depositions of Dr. Pock and Dr. Kornreich constitute relevant and pertinent new evidence not previously considered by OWCP. Therefore, appellant is entitled to merit review pursuant to 20 C.F.R. § 10.608(a). OWCP's April 23, 2013 decision shall be set aside, and the case remanded for merit review and a determination of whether modification of the May 16, 2011 decision is warranted.

CONCLUSION

The Board finds that OWCP improperly denied merit review.

¹⁰ 20 C.F.R. §§ 10.608(a) and 10.609.

¹¹ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹² *See supra* note 6.

¹³ Dr. Kornreich's previous handwritten progress notes did not include a definitive statement on causal relationship and/or triggering events.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: May 6, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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