

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, MAIN POST OFFICE,)
Fayetteville, GA, Employer)

**Docket No. 14-453
Issued: November 4, 2014**

Appearances:

Martin Kaplan, Esq., for the appellant

Jim C. Gordon, Jr., Esq., for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 23, 2013 appellant, through her attorney, filed a timely appeal from a November 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).¹

¹ On July 29, 2014 OWCP failed a motion to dismiss the appeal and cancel an oral argument. In an order dated August 29, 2014, the Board granted that portion of the Director's motion to cancel oral argument. *Order Granting Cancellation of Oral Argument*, Docket No. 14-453 (issued August 29, 2014).

Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant sustained an emotional condition as a consequence of her accepted December 10, 2001 employment-related injuries.

FACTUAL HISTORY

This case has previously been before the Board. In a December 13, 2010 decision,⁴ the Board affirmed OWCP's December 15, 2009 decision denying appellant's November 16, 2009 request for reconsideration because it was not timely filed and did not establish clear evidence of error. The Board found that the newly submitted medical reports of Dr. Brian Teliho, a Board-certified psychiatrist and OWCP referral physician and Dr. Harold H. Alexander, a Board-certified orthopedic surgeon and an OWCP referral physician, did not raise a substantial question as to the correctness of OWCP's determination that appellant's total disability during the claimed period was not causally related to her accepted December 10, 2001 employment injuries. In a May 20, 2014 decision,⁵ the Board affirmed OWCP's December 6, 2012 decision finding that appellant had not established total disability from August 23, 2006 to January 24, 2012 due to her December 10, 2001 work injuries. The Board also affirmed its March 7, 2013 decision finding that appellant had not established a recurrence of disability on November 18, 2004 causally related to the same accepted injuries. The facts and circumstances as set forth in the prior decisions are hereby incorporated by reference. The relevant facts are set forth.

OWCP accepted that on December 10, 2001 appellant, then a 43-year-old rural carrier associate, sustained employment-related right wrist sprain and strain and temporary aggravation of a right carpal tunnel fracture. Following these injuries, appellant returned to work in a

² 5 U.S.C. § 8101 *et seq.*

³ In its July 29, 2014 Motion to Dismiss and Cancel Oral Argument, OWCP asserted that the November 21, 2013 Branch of Hearings and Review's decision (affirming OWCP's December 18, 2012 decision) had been issued erroneously while the same matter was pending before the Board, citing 20 C.F.R. § 501.2(c)(3). It argued that the issue in the November 21, 2013 OWCP decision was the same issue appealed to the Board on April 17, 2013 in Docket No. 13-1172 (issued May 20, 2014); *i.e.*, whether appellant had established that her preexisting emotional condition was related to her accepted employment-related injuries. The Board disagrees and finds that it has jurisdiction over the November 21, 2013 decision as it is a direct appeal from OWCP's only decision denying appellant's request for expansion of her claim to include an emotional condition. Although the emotional condition issue was addressed tangentially in OWCP's December 6, 2012 and March 7, 2013 decisions, the Board specifically noted in its May 20, 2014 affirmance of those decisions: "In a December 18, 2012 decision, OWCP found that the medical evidence was insufficient to establish that appellant's emotional condition was caused or contributed to by her December 10, 2001 work injuries. The Board notes that this consequential injury claim will be addressed separately under Docket No. 14-453." Accordingly, the Motion to Dismiss is denied. *See B.G.*, Docket No. 14-439 (issued August 7, 2014); *B.G.*; Docket No. 14-6 (issued March 21, 2014); *Leon Hayes*, Docket No. 94-2292 (issued January 15, 1997). *Cf.*, *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ Docket No. 10-896 (issued December 13, 2010).

⁵ Docket No. 13-1172 (issued May 20, 2014).

modified clerk position on July 8, 2004. On September 14, 2004 she stopped work. On September 3, 2008 OWCP granted appellant a schedule award for 19 percent impairment of the right arm.

By letter dated February 22, 2012, counsel requested that OWCP expand appellant's claim to include an exacerbation of her preexisting psychiatric condition by the accepted employment injuries.

In a March 5, 2012 one-page report, Dr. Olufemi A. Taiwo, an attending Board-certified psychiatrist, advised that appellant had a severe depressive episode of bipolar disorder with psychosis and a generalized anxiety disorder on Axis I. Appellant had a long history of psychiatric illness, but her current chronic and severe emotional problems were triggered by her December 2001 work-related physical injuries and affected her family, occupational and social functioning. She required intensive psychiatric, psychological, family and social services to function appropriately. Dr. Taiwo concluded that appellant could not perform any work-related activity as this would cause her conditions to decompensate. He concluded that she was emotionally fragile, had significant cognitive difficulties and lacked appropriate job-related coping skills to perform any work-related activity.

In a December 18, 2012 decision, OWCP found that the medical evidence was insufficient to establish that appellant's emotional condition was caused or contributed to by her December 10, 2001 work injuries.

By letter dated December 31, 2012, appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative.

In encounter notes dated October 13, 2004 to April 24, 2008, Dr. Taiwo noted appellant's current symptoms of sadness, withdrawal, anhedonia, hallucinations, nervousness, excessive worry and concern about going back to work and wrist pain. He listed findings on mental examination and addressed her therapy. Dr. Taiwo diagnosed Bipolar I Disorder, severe depression with psychosis, anxiety disorder not otherwise specified and schizoaffective disorder on Axis I, an occupational problem on Axis IV and current global assessment of functioning scores from 10 to 82 on Axis V. He deferred a diagnosis on Axis II and found no diagnosis on Axis III.

In reports dated November 4, 2004 to January 9, 2006, Dr. Randall C. Berinhout, a Board-certified anesthesiologist, obtained a history that appellant's right wrist and hand pain began on December 10, 2001. He set forth a history of her medical treatment, family and social background. Dr. Berinhout listed findings on physical examination and diagnosed neuropathic pain in the wrist secondary to a failed surgical procedure, failed wrist surgery, depression and anxiety, history of bipolar disorder, insomnia with some depression secondary to personal emotional problems, deconditioning of the right wrist and hand and cervical radiculopathy.

In duty status reports (Form CA-17) dated June 13, 2006 to February 15, 2007, Steven Marrison, Ph.D., a clinical psychologist, provided a history that appellant sustained a sprained wrist on December 10, 2001. He diagnosed major depression and stated that she had a disabling

right wrist injury. Dr. Marrison listed appellant's restrictions and stated that she was advised not to resume work. He stated that she could not perform the described regular work duties.

In an October 31, 2007 narrative report, Dr. Marrison noted that appellant had recently been disoriented with agitation, loss of energy and confusion. It appeared that appellant accidentally stopped taking some of her medication which had been corrected through a visit with Dr. Taiwo. Dr. Marrison stated that she appeared quite shaky at the beginning of their meeting. Much of the time was spent assisting appellant with getting herself under better control. She was instructed to continue to practice the behavioral strategies utilized on that day with follow-up in one week.

In a March 28, 2008 letter, Dr. Marrison stated that he reviewed Dr. Teliho's report and agreed that appellant had a psychiatric disorder predating her December 10, 2001 employment injuries.⁶ He began treating appellant on September 20, 2004. Dr. Marrison stated that the damaged nerve in her wrist and subsequent medical treatment has had disastrous consequences for her psychiatrically due to chronic pain. He obtained a history that appellant had suffered from bipolar disorder and depressive, hypomanic and manic episodes most of her adult life. Dr. Marrison stated that, prior to her work-related injury, she was quite capable of functioning adequately as an adult at work and in other aspects of psychosocial functioning with only brief episodes of depression or hypomania usually lasting less than one week that interfered with work related and other mental functioning. He identified severe wrist pain and loss of functioning as two stressors that aggravated appellant's bipolar disorder. Dr. Marrison noted that severe life stressors, including divorce and rape caused only temporary losses of functional status, but the work injury was unrelenting and, thus, made it more difficult for her to psychologically recover. At the time of appellant's evaluation with Dr. Teliho, she was in temporary partial remission from her bipolar disorder. Apparently, Dr. Teliho focused exclusively on her mental functioning during her one-time visit when she was between episodes and thus relatively free of symptoms. He did not investigate her level of mental functioning over time.

Dr. Marrison noted appellant's symptoms which included incidents of loss of concentration and diagnosed severe recurrent major depressive episodes with psychotic features. He advised that given the severity of symptoms and duration and frequency of these episodes of deterioration in her mental functional status, she was clearly not capable of sustaining any regularly scheduled work. Dr. Marrison stated that Dr. Teliho failed to take into account that appellant's wrist surgery, which failed to relieve her pain from the damaged nerve, her chronic pain and limited use of her dominant right hand had severely aggravated her bipolar disorder, such that the frequency and duration of her severe depressive and manic episodes totally precluded her from sustaining regular employment. He concluded that there was no evidence of symptom magnification or malingering.

⁶ In an August 17, 2006 report, Dr. Teliho found that appellant most likely had underlying personality disorder symptoms which included depression and anxiety. He opined that her preexisting emotional condition was likely exacerbated by her December 10, 2001 employment injuries, but that the degree of her anxiety, which included auditory hallucinations, was not directly caused by her accepted injuries. Dr. Teliho advised that appellant could return to part-time work as a mail carrier with restrictions related to her employment injuries.

In an April 24, 2008 report, Dr. Jerry W. Bush, a Board-certified internist, obtained a history of the December 10, 2001 employment injuries and appellant's medical, family and social background. He reviewed her medical records and noted that she complained about depression and anxiety. Dr. Bush reported findings on physical, neurologic and mental examination. He diagnosed avascular necrosis of the right wrist, depression and anxiety. Based on the available information and his examination, Dr. Bush advised that appellant had mild-to-moderate impairment with work restrictions.

In a November 21, 2013 decision, OWCP found that the medical evidence was insufficient to establish that appellant sustained an emotional condition as a consequence of her accepted work injuries.

LEGAL PRECEDENT

With respect to consequential injuries, it is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.⁷ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸

A claimant bears the burden of proof to establish a claim for a consequential injury.⁹ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is an opinion of reasonable medical certainty and be supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁰

ANALYSIS

OWCP accepted appellant's claim for employment-related right wrist sprain and strain, and temporary aggravation of a right carpal tunnel fracture. The Board finds that she has not submitted sufficient medical evidence to establish an emotional as a consequence of her accepted employment injuries.

The reports and notes of Drs. Marrison and Taiwo found that appellant had a severe depressive reaction and an episode of bipolar disorder with psychosis, and generalized anxiety and schizoaffective disorders due to her accepted December 10, 2001 employment injuries resulting in her total disability for work.

⁷ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁸ See A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁹ *J.A.*, Docket No. 12-603 (issued October 10, 2012).

¹⁰ *Id.*

OWCP has not accepted appellant's claim for a consequential emotional injury. Where a claimant claims that a condition not accepted or approved by OWCP was due to his or her employment injury, he or she bears the burden of proof to establish that the condition is causally related to the injury through the submission of rationalized medical evidence.¹¹

The Board notes that Dr. Marrison and appellant described a history of an emotional condition predating her December 10, 2001 employment injuries. While Dr. Marrison concluded that appellant diagnosed emotional conditions were due to her accepted employment injuries and resulted in disability, he did not provide adequate medical reasoning to support his stated conclusions. Dr. Marrison identified severe wrist pain and loss of functioning as two stressors that aggravated appellant's bipolar disorder. He did not explain how these two stressors aggravated her underlying condition. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident caused or contributed to appellant's diagnosed medical condition.¹² Dr. Marrison's observation that appellant was in temporary partial remission from her bipolar disorder at the time of Dr. Teliho's examination is insufficient, by itself, to establish the element of causal relationship.¹³

Dr. Taiwo advised that appellant was emotionally fragile, had significant cognitive difficulties and lacked appropriate job-related coping skills to perform any work-related activity. He did not adequately explain how these work-related residuals prevented her from performing any work.¹⁴ As for Dr. Taiwo's explanation that appellant could not work to prevent further injury, it is well established that fear of future injury does not constitute a basis for the payment of compensation.¹⁵ The Board finds that the reports and notes of Drs. Marrison and Taiwo are insufficient to establish appellant's claim.

The reports from Drs. Berinhout and Bush found that appellant had depression, anxiety, a history of bipolar disorder and insomnia with some depression secondary to personal emotional problems, but failed to provide an opinion stating that the diagnosed conditions were caused or aggravated by the December 10, 2001 employment injuries. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁶ The Board finds that the reports of Drs. Berinhout and Bush are insufficient to establish appellant's claim. As appellant has failed to provide rationalized medical opinion evidence establishing a consequential emotional condition as a result of her December 10, 2001 employment injuries, she has failed to meet her burden of proof.

¹¹ *M.D.*, Docket No. 11-1737 (issued April 3, 2012); *F.H.*, Docket No. 10-1267 (issued March 7, 2011); *JaJa K. Asaramo*, 55 ECAB 200, 214 (2004).

¹² *B.T.*, Docket No. 13-138 (issued March 20, 2013); *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *Thomas D. Petrylak*, 39 ECAB 276 (1987) (a temporal sequence of events is not sufficient to establish causal relationship).

¹⁴ See cases cited, *supra* note 12.

¹⁵ *E.g.*, *D.S.*, Docket No. 12-1042 (issued December 7, 2012).

¹⁶ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

Appellant may submit new evidence or argument as part of 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.

CONCLUSION

The Board finds that appellant did not sustain an emotional condition as a consequence of her accepted December 10, 2001 employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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