United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 16-0811**
	)	**Issued: October 26, 2016**
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Louisville, KY, Employer	)	

Appearances:
Martin Kaplan, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 11, 2016 appellant, through counsel, filed a timely appeal from an October 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish an emotional condition as a consequence of the April 13, 2006 employment injury.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 13, 2006 appellant, then a 47-year-old general supply specialist, sustained a head, neck, and shoulder injury after he hit his head while stepping into a forklift. OWCP accepted his claim for aggravation of cervical spondylosis with myelopathy. Appellant stopped work on June 8, 2006 and missed work intermittently thereafter.

In a July 14, 2006 report, Dr. Michael Casnellie, a Board-certified orthopedic surgeon, noted seeing appellant for right arm pain and numbness as well as neck pain. He noted the history of the April 13, 2006 work injury and also advised that appellant had a prior history that included heart palpitations, gastritis, and anxiety. On January 22, 2007 appellant underwent an authorized anterior cervical discectomy and fusion at C5-6 and C6-7, performed by Dr. Casnellie. Dr. Casnellie released appellant back to limited duty on April 13, 2007.[3] On August 7, 2007 he advised that appellant was recently diagnosed with bipolar disorder and also had a pituitary tumor removed. Dr. Casnellie continued to treat appellant and note his status.

On July 21, 2013 OWCP granted appellant a schedule award for four percent permanent impairment of the left arm.

In a December 2, 2013 report, Dr. Jason M. Meckler, a Board-certified neurologist, noted seeing appellant for neurological follow up. He advised that appellant had a recent fall and twisted his neck, injuring the nerves under his arm. Dr. Meckler's diagnoses included traumatic brain injury, localization-related epilepsy, pituitary tumor, cervical radiculopathy, cognitive dysfunction, anxiety and depression, and depression with somatization.

In a December 30, 2014 report, Dr. Frank Deland, a Board-certified psychiatrist, advised that appellant had been under his care since May 2007. He diagnosed bipolar disorder and noted that the condition first emerged when he was suffering from an active pituitary tumor. Dr. Deland noted that the tumor was surgically excised, but his mood disturbance persisted. He indicated that he could not say that appellant's bipolar disorder was caused by his neck injury, but the stress of the injury and subsequent disability exacerbated his underlying mood instability. Dr. Deland advised that numerous studies have proven that bipolar disorder is adversely affected by stress, which he opined was the case with appellant. He explained that appellant's increased irritability, psychomotor agitation, decreased need for sleep, poor judgment, grandiosity, racing thoughts, and pressured speech were all worsened by the stress of his neck injury. Dr. Deland also noted that appellant would not sleep, paced constantly, and obsessed over work to the exclusion of normal activities of daily life. He indicated that appellant was "vulnerable to relapse and recurrences of both manic and depressive episodes, but the mood swings during the time in question [were] almost certainly triggered by the effects of his injury and his ability to work."

By letter dated January 13, 2015, counsel requested that appellant's claim be expanded to include aggravation of preexisting bipolar disorder. He contended that Dr. Deland's report was sufficient to establish that his condition was directly related to the accepted work injury.

[3] Appellant received wage-loss compensation and leave buy-back for intermittent periods from June 9, 2006 to February 20, 2009.

In a March 12, 2015 letter, OWCP advised appellant of the type of evidence needed to establish his claim. Appellant was informed that he had 30 days to submit responsive evidence.

By decision dated April 21, 2015, OWCP denied expansion of appellant's claim as evidence of record did not establish that appellant's psychiatric condition was caused or aggravated by the accepted condition.

On April 27, 2015 appellant, through counsel, requested review of the written record by an OWCP hearing representative. Counsel reiterated that Dr. Deland's report was sufficient to establish that appellant sustained a consequential emotional condition related to the accepted work injury.

By decision dated October 8, 2015, an OWCP hearing representative affirmed OWCP's prior decision.

LEGAL PRECEDENT

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.[4]

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.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] 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.[7] Neither the mere fact that a disease or condition manifests itself during a period

[4] *Arthur Larson & Lex K. Larson, The Law of Workers' Compensation* § 3.05 (2014); *Melissa M. Frederickson,* 50 ECAB 170 (1998).

[5] *Charles W. Downey*, 54 ECAB 421 (2003).

[6] *Jacqueline M. Nixon-Steward,* 52 ECAB 140 (2000).

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

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.[8]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that his diagnosed bipolar disorder was a consequence of his April 13, 2006 employment injury.

By letter dated January 13, 2015, counsel requested that appellant's claim be expanded to include aggravation of preexisting bipolar disorder. He contended that Dr. Deland's report was sufficient to meet appellant's burden of proof in establishing that this condition was directly related to the accepted work injury.

In his December 30, 2014 report, Dr. Deland advised that appellant had been under his care since May 2007 and diagnosed bipolar disorder. He noted that the condition first emerged when appellant was suffering from an active pituitary tumor and persisted after the tumor was surgically excised. Dr. Deland opined that the stress of appellant's neck injury and subsequent disability exacerbated his underlying mood instability. He advised that numerous studies showed that bipolar disorder is adversely affected by stress, which he opined was the case with appellant. Dr. Deland asserted that appellant's symptoms were "almost certainly triggered by the effects of his injury and his ability to work." Although he advised that he began treating appellant in May 2007, he provided no contemporaneous medical reports or treatment notes and failed to provide any objective findings linking appellant's emotional condition to his accepted work injury. 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 history, such as that of Dr. Deland, are of diminished probative value.[9] Dr. Deland attributed appellant's condition to the stress of his neck injury and his inability to work and noted that studies have shown that stress adversely affects bipolar disorder, but he failed to specifically explain how the accepted aggravation of cervical spondylosis with myelopathy aggravated appellant's preexisting bipolar disorder. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[10] The need for medical rationale is particularly important where the medical record indicates that he had a history of anxiety at the time of his work injury and that he also had a subsequent and nonwork-related traumatic brain 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.

[8] *Dennis M. Mascarenas,* 49 ECAB 215 (1997).

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

[10] *Carolyn F. Allen,* 47 ECAB 240 (1995).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an emotional condition as a consequence of the April 13, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board