

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Riverview, FL, Employer**

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**Docket No. 16-0404
Issued: April 11, 2016**

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 22, 2015 appellant, through counsel, filed a timely appeal from a September 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition as a consequence of an April 17, 2012 employment injury.

On appeal counsel asserts that medical evidence dating back to 1991 establishes that appellant's anxiety and depression are related to employment injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 19, 2012 appellant, then a 40-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that she injured her knees, back, and hand when she tripped and fell while carrying boxes at work on April 17, 2012. She returned to modified-duty work. OWCP accepted lumbar sprain, bilateral shoulder sprains, and aggravation of bilateral carpal tunnel syndrome. On June 27, 2012 Dr. Marc Weinstein, an attending Board-certified orthopedic surgeon, advised that appellant could return to full duty. The instant claim was adjudicated by OWCP under file number xxxxxx181.

On December 27, 2013 appellant filed an occupational disease claim (Form CA-2), alleging that she was having panic attacks because she was being harassed by management and publicly embarrassed. She stopped work on April 18, 2013. In support of her claim, appellant submitted a nine-page statement describing claimed employment factors. OWCP adjudicated this claim under file number xxxxxx325. By decision dated March 17, 2014, it denied the claim, finding that appellant failed to establish a compensable factor of employment.

On March 25, 2015 counsel requested that the instant claim, file number xxxxxx181, be expanded to include depression and anxiety secondary to medical conditions. He forwarded a psychiatric evaluation dated February 9, 2015 in which Dr. Gary K. Arthur, a Board-certified psychiatrist noted that he began treating appellant in April 2011. Dr. Arthur indicated that appellant's depression and anxiety became increasingly debilitating and were directly related to her worsening physical problems of carpal tunnel syndrome, her shoulders, and her lumbar spine, and that these also worsened her diabetes. He diagnosed depression and anxiety secondary to medical conditions of bilateral shoulder derangement, lumbar disc disease, bilateral carpal tunnel syndrome, and diabetes mellitus. Dr. Arthur added that appellant's depression and anxiety had been documented since 1991, and as her work injuries increased in disability and pain, her depression and anxiety were directly, steadily aggravated, and worsened and began to affect her abilities to concentrate, attend to task, and make good judgements. He concluded that she became totally disabled from work on April 20, 2013 and remained unable to work anywhere. On a work capacity evaluation dated February 9, 2015, Dr. Arthur repeated his diagnoses and conclusions, opining that appellant was totally disabled from all work.

Dr. Arthur also forwarded a note dated September 17, 2013 in which he related that appellant had increasing problems with her diabetes, lumbar discs, shoulder problems, and bilateral carpal tunnel syndrome with pain and limitation since January 2013. He continued that she was taken off work on April 20, 2013 because she could no longer function there and ended up hospitalized in May 2013. Dr. Arthur concluded that appellant remained disabled for any work due to her diabetes and orthopedic problems. He provided disability slips covering the period April 20, 2013 to September 5, 2014. On a Family and Medical Leave Act (FMLA) application dated June 18, 2013, Dr. Arthur advised that work stress was aggravating appellant's depression, anxiety, and diabetes. He indicated that beginning on April 20, 2013 she became totally disabled due to a poor ability to concentrate, attend to tasks, relate to others, and keep regular attendance.

One page of an unsigned April 17, 2006 report on the letterhead of Dr. Conrad P. Weller, a Board-certified psychiatrist, advised that appellant had significant physical conditions of

bilateral carpal tunnel syndrome, bilateral shoulder conditions, and significant psychiatric difficulties including anxiety and depression. The report continued that appellant's psychiatric problems were directly related to her persistent musculoskeletal pain and physical limitations and that she was mentally and behaviorally impaired.

On June 15, 2015 Dr. Arthur reiterated his findings and conclusions. He forwarded a mental capacity assessment, originally dated October 10, 2014. On June 15, 2015 Dr. Arthur indicated that there had been no change.

Appellant retired from the employing establishment, effective June 29, 2015. The employing establishment noted that under OWCP file number xxxxxx325, which had been denied, appellant claimed that her depression and anxiety were related to events and noted that these conditions were preexisting.

On August 5, 2015 Dr. Arthur advised that the injuries that aggravated appellant's depression and anxiety were bilateral carpal tunnel syndrome, bilateral upper shoulder and arm sprains, and lumbar sprain. He explained that several months of working in a hostile environment at the employing establishment also aggravated appellant's emotional condition, but that both the work environment and employment injuries led to a worsening of appellant's depression and anxiety to the point of disability.

In treatment notes dated June 18, 2013 to June 9, 2014, Dr. Albert Tawil, a Board-certified family physician, related that on June 7, 2013 appellant was involved in a motor vehicle accident where her vehicle was rear-ended. He described her care thereafter, noting complaints of cervical and lumbar pain and occipital headaches. A June 21, 2013 cervical spine magnetic resonance imaging (MRI) scan demonstrated an impinging disc at C6-7. A lumbar spine MRI scan that day demonstrated disc bulges at L4-5 and L5-S1. Appellant had a lumbar epidural injection on July 30, 2013. On August 12, 2013 Dr. Tawil noted that this did not give enough relief. On November 8, 2013 appellant had nerve root block at L4-5. On March 4, 2014 she was seen at an emergency department for uncontrolled insulin-dependent diabetes. On April 18, 2014 appellant had an additional lumbar epidural injection. Dr. Tawil reported on May 1, 2014 that this did not give her much relief.

In a September 17, 2015 decision, OWCP denied the instant claim (OWCP file number xxxxxx181). It referenced OWCP file number xxxxxx325, the previously denied emotional condition claim. OWCP found that the evidence in the OWCP file number (xxxxxx181) did not demonstrate that appellant's psychiatric condition was caused or aggravated by the accepted injuries.

LEGAL PRECEDENT

A claimant bears the burden of proof to establish a claim for a consequential injury. 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. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the

nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.²

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁴ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁵

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. 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.⁶

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that the diagnosed conditions of anxiety and depression were a consequence of the April 17, 2012 employment injury. The accepted conditions in this case, adjudicated under file number xxxxxx181, are lumbar sprain, bilateral shoulder sprains, and aggravation of bilateral carpal tunnel syndrome. Appellant stopped work on April 18, 2013 and filed an occupational disease claim, adjudicated under file number xxxxxx325. With that claim, in a nine-page statement she described perceived hostile treatment at work, alleging that it caused depression and anxiety such that she could not work. Appellant did not state that the conditions accepted in this case OWCP file number xxxxxx181 led to increased depression and anxiety. OWCP file number xxxxxx325 was denied by OWCP on March 17, 2014.

In March 2015 counsel requested that the instant claim be expanded to include a consequential emotional condition. In support of this claim, in reports dated February 9 to August 5, 2015, Dr. Arthur, an attending psychiatrist, diagnosed depression and anxiety and advised that these conditions were secondary to the accepted orthopedic injuries. He maintained that the depression and anxiety were directly, steadily, aggravated and worsened by both a

² *Charles W. Downey*, 54 ECAB 421 (2003).

³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *Larson, The Law of Workers' Compensation* § 1300; *see supra* note 2.

hostile environment at work and by the accepted employment injuries, such that appellant could no longer concentrate and make good judgements, and that she became totally disabled from all work. Dr. Arthur also submitted disability slips covering the period April 20, 2013 to September 5, 2014 and an FMLA application dated June 18, 2013. In a September 20, 2013 treatment note, he related that appellant had increasing problems with her diabetes, lumbar discs, shoulder problems, and bilateral carpal tunnel syndrome with pain and limitation since January 2013. Dr. Arthur noted that she was taken off work on April 20, 2013 because she could no longer function at the employing establishment and that she was hospitalized in May 2013. He concluded that appellant remained disabled for any work due to her diabetes and orthopedic problems.

The Board finds Dr. Arthur's opinion of diminished probative value. The record supports that appellant was in a motor vehicle accident in June 2013, shortly after she stopped work. Dr. Tawil documented cervical and lumbar conditions resulting from the motor vehicle accident, and appellant had several lumbar injections to relieve pain. Dr. Arthur did not reference the motor vehicle accident and its *sequelae* in any of his reports. He provided no contemporaneous evidence such as treatment notes from the time appellant stopped work in April 2013 until his report in February 2015, with the exception of the September 20, 2013 report described above. It is well established that to be of probative value a medical opinion must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history, such as that of Dr. Arthur, are of diminished probative value.⁷

The one page, incomplete, unsigned report from Dr. Weller's office predates the claimed disability in this case by seven years. Moreover, reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.⁸

As noted above, the opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹ Appellant submitted insufficient medical evidence in this case.

Counsel, on appeal, argued that appellant's claim should be expanded to include the consequential injuries of major depression and anxiety disorder as a consequence of her accepted medical conditions. As noted above, the Board finds that the evidence of record is insufficient to establish a consequential injury.

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.

⁷ *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

⁸ *R.M.*, 59 ECAB 690 (2008).

⁹ *Supra* note 5.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an emotional condition as a consequence of an April 17, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 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