

FACTUAL HISTORY

On December 28, 2014 appellant, then a 49-year-old tractor trailer driver, filed an occupational disease claim (Form CA-2) alleging that he was assaulted on the job by another employee which caused his post-traumatic stress disorder (PTSD). He first realized his condition was caused or aggravated by his employment on October 21, 2014 and received medical care on October 22, 2014. Appellant stopped work on December 15, 2014. On the reverse side of the form, appellant's supervisor indicated that appellant was last exposed to the conditions alleged to have caused his condition on November 18, 2014 when he was placed on a modified-duty assignment.

In an accompanying statement dated December 23, 2014, appellant reported that on October 21, 2014 he was performing his duties as a tractor trailer driver and was assaulted by M.T., another driver for the employing establishment, who punched him in the right shoulder. As a result, he had been under his physician's care for shoulder damage and PTSD. Appellant reported that he was exposed to stressful conditions because he had to face his attacker almost every day at work, for eight hours a day, five days per week. He further noted that he had never suffered from a similar stress disorder as a result of being assaulted.

In an October 21, 2014 medical report, Dr. James Rose, a Board-certified diagnostic radiologist, reported that appellant had originally sustained a right shoulder injury on October 21, 2014 when he was punched in the right shoulder by a coworker. He was evaluated in the emergency department on October 22, 2014. Dr. Rose described appellant's course of treatment and provided findings on examination. He diagnosed right infraspinatus tear and acute stress reaction. Dr. Rose opined that both conditions were work related as the right shoulder infraspinatus tear was due to direct injury from an on-the-job assault, and the acute stress reaction was a normal emotional response to a traumatic event.

In a December 22, 2014 report, Dr. Richard C. Bowers Jr., a licensed clinical psychologist, reported that he had evaluated appellant on December 18, 2014 after being assaulted by a coworker and suffering a right shoulder injury and acute stress disorder. He reported that appellant was unable to perform his current work duties and was to remain out of work, especially if there was any possibility that the alleged perpetrator would be seen. Dr. Bowers noted that given appellant's continued symptoms more than one month after the incident, the more appropriate diagnosis was PTSD.

By letter dated January 8, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence necessary to establish his claim. He was afforded 30 days to submit the additional evidence. By letter of the same date OWCP requested additional information from the employing establishment.

An October 21, 2014 employing establishment assault and threat report documented that on that same date, appellant was punched in the right shoulder by M.T. while appellant's back was turned to him. The incident was witnessed by Supervisor H. Supervisor H. described the incident as "horseplay" on the floor that apparently "offended" appellant. Appellant reported that he had been experiencing "bullying" from M.T. for a period of time which began verbally

and escalated to grabbing. He feared that the behavior would continue to escalate and was concerned for his safety. M.T. reported that he was merely joking with appellant, there was no malice behind his actions, and he never intended to offend or injure him. He believed that he had a rapport with appellant that allowed for horseplay. Supervisor H. held a meeting where M.T. apologized to appellant and reviewed policy regarding workplace conduct. The report concluded that, based upon the facts and circumstances surrounding the incident, there was no sufficient reason to believe that M.T. committed a willful criminal assault with malicious intent against appellant. It determined however, that M.T.'s conduct was inappropriate in the workplace which was appropriately addressed by Supervisor H., and that further action regarding this matter was declined.

In an October 25, 2014 narrative statement, M.T. reported that on October 21, 2014 he was involved in a horseplay incident on the dock. He reported that while he was walking to his truck, he noticed appellant and with a joking gesture, struck appellant on his right arm between his shoulder and elbow. M.T. explained that the strike was not malicious and he did not intend to hurt appellant, describing the incident as horseplay. He further noted that there was no extreme energy or power behind the strike as it was done in a playful manner.

In a January 13, 2015 narrative statement, appellant responded to OWCP's questionnaire. He reported that on October 21, 2014, M.T. punched appellant in his right shoulder. As such, he was under the care of Dr. Geoffrey B. Higgs, Board-certified in orthopedic surgery and orthopedic sports medicine, who diagnosed bicipital tenosynovitis and rotator cuff tear. Appellant reported that on the date of the incident, Supervisor H. had a meeting with them to discuss the incident and informed them of policies and procedures regarding workplace violence. M.T. offered no explanation for the assault, nor did he provide an apology. Appellant reported that he was placed on a limited-duty assignment as a result of his shoulder injury and was forced to face his attacker almost every day, creating an uncomfortable work environment. He noted that this was not an isolated incident as he had previous run-ins with M.T. beginning in March 2010 involving racial comments, explicit language, and unwelcomed body contact.

Appellant reported that in April 2013, he experienced physical contact from M.T. in the form of a bear hug/detainment that was unwelcomed and unwarranted. This incident had also been reported to Supervisor H. who addressed the issue by conducting a safety meeting with drivers regarding harassment and violence in the workplace. Appellant reported that M.T. would temporarily discontinue his behavior after he reported the incidents, but would resume in a more aggressive manner shortly thereafter. Since 2010, he had made every effort to avoid M.T., but this was not always possible because of his work assignment. Appellant noted that he had not filed an Equal Employment Opportunity (EEO) complaint and had experienced no prior emotional condition claims or other stressors outside of his employment. He first noticed his condition on October 21, 2014, the day of the assault, and experienced flashbacks of the attack, anger, fear, paranoia, hopelessness, anxiety, dizziness, feelings of being unsafe, easily startled, loss of concentration, feelings of wanting to avoid people and places, and difficulty falling asleep. Due to his shoulder injury, appellant was placed on limited duty on October 21, 2014.

By letter dated January 15, 2015, Dr. Bowers responded to OWCP's development letter regarding the specific information requested. He reported that he was not treating appellant and only evaluated him once on December 18, 2014 for an assessment at the request of his counselor.

Dr. Bowers diagnosed PTSD which he opined was caused by the assault from appellant's coworker, noting that appellant feared for his life and did not think he was safe at work. He described appellant's symptoms which had persisted for more than a month and thus, met the criteria for PTSD. Dr. Bowers attached an intake report pertaining to appellant's assessment completed on that date.

In a January 15, 2015 report, Dr. Bowers reported that on October 21, 2014, appellant was performing his regular job duties when a coworker walked by and punched him in the shoulder causing injuries. Appellant's supervisor witnessed the event and stopped him from retaliating. Appellant had become fearful as the assailant had previously squeezed him and put him in choke holds and bear hugs. He had experienced this behavior for years, would not go into the break room with the assailant, and tried to avoid him at work. Dr. Bowers reported that appellant could not perform the duties of a truck driver and was provided light duty as a result of the assault. Stress symptoms reported were hypervigilance, paranoia, fear of retaliation, trouble sleeping, trouble keeping food down, withdrawal, decrease of enjoyment of life, daydreams, replay of the incident, and nightmares. Appellant reported taking appropriate steps of reporting the perpetrator's behavior well before this incident, for which the perpetrator was reprimanded. Appellant's supervisor witnessed the assault that damaged his shoulder, but he was still required to work side-by-side with his attacker on a daily basis. The attacker was roughly twice as big as appellant. The attacks started several years ago, and usually involved bear hugs, bucking, and choke holds. Appellant feared for his life and the safety of his family.

Dr. Bowers noted that it had been two months since the incident and he diagnosed PTSD and shoulder injury due to anxiety and vocational stress. He restricted appellant from working and noted that recovery would be aided if the attacker was fired or transferred, and that the incident needed to be recognized by authorities in order for appellant to feel as if some sort of justice had occurred.

In a January 18, 2015 report, Supervisor H. reported that on October 21, 2014, M.T. was horse playing and punched appellant in the shoulder as M.T. was walking by appellant with his back turned. On the date of the assault, Supervisor H. had a meeting with appellant and M.T. He offered appellant medical care, but he refused, stating that he was ok. M.T. reported that he did not intend to harm appellant, that he was only joking around, and that horseplay was acceptable based on their rapport. Supervisor H. reported that appellant appeared to be upset but did not seem fearful. He explained that while the assault was unacceptable behavior, it was not done with violent aggression towards appellant and was more of a childish act. On October 22, 2014 appellant reported to work and complained of numbness in his fingers and pain and stiffness in his right shoulder, at which time he filed a traumatic injury claim (Form CA-1).³ Appellant was provided light duty as he sought medical treatment.

Supervisor H. stated that appellant had been assigned to a manual sorting unit and was also transporting mail by a postal car upon request of management which duties were within his restrictions. Appellant reported that he had been exposed to his attacker for eight hours per day, five days per week. However, Supervisor H. explained that appellant reported to a completely

³ OWCP File No. xxxxxx338.

different section of the facility. Furthermore, he reported that there had been no interaction with M.T. that he could recall since the incident, and appellant had not complained of any fear or danger from seeing or being in the presence of M.T. at any time during or prior to his light-duty assignment. Supervisor H. stated that he had spoken with appellant on several occasions since the incident regarding how he was doing, but he never gave any indication that he was under stress or was unable to perform his modified duties.

By letter dated January 26, 2015, the investigation by the employing establishment concluded that the incident where appellant was struck on the shoulder was horseplay, without intent to harm or cause injury. The horseplay incident was investigated and it was determined that there was no credible threat to appellant. M.T. was disciplined and later apologized to appellant. The employing establishment further reported that on the date of the incident, appellant had not requested medical attention, nor had he reported feeling threatened, which was in direct conflict with what he had eventually reported to his treating physician. The employing establishment determined that appellant had expressed most of his aggressive behavior in the meeting and, therefore, had negated all inferences of fear or intimidation of the other employee or the workplace. The employing establishment further noted that appellant had previously filed a traumatic injury claim (Form CA-1) for the same October 21, 2014 employment incident.⁴

By letter dated February 10, 2015, Supervisor H. reported that he had not been made aware that appellant had been assaulted earlier by M.T. in April 2013, in the form of a bear hug/detainment. The prior year, appellant had spoken of people “playing games,” but that appellant just wanted to do his job. Appellant had not provided any specifics regarding the incident or about whom he was talking. Supervisor H. told him he would have a service talk with all the drivers to let everyone know that certain types of jokes and horseplay should not occur as it may not be acceptable with everyone. Appellant had reported being harassed by M.T. since 2010, but Supervisor H. reported no knowledge of this. Appellant had never informed him that he felt threatened by M.T. He further stated that the October 21, 2014 incident was clearly horseplay and M.T. had apologized to appellant for punching him in the shoulder.

In disability certificates dated January 23 and February 24, 2015, a licensed clinical social worker (LCSW) reported that appellant was under professional care from January 23 through March 3, 2015 and could not return to work. Appellant also submitted a February 12, 2015 report from Dr. Bowers. The report was identical to the January 15, 2015 report previously submitted.

By decision dated March 30, 2015, OWCP accepted the employment factor of being hit by a coworker, but denied appellant’s claim finding that he had failed to establish that his diagnosed medical condition was causally related to the accepted employment factor. On April 7, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. In support of his request, appellant resubmitted medical evidence previously of record.

At the November 13, 2015 hearing, appellant testified that he had also filed a traumatic injury claim (Form CA-1) with respect to the October 21, 2014 employment incident and

⁴ *Id.*

indicated that the claim had been accepted for his right shoulder injury.⁵ He stopped work on December 13, 2014 and had been receiving wage-loss compensation as a result of the traumatic injury claim. Appellant then filed an occupational disease claim (Form CA-2) alleging PTSD dating back to the October 21, 2014 assault. He described the circumstances surrounding this claim and his need for medical treatment. Appellant advised that his claim should be accepted for PTSD, noting that the stress began immediately with the assault. He further noted that the assault was unprovoked and he did not see it coming. Counsel for appellant noted that this claim could also be considered a consequential condition of the traumatic injury.⁶

By decision dated January 29, 2016, an OWCP hearing representative affirmed the March 30, 2015 decision finding that the evidence of record failed to establish that appellant's emotional condition was causally related to the accepted employment factor.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional 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.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁸ Physical contact by a coworker or supervisor may give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.⁹

In cases involving occupational disease claims, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 and which working conditions are not deemed factors of employment and may not be considered.¹⁰ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹¹ When the matter asserted is a compensable factor of employment and the evidence of

⁵ *Id.*

⁶ *Id.*

⁷ 5 U.S.C. § 8101 *et seq.*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *Denise Y. McCollum*, 53 ECAB 647 (2002); *Helen Casillas*, 46 ECAB 1044 (1995).

¹⁰ *D.L.*, 58 ECAB 217 (2006).

¹¹ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of being punched in his right shoulder by a coworker on October 21, 2014. OWCP accepted as a compensable employment factor that he had been hit by a coworker on that date.¹³

Appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under FECA. To establish his emotional condition claim, appellant must also submit rationalized medical evidence establishing that his claimed condition is causally related to the accepted compensable employment factor.¹⁴ While it is undisputed that appellant has been diagnosed with PTSD, the Board finds that the evidence of record is insufficient to establish that his PTSD is causally related to the compensable employment factor.

In support of his claim, appellant submitted medical reports dated December 22, 2014 through February 12, 2015 from Dr. Bowers, a licensed clinical psychologist. Dr. Bowers evaluated appellant on December 18, 2014 after he was assaulted by a coworker. He diagnosed PTSD and opined that the condition was caused by the assault by his fellow coworker at the place of his employment.

The Board finds that the opinion of Dr. Bowers is not well rationalized. Dr. Bowers reported that he was not appellant's treating psychologist and only evaluated him once at the request of his treating counselor. His report maintains that appellant suffered stress symptoms of hypervigilance, paranoia, fear of retaliation, trouble sleeping, trouble keeping food down, withdrawal decrease of enjoyment of life, daydreams, replay of incident, and nightmares for a period of more than two months. Dr. Bowers merely repeated the history of injury as reported by appellant without providing his own rationalized opinion on the issue of causation based upon a full and accurate history of injury. Therefore, Dr. Bowers' opinion on the cause of appellant's condition is of diminished probative value and insufficient to establish that his PTSD was caused by the October 21, 2014 employment incident.¹⁵

The Board further notes that the history of injury appellant provided to Dr. Bowers does not focus on the horseplay incident itself, but rather assumes that the October 21, 2014 incident constituted an assault. However, the record reflects that the employing establishment's investigation, as well as statements from M.T. and Supervisor H., belies the assertion. As noted above, statements made by M.T. and Supervisor H. indicate that the incident was horseplay and

¹² *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *Supra* note 4. (OWCP also had previously accepted a right shoulder injury as a result of appellant's traumatic injury claim for the same incident).

¹⁴ *See William P. George*, 43 ECAB 1159 (1992).

¹⁵ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

that M.T. apologized to appellant following his complaint to their supervisor. Supervisor H. further reported that appellant declined medical treatment on the date of the incident and never made any allegations that he was in fear for his safety. The Board notes that appellant alleged that he was forced to see his assailant for eight hours per day, five days per week. Dr. Bowers also reported that, following the incident, appellant was forced to work side-by-side next to his attacker. However, review of the record reveals that appellant was placed on light duty on October 22, 2014 due to his shoulder injury and, on November 18, 2014, he was offered a modified assignment which he accepted. Supervisor H. reported that appellant had been assigned to a new unit in a completely different section of the facility from where he had previously worked. He further stated that he could not recall any interaction that appellant had with M.T. since the incident, and appellant had not complained of any fear or danger from seeing or being in the presence of M.T. at any time during or prior to his light-duty assignment. These statements contradict appellant's assertion that he was exposed to his attacker for eight hours per day, five days per week.

Supervisor H. further noted that he had spoken with appellant on several occasions since the incident regarding how he was doing yet appellant never gave any indication that he was under stress and was able to perform his modified duties without any problems.

These inconsistencies, which neither appellant nor his psychologist have adequately explained, cast serious doubt on the validity of his allegations.¹⁶ Dr. Bowers reported that appellant's recovery would be aided if the attacker was fired or transferred, and that the incident needed to be recognized by authorities in order for appellant to feel as if some sort of justice had occurred. Given that appellant was on light duty beginning October 22, 2014, placed in a different unit beginning November 18, 2014, and stopped working on December 13, 2014, Dr. Bowers does not appear to have an accurate history of appellant's exposure to M.T. following the October 21, 2014 employment incident. Furthermore, the employing establishment had already taken corrective action and addressed the issue following the October 21, 2014 employment incident. Dr. Bowers failed to explain why these corrective actions did not aid in appellant's recovery. It remains unclear why appellant would continue to suffer symptoms related to the October 21, 2014 employment incident despite not being exposed to his attacker. Medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim.¹⁷ As appellant has not submitted a medical report which supports that he sustained the diagnosed condition due to the horseplay incident, appellant has not met his burden of proof regarding this accepted employment factor.¹⁸

The remaining medical evidence is also insufficient to establish appellant's claim. In his October 21, 2014 report, Dr. Rose diagnosed right infraspinatus tear and an acute stress reaction, noting that appellant was punched in the right shoulder by a coworker. He opined that both conditions were work related as the right shoulder infraspinatus tear was due to direct injury

¹⁶ *Rema Vescosi*, Docket No. 01-1712 (issued June 5, 2003).

¹⁷ *See Maribel Dayap*, 48 ECAB 248 (1996).

¹⁸ *Supra* note 12.

from an on-the-job assault and the acute stress reaction was a normal emotional response to a traumatic event. The Board notes that Dr. Rose failed to provide a fully-rationalized opinion explaining how the emotional condition resulted from the accepted employment factor.¹⁹ Additionally, Dr. Rose appears to be repeating the history of injury as reported by appellant without an understanding of the events that transpired regarding the level and severity of assault pertaining to horseplay.²⁰ Without an accurate understanding of the circumstances surrounding this employment factor, and without an adequate explanation for the conclusion reached, his report is insufficient to establish causal relationship.²¹

The disability certificates from a licensed clinical social worker are also insufficient to establish appellant's claims as they are not signed by a physician. Registered nurses, physical therapists, social workers, and physician assistants, are not physicians as defined under FECA; therefore, their opinions are of no probative value.²² Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment factor caused or aggravated his PTSD.²³

Thus, the Board finds that appellant has not submitted rationalized medical evidence establishing that his PTSD is causally related to the accepted compensable employment factor.²⁴

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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish his emotional condition in the performance of duty.

¹⁹ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

²⁰ *Supra* note 13.

²¹ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

²² 5 U.S.C. § 8102(2) of FECA provides as follows: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Roy L. Humphrey*, 57 ECAB 238 (2005); *C.P.*, Docket No. 17-0042 (issued December 27, 2016) (social workers are not considered physicians as defined under FECA).

²³ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

²⁴ *M.M.*, Docket No. 06-998 (issued August 28, 2006).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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