

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

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**B.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 14-576  
Issued: May 22, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 14, 2014 appellant filed a timely appeal from an August 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 appellant was disabled after August 17, 2007 due to her accepted emotional condition.

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<sup>1</sup> OWCP stated in its August 19, 2013 decision that it did not review the merits of appellant's claim as the medical evidence submitted was cumulative. However, as it weighed the medical evidence submitted, the Board finds that it conducted a merit review of the case.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated March 19, 2007, the Board set aside OWCP decisions denying appellant's emotional condition claim.<sup>3</sup> The Board determined that she had established as a compensable work factor that she experienced stress responding to a telephone call during the course of employment. It remanded the case for OWCP to evaluate the medical evidence. By decision dated November 25, 2011, the Board set aside a January 7, 2011 nonmerit decision denying appellant's request for reconsideration under 5 U.S.C. § 8128.<sup>4</sup> The Board noted that, based on the opinion of Dr. Brian Teliho, a Board-certified psychiatrist, who provided a second opinion examination, OWCP accepted that she sustained a temporary aggravation of major depressive disorder and panic disorder that resolved by August 17, 2007.<sup>5</sup> On reconsideration appellant argued that Dr. R. Michael Prudent, a Board-certified psychiatrist and OWCP referral physician, found that she had continued disability due to her accepted employment injury.<sup>6</sup> The Board determined that her argument was relevant as it directly addressed the pertinent issue of whether she had further disability after August 23, 2007. The Board remanded the case for OWCP to review the merits of appellant's claim. The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference.

By decision dated December 29, 2011, OWCP denied modification of its January 22, 2010 decision. It found that the August 17, 2007 second opinion examination by Dr. Teliho constituted the weight of the evidence and established that the accepted condition of a temporary aggravation of major depression and aggravation of panic disorder had ceased. OWCP noted that Dr. Prudent found that appellant continued to have major depression and panic attacks but determined that she had not experienced a permanent aggravation of her condition.

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<sup>3</sup> Docket No. 07-36 (issued March 19, 2007). On September 6, 2005 appellant, then a 51-year-old monitor/bulk mail technician, filed a traumatic injury claim alleging that she sustained an emotional condition on May 18, 2005. She stopped work on June 6, 2005.

<sup>4</sup> Docket No. 11-1090 (issued November 25, 2011).

<sup>5</sup> In a report dated August 17, 2007, Dr. Teliho diagnosed moderate major depressive disorder and panic disorder aggravated by the events in May 2005 set forth in the statement of accepted facts. He opined that the aggravation of her preexisting depression and anxiety had resolved.

<sup>6</sup> In a report dated November 2, 2009, Dr. Prudent discussed the May 18, 2005 work incident where appellant worked as a monitor and received a telephone call from an attorney requesting an escort to the parking lot. He diagnosed chronic major depressive disorder and panic disorder. Dr. Prudent indicated that appellant had experienced anxiety, panic attacks, insomnia, depression and tearfulness following the May 2005 incident. He stated, "however, it is unclear that any particularly traumatic event occurred on that evening, but that her preexisting anxiety disorder was triggered by her fears of being alone at the security desk and feeling vulnerable.... Again, there are not many objective findings related to that incident other than to say that [the] incident apparently has triggered preexisting anxiety and those anxieties have continued to be problematic for the last four years."

On June 4, 2012 appellant requested reconsideration. She submitted an April 12, 2012 report from Dr. Steven Marrinson, a licensed clinical psychologist, who related:

“[Appellant] continues to experience symptoms of hypervigilance, panic, nightmares and recurrent memories associated with work stress on May 18, 2005 which triggered extreme panic. These symptoms continue to aggravate and sustain her current major depressive disorder. In my professional opinion these symptoms are directly related to the extreme panic which was triggered by work stress on May 18, 2005, and are unrelated to any previous, nonwork-related trauma.”

Dr. Marrinson opined that appellant was disabled from employment. He further asserted that his opinion was consistent with that of Dr. Prudent, who found that appellant had continued to experience panic and hypervigilance due to the May 18, 2005 incident.

In a decision dated July 30, 2012, OWCP denied modification of its December 29, 2011 decision.

On July 26, 2013 appellant, through her representative, requested reconsideration based on the submission of supporting medical evidence. She resubmitted the April 12, 2012 report from Dr. Marrinson.

In a report dated June 7, 2013, Dr. Todd M. Antin, a Board-certified psychiatrist, discussed appellant’s history of experiencing a panic attack on May 18, 2005 after receiving a telephone call while monitoring closed circuit television.<sup>7</sup> He diagnosed moderate, recurrent major depressive disorder and anxiety disorder. Dr. Antin noted that she had a history of depression beginning in 1982. Appellant experienced a recurrence of depression in 1992 after harassment at work and an exacerbation at work on May 18, 2005. Dr. Antin opined that she continued to experience symptoms of depression and anxiety. He stated that “concluding that [appellant’s] current diagnoses are directly and solely related to the incident of May 18, 2005 is extraordinarily difficult. [Appellant] remains aggravated and obsessed with that incident from eight years ago and cannot let go of it. This constant reliving of that incident continues to bother and plague her.” Dr. Antin found that appellant was disabled by her psychiatric conditions and recommended continued treatment. He asserted, “It is difficult to state with any certainty that her current diagnoses are solely related to her May 18, 2005 incident as there have been many stressors and setbacks in [her] life since that time. It is more likely that the reasons for the persistence of her illnesses are multivariable.”

By decision dated August 19, 2013, OWCP denied modification of its prior merit decision.<sup>8</sup>

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<sup>7</sup> On July 5, 2013 Dr. Seeme V. Ahmad, a Board-certified psychiatrist, diagnosed recurrent major depressive disorder and panic disorder. He stated, “She continues to suffer from recurrent memories of the incident which she alleges occurred at her work in May of 2005.” Dr. Ahmad found that the 2005 incident might be aggravating her preexisting depression and anxiety.

<sup>8</sup> As previously noted OWCP indicated that it was issuing a nonmerit decision but weighed the medical evidence submitted by appellant. Consequently, it conducted a merit review of the case.

On appeal appellant argues that OWCP misinterpreted Dr. Prudent's report. She further asserts that Dr. Antin did not have to find that her condition arose solely due to her May 18, 2005 injury for it to be compensable. Appellant contends that the record contains a conflict in medical opinion. She alleges that OWCP asked a leading question of Dr. Teliho when it asked whether her condition was due to a 2003 attack by her supervisor rather than the May 18, 2005 incident where she received a telephone call. Appellant maintains that OWCP failed to review witness statement that she was unsafe at her workstation.

### **LEGAL PRECEDENT**

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>10</sup> must be one of reasonable medical certainty<sup>11</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>13</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>14</sup>

### **ANALYSIS**

On prior appeal, the Board determined that appellant had established a compensable work factor when she responded to a telephone call on May 18, 2005 from an attorney requesting an escort to the parking lot. After developing the medical evidence, OWCP accepted that appellant sustained a temporary aggravation of major depressive disorder and panic disorder that resolved no later than August 17, 2007. The issue is whether she has established that she had continuing employment-related disability after August 17, 2007.

The Board finds that this case is not in posture for decision due to a conflict in medical opinion. In a report dated August 16, 2007, Dr. Teliho, an OWCP referral physician, found that the May 2005 compensable work factor aggravated appellant's major depressive disorder and

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<sup>9</sup> *John J. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>13</sup> 5 U.S.C. § 8123(a).

<sup>14</sup> 20 C.F.R. § 10.321.

panic disorder. He asserted that the aggravation had resolved by August 17, 2007. In a report dated April 12, 2012, Dr. Marrinson, an attending clinical psychologist, diagnosed major depressive disorder with symptoms of panic, nightmares and hypervigilance. He attributed the diagnosed condition and resulting symptoms to the May 18, 2005 compensable work incident. Dr. Marrinson opined that appellant was disabled from employment.

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>15</sup> The Board finds that there is an unresolved conflict of opinion between appellant's attending clinical psychologist, Dr. Marrinson and Dr. Teliho, an OWCP referral physician, regarding whether she had any continuing disability due to her accepted employment injury after August 17, 2007. The case will therefore be remanded for OWCP to refer appellant to an impartial medical examination for resolution of the conflict. Following any necessary further development, OWCP shall issue a *de novo* decision.

On appeal appellant contends that OWCP asked a leading question of Dr. Teliho when it requested that he address whether her disability was due to a 2003 work incident or the 2005 compensable employment factor. The Board has defined a leading question as one which suggests or implies an answer to the question posed.<sup>16</sup> The question posed to Dr. Teliho, did not suggest an answer and thus his report does not need to be excluded from the record.<sup>17</sup>

Appellant argues that OWCP failed to consider that the opinion of Dr. Prudent supported her claim. In view of the Board's finding of a conflict in medical opinion, it is not necessary to address this contention.

Appellant also contends that Dr. Antin's opinion supports her claim as it is not necessary that he find that her condition was due solely due to employment for it to be compensable. OWCP, in its August 19, 2013 decision, found that Dr. Antin's opinion did not support that her condition persisted as he found the causes "multivariable." While a condition is compensable if it is due in whole or in part to employment, Dr. Antin did not specifically opine that she had continued disability due to her work injury and thus his opinion is insufficient to meet her burden of proof or to create a conflict with Dr. Teliho.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>15</sup> 5 U.S.C. § 8123(a).

<sup>16</sup> See *Carl D. Johnson*, 46 ECAB 804 (1995); *S.H.*, Docket No. 12-1666 (issued March 18, 2013).

<sup>17</sup> See *J.T.*, Docket No. 13-452 (issued May 29, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 22, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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