

ISSUE

The issue is whether appellant has established an aggravation of his preexisting anxiety disorder and the obsessive compulsive symptoms secondary to his Asperger's syndrome causally related to the accepted compensable employment factors related to a fitness-for-duty examination on May 14, 2007.

On appeal counsel contends that abundant psychological medical evidence has been provided establishing a causal relationship between appellant's fitness-for-duty examination and the aggravation of his emotional condition. He further asserts that at a minimum, appellant has provided *prima facie* evidence for this claim.

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decisions are incorporated herein by reference. The facts relevant to this appeal are set forth below.

On May 13, 2010 appellant, then a 51-year-old building maintenance specialist, filed a traumatic injury claim (Form CA-1) alleging that he sustained an aggravation of his preexisting anxiety disorder and the obsessive compulsive symptoms secondary to his Asperger's syndrome as a result of being forced to attend a fitness-for-duty examination on May 14, 2007. The employing establishment advised that appellant was terminated from employment effective September 7, 2007.

OWCP denied as compensable that the employing establishment referred appellant for a fitness-for-duty examination. It found that referral of an employee for a fitness-for-duty examination was an administrative matter and, absent error or abuse, it would not be found to be compensable. OWCP found no error or abuse in the referral as it found that it was not unreasonable for the employing establishment to refer appellant for a fitness-for-duty examination to determine his ability to work.

OWCP did find two compensable factors associated with the fitness-for-duty examination. It accepted that, during the fitness-for-duty examination, appellant was touched by Dr. Robert Boesch, Board-certified in occupational medicine and the physician conducting the examination, and that appellant was required to provide a medical history to Dr. Boesch in conjunction with the examination.

In a decision dated December 20, 2012, the Board affirmed OWCP's December 2, 2011 decision denying appellant's claim. The Board found that appellant had established two compensable employment factors relating to the May 14, 2007 fitness-for-duty examination, but that appellant had failed to meet his burden of proof to establish a causal relationship between the conditions for which compensation was claimed and the accepted compensable employment factors.³

³ Docket No. 12-1024 (issued December 20, 2012).

This case came before the Board a second time and, in a decision dated December 18, 2014, the Board again found that OWCP had properly determined, in a September 11, 2013 decision, that appellant had not met his burden of proof to establish an aggravation of his preexisting conditions causally related to the two accepted compensable factors. Therefore, the Board found that modification of the prior decision was properly denied.⁴

On December 17, 2015 appellant again requested reconsideration. In further support of this request, appellant submitted a December 14, 2015 report from his treating clinical psychologist, Dr. Sean R. Evers. Dr. Evers had previously submitted numerous reports in support of appellant's claim and noted that "[r]ather than reiterate the contents of these reports, I have attached copies of them to this letter. These reports were dated [August 23, 2006, January 26, 2010, June 1 and June 7, 2011, March 2, 2012, and July 23, 2013].⁵ In the December 14, 2015 report, Dr. Evers noted that appellant had been his patient since September 2005 and that appellant had been diagnosed with Asperger's syndrome. He related that appellant's symptoms become exacerbated when situations arise which force appellant to change his rituals and patterns or force him into behaviors. Dr. Evers noted that these situations include interpersonal contact. He explained that if appellant was pressured to perform outside his limitations his anxiety would spike and his obsessive compulsive traits would assert themselves with debilitating anxiety and episodic decompensation. Dr. Evers noted that appellant experienced significant anxiety and aggravation of his psychological condition as a direct result of the medical examination of May 14, 2007. Even though appellant indicated that Dr. Boesch acted in a professional manner, appellant found the "entire experience emotionally challenging." He felt forced to attend the examination, he anticipated the difficulties traveling to the appointment, he reported being very anxious and disoriented in traveling to Dr. Boesch's office, and he reported feeling "violated by the physical contact" required by the examination. Dr. Evers contended that "[t]his discomfort triggered an extended period of obsessive ruminating and anxiety."

Dr. Evers opined that on or about May 14, 2007 appellant experienced a psychological injury, that injury being an exacerbation of his anxiety disorder and the obsessive compulsive syndromes secondary to his Asperger's syndrome. He determined that, based on his knowledge of appellant through his long-term psychotherapy, appellant's condition was permanently aggravated by "conditions of employment the requirements to undergo the examination of May 14, 2009." Dr. Evers reported that appellant's psychological level of functioning declined from 60 to 35 from April 26, 2006 through May 2, 2012. As a result, he opined that based upon the progression of appellant's illness, he never returned to his preinjury level of function.

By decision dated March 10, 2016, OWCP determined that Dr. Evers' December 14, 2015 opinion failed to provide sufficient medical reasoning to establish a causal relationship between appellant's preexisting psychological conditions and being touched by Dr. Boesch or being required to report his medical history to Dr. Boesch. Accordingly, OWPC denied modification of its prior decisions.

⁴ Docket No. 14-390 (issued December 18, 2014).

⁵ The Board notes that there were no additional reports attached to Dr. Evers' letter.

LEGAL PRECEDENT

Worker's compensation law does not apply to each and every injury or illness that is somehow related to employment. In the case of *Lillian Cutler*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is insufficient to constitute a personal injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁹ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹¹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.

⁶ 28 ECAB 125 (1976).

⁷ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁸ *Supra* note 3.

⁹ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

An employee may establish that the employment incident occurred as alleged, but failed to show that his or her condition relates to the employment incident.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.¹³

ANALYSIS

OWCP accepted as compensable factors of employment that on May 14, 2007 appellant was touched by Dr. Boesch during the course of a fitness-for-duty examination and that appellant was required to provide a medical history to Dr. Boesch.¹⁴ The issue is whether these accepted compensable factors of employment aggravated appellant's preexisting anxiety disorder or the obsessive compulsive symptoms secondary to Asperger's syndrome.

The Board, in its previous decision dated December 20, 2012, had already reviewed the reports of Dr. Evers dated January 26, 2010 and June 7, 2011. It had also reviewed the report dated July 23, 2013 in its December 18, 2014 decision.¹⁵ Therefore, regarding these reports, the issue is *res judicata*.¹⁶

The only new medical report before the Board in this appeal is the December 14, 2015 report of Dr. Evers. In that report, Dr. Evers indicated that appellant experienced significant anxiety and aggravation of his psychological condition as a direct result of his medical examination of May 14, 2007. He noted that appellant was very anxious and disoriented in traveling to the appointment, that he felt violated by the physical contact, and this triggered an extended period of obsessive ruminating and anxiety. Dr. Evers noted that as a result of this examination, appellant's preexisting anxiety disorder and the obsessive compulsive symptoms secondary to his Asperger's syndrome were permanently aggravated. He noted a decline in his psychological function and noted that appellant never returned to his preinjury level of function. Although Dr. Evers' report suggests that one of the compensable employment factors, being touched by Dr. Boesch, caused an aggravation of his preexisting conditions, he has failed to adequately explain with medical rationale how this touching, in connection with the fitness-for-

¹² *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *Id.*; see *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ See *Raymond H. Schultz, Jr.*, 23 ECAB 25 (1971) (Schwartz, Chairman, dissenting) the Board found that the requirement to undergo a fitness-for-duty psychiatric examination was a compensable factor of employment.

¹⁵ The record does not include reports referenced by Dr. Evers dated August 23, 2006, June 1, 2011, or March 2, 2012.

¹⁶ See *J.V.*, Docket No. 14-0788 (issued October 19, 2015); see also *D.S.*, Docket No. 14-0012 (issued March 18, 2014).

duty examination which appellant has consistently described as completely professional, could have caused an aggravation of the underlying preexisting conditions, causing disability.¹⁷

Furthermore, Dr. Evers suggested that activities over the period from April 26, 2006 through May 2, 2012 were responsible for a progression of appellant's illness. This contradicts appellant's argument that the accepted employment incident of touching by Dr. Boesch in a professional medical examination on May 14, 2007 was responsible for decompensation of appellant's underlying conditions.¹⁸

Dr. Evers has also failed to relate the requirement of appellant to provide a medical history to Dr. Boesch to any aggravation of his preexisting conditions. A medical report that does not provide an opinion on causal relationship is of little probative value.¹⁹ Dr. Evers also failed to address any other factors in appellant's life which could have caused the decline in appellant's emotional conditions during the period 2006 through 2012. The Board notes that the mere fact that work factors produced pain or discomfort revelatory of an underlying condition does not raise an inference of an employment relationship.²⁰

The Board finds that appellant failed to establish that the accepted employment factors of being touched by Dr. Boesch during the fitness-for-duty examination and being required to provide a medical history to Dr. Boesch aggravated his preexisting anxiety disorder and the obsessive compulsive symptoms secondary to his Asperger's syndrome.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an aggravation of his preexisting emotional condition causally related to a May 14, 2007 fitness-for-duty examination.

¹⁷ See *K.S.*, Docket No. 16-0404 (issued April 11, 2016) (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).

¹⁸ *Id.*

¹⁹ See *L.M.*, Docket No. 14-973 (issued August 25, 2014).

²⁰ See *Wilbur D. Starks*, 23 ECAB 85 (1971).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2016 is affirmed.

Issued: April 12, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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