

On March 25, 2010 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) asserting that he sustained an emotional condition and unspecified physical injuries when he leaned far back in his postal vehicle. By decision dated May 19, 2010, OWCP denied his claim as fact of injury had not been established. It found that appellant had not explained how he was injured.

Appellant requested a review of the written record. He submitted a November 17, 2010 statement explaining that, on March 12, 2010, while delivering mail, a car stopped in front of his postal vehicle and the occupants exchanged gunfire with a second car near appellant's vehicle. When a bullet shattered appellant's driver's side window of the postal vehicle, appellant thrust himself backward in his seat to avoid the gunfire. Glass from the shattered window struck his face and body. Appellant put his vehicle in reverse and almost crashed into a fence, injuring his head, neck, back, left shoulder, and legs. He 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. Appellant's supervisor accompanied appellant to the hospital. A Dr. Medina noted that the right side window of appellant's postal vehicle was shot out, and that shards of glass sprayed appellant's face and body. Dr. Medina diagnosed an emotional reaction and prescribed medication.

Dr. Luis E. Faura Clavell, an attending physiatrist, 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.

Dr. Reinaldo E. Kianes, an attending 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. 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 November 1, 2010 note, he noted that appellant had been disabled for work since September 27, 2010 as the March 12, 2010 incident worsened his emotional condition.

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.² He submitted March 31, April 29, and June 24, 2010 appointment slips.

By decision dated May 1, 2012, OWCP accepted that the March 12, 2010 shooting incident occurred at the time, place, and in the manner alleged, but denied the claim as causal relationship was not established. It found that the medical evidence of record did not explain how and why the March 12, 2010 shooting would have caused the claimed emotional condition and physical injuries.

² 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 of the recurrence claim.

In a May 8, 2012 letter, counsel requested a telephonic hearing which was held on August 6, 2012. He submitted an August 20, 2012 report from Dr. Kianes, noting that appellant presented on March 29, 2010 and described the March 12, 2010 shooting incident where occupants of two cars adjacent to his postal vehicle exchanged gunfire, shattering appellant's driver's side 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 again stopped work due to increased symptoms. Appellant had a psychiatric hospitalization in September 2011 and was granted 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 workplace incident. Dr. Kianes opined that appellant was totally and permanently disabled from gainful employment.

By decision dated and finalized on September 26, 2012, an OWCP hearing representative denied appellant's claim as causal relationship was not established. He found that Dr. Kianes did not explain how and why the shooting incident would have caused or aggravated appellant's post-traumatic stress disorder. Appellant then appealed to the Board.

By decision and order issued February 3, 2014,³ the Board affirmed OWCP's September 26, 2012 decision denying appellant's claims for physical and emotional conditions related to the March 12, 2010 shooting incident. The Board found that the medical evidence did not contain a sufficient explanation of causal relationship to meet appellant's burden of proof for either the physical or emotional claims.

In a May 14, 2014 letter, appellant's counsel⁴ requested reconsideration. He asserted that a new March 9, 2014 report from Dr. Fernando Cabrera, Jr., an attending Board-certified psychiatrist who followed appellant after Dr. Kianes retired, was sufficient to meet appellant's burden of proof in establishing an occupational psychiatric condition. Dr. Cabrera provided a history of post-traumatic stress disorder and generalized anxiety disorder beginning in 1997, treated by Dr. Kianes. He noted the March 12, 2010 shooting incident and appellant's subsequent treatment. Dr. Cabrera diagnosed chronic post-traumatic stress disorder in partial remission, rule out recurrent major depressive disorder in partial remission, and rule out panic disorder. He opined that appellant was functioning well until the March 12, 2010 shooting aggravated his preexisting emotional condition. Dr. Kianes took him off work in September 2010 as the incident exacerbated his emotional and physical conditions. Dr. Cabrera found that appellant remained disabled for work.

By decision dated July 11, 2014, OWCP denied modification, finding that Dr. Cabrera's report was insufficient to establish the claimed causal relationship between the March 12, 2010 incident and a psychiatric condition. It found that Dr. Cabrera did not explain the medical reasons why the shooting would cause or aggravate the diagnosed post-traumatic stress disorder.

³ Docket No. 13-0126 (issued February 3, 2014).

⁴ As of May 14, 2014, appellant was represented by Alan J. Shapiro, Esq.

In an April 8, 2015 letter, counsel requested reconsideration, asserting that the medical record established that the March 12, 2010 shooting incident caused or aggravated post-traumatic stress disorder. He submitted additional evidence.

Dr. Cabrera provided a December 29, 2014 report noting that he first evaluated appellant on March 11, 2014. Appellant described chronic anxiety, intrusive thoughts, feelings of paranoia when near postal workers, depression, disorientation, flashbacks, and frequent nightmares about the March 12, 2010 shooting. He remained on several psychiatric medications. Dr. Cabrera opined that appellant's clinical presentation met all diagnostic criteria for post-traumatic stress disorder as set forth in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders IV-R*. He explained that appellant met the first element, "exposure to actual or threatened death" when on March 12, 2010, "two cars started to shoot at [appellant's] working vehicle. A bullet impacted [appellant's] driver side door, shattering the window glass." Appellant also met the diagnostic criteria of intrusive thoughts, distressing recurrent memories of the incident, dissociative reactions, prolonged distress to cues resembling aspects of the trauma, and persistent avoidance of such stimuli." This incident caused emotional disturbance, anxiety, palpitations, irritability, restlessness, nightmares, and feelings of paranoia triggered by postal employees. Appellant also exhibited the chronic anxiety and depression associated with post-traumatic stress disorder. Dr. Cabrera emphasized that photographs of appellant's postal vehicle with the window shot out, appellant's clinical presentation, and his treatment record were entirely consistent with post-traumatic stress disorder directly caused by the March 12, 2010 shooting.

By decision dated July 8, 2015, OWCP denied modification as the medical evidence of record was insufficient to establish causal relationship. It found that Dr. Cabrera's latest report did not explain how and why the March 12, 2010 shooting would have caused or aggravated a psychiatric condition. OWCP also found that he provided an inaccurate history of injury, as he noted that the occupants of two vehicles shot at appellant's vehicle, whereas in prior accounts the occupants of the two vehicles shot at each other.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.⁵ 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.⁶

In *Lillian Cutler*,⁷ the Board noted that workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. Where

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ 28 ECAB 125 (1976).

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.⁸ The Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.⁹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰

When working conditions are alleged as factors in causing emotional 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.¹¹ If a claimant implicates 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.¹²

ANALYSIS

OWCP accepted that on March 12, 2010 a stray bullet shattered the driver's side window of appellant's delivery vehicle during a gunfight between the occupants of two cars adjacent to his vehicle. Appellant claimed that this incident caused an emotional condition. OWCP denied the claim, finding that the medical evidence was insufficient to establish causal relationship.

In support of his claim, appellant submitted reports from Dr. Kianes, an attending psychiatrist, who treated appellant beginning in 1997 for generalized anxiety disorder and post-traumatic stress disorder. Dr. Kianes opined that the March 12, 2010 incident aggravated preexisting post-traumatic stress disorder, permanently disabling him from work.

Appellant was then treated by Dr. Cabrera, a Board-certified psychiatrist. Dr. Cabrera noted appellant's treatment for post-traumatic stress disorder and generalized anxiety disorder prior to the March 12, 2010 shooting. He opined that appellant's history and clinical presentation met all diagnostic criteria for post-traumatic stress disorder. Dr. Cabrera explained that appellant was exposed to actual or threatened death during the shooting, particularly when his driver's side window was shot out. Appellant experienced the remaining criteria of post-traumatic stress, including intrusive thoughts, distressing recurrent memories of the incident, dissociative reactions, paranoia, and distress when exposed to postal employees, persistent avoidance of triggering stimuli, anxiety, and nightmares. Dr. Cabrera emphasized that

⁸ *Supra* note 1; *Id.*

⁹ *L.R.*, Docket No. 14-302 (issued June 6, 2014).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ *See Norma L. Blank*, 43 ECAB 384 (1992).

¹² *Marlon Vera*, 54 ECAB 834 (2003).

appellant's history and presentation were entirely consistent with post-traumatic stress disorder directly caused by the March 12, 2010 shooting.

The Board finds that, while Dr. Cabrera's opinion is not sufficiently rationalized¹³ to meet appellant's burden of proof to establish his claim, there are no opposing medical opinions of record. The Board further finds that the minor variation in Dr. Cabrera's description of who was shooting at whom does not in any way diminish the probative value of his opinion. The medical record is therefore of sufficient quality to require further development of the case by OWCP.¹⁴ OWCP has not undertaken further development of the medical record, such as referring the record to an OWCP medical adviser or referring appellant for a second opinion examination. In view of the above evidence, the Board finds that OWCP should have referred the matter to an appropriate medical specialist to determine whether appellant sustained an emotional condition due to the March 12, 2010 shooting.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁵ The case must therefore be remanded to OWCP for preparation of a statement of accepted facts concerning the March 12, 2010 incident and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether appellant sustained or exacerbated an emotional condition resulting from the March 12, 2010 shooting. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, counsel contends that the medical and factual record is more than sufficient to establish that appellant "found himself an unwilling participant in a gunfight," that his vehicle was struck by a bullet, and that this incident caused post-traumatic stress disorder. He argues that OWCP has adopted an adversarial posture in the case, placing "an unreasonably high burden of proof upon [appellant] in requiring [him] to establish causal relationship beyond all reasonable doubt." As set forth above, the case will be remanded to OWCP for additional development on the issue of causal relationship.

CONCLUSION

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

¹³ See *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

¹⁵ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for additional development consistent with this decision and order.

Issued: April 5, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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