

ISSUE

The issue is whether appellant met his burden of proof to establish an emotional condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On August 5, 2014 appellant, then a 54-year-old tractor-trailer operator, filed a traumatic injury claim (Form CA-1) for both physical and emotional conditions that he attributed to workplace harassment, including alleged threats and racial slurs.³ He identified July 31, 2014 as the date of injury. Appellant also stopped work on that date.

In an August 2, 2014 report, Dr. Robert Malizia, Board-certified in emergency medicine, advised that appellant was experiencing anxiety and stress, which had been ongoing for the previous month. He noted that appellant currently had severe anxiety and felt as if he was about to have a panic attack. Dr. Malizia reported that he had been harassed by a coworker for the past month and that he had been unable to get his supervisor to do anything about it. Appellant contended it was a delicate situation involving racial matters. He reported to Dr. Malizia that he was very angry and concerned that his coworker might do him physical harm. Appellant also advised that the coworker had cut him off in his truck deliberately and made innuendos about owning a handgun. Dr. Malizia advised that he was unable to sleep, and had difficulty staying awake and concentrating behind the wheel of his tractor-trailer. He diagnosed post-traumatic stress disorder (PTSD).

In an August 26, 2014 report, Dr. Asher Pakier, a Ph.D in clinical psychology, diagnosed PTSD and advised that appellant was unable to resume his regular activities for the near future. He noted that he would be treating appellant on a weekly basis for psychotherapy.

By letter dated September 8, 2014, OWCP advised appellant that he needed additional information to support his claim. It asked appellant to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition, and to provide specific descriptions of all practices, incidents, etc., which he believed affected his condition.

In a September 21, 2014 statement, appellant alleged that he had been harassed and threatened on numerous occasions by coworker H.S. He alleged that he was continuously harassed on the job, which caused him considerable aggravation and irritation resulting in sleepless nights worrying that H.S might harm him or his coworkers. Appellant alleged that H.S. had threatened him with bodily harm on numerous occasions and called him “a white mother-f--r.” He asserted that, although his supervisor, A.N, overheard this remark, he did not take any disciplinary action against H.S. Appellant expressed that he was being antagonized and “baited” in an ongoing situation and feared he might react rashly.

³ Appellant claimed to have developed stress-related high blood pressure, headaches, stomach pain, including throwing up, an inability to sleep, and anxiety. Although he filed a traumatic injury claim (Form CA-1), OWCP ultimately adjudicated the claim as an occupational disease because the alleged harassment occurred over a period of days.

Appellant made the following allegations regarding specific incidents involving H.S.:

(1) In June 2014, appellant entered the swing room, moved items off a chair and put them on the table so he could sit down. Soon afterwards H.S. entered the room screaming, "oh no you didn't" and shouting obscenities at appellant for moving his computer off the chair. Appellant got up and told him he shouldn't hold the chair if he was not in the room, which infuriated H.S. Appellant gave him the chair so he would stop shouting but he didn't stop. Appellant contended that H.S. continued to curse at him and repeatedly called him a "white mother-f---er" and other racial epithets for five to ten minutes. Appellant responded in kind by verbally assaulting H.S. with a racial slur of his own, after which supervisor A.N. entered the room to break up the confrontation. Appellant alleged that A.N. refused to take disciplinary action against H.S., despite overhearing the racial slur he made toward appellant. He further alleged that H.S. triggered another verbal confrontation with him in the swing room two days later;

(2) In a witness statement dated July 28, 2014 D.W., a coworker, asserted that H.S. had told him on July 28, 2014 that appellant "doesn't realize that I can snatch his life from him" and that a few other employees who had a problem with him "are all gone and he is still here." D.W. also stated, "I'm afraid someone might get hurt and that is why I have come forward;"

(3) Sometime during July 2014, H.S. had an altercation with a new employee, G.G. Appellant alleged that H.S. told G.G. that he could not sit at a seat where H.S. always sat because he had no seniority. When the new employee tried to get appellant's attention, H.S. told him repeatedly and aggressively that appellant "was not gonna help him, don't look at him;"

(4) Also during July 2014, H.S. on multiple occasions would mumble comments and tell appellant to watch his back, which caused him to have more feelings of irritability and anxiety. He would hide behind the building worksite with his tractor-trailer, entering the building only briefly when I had to, in order to avoid any further altercations with H.S. Appellant had trouble breathing, was sweating profusely, and felt his heart pound out of my chest;

(5) On July 24, 2014 H.S. made another verbal threat toward appellant by telling coworker V.C. "you will be here when things happen," which according to V.C. was directed toward appellant due to their earlier altercation;

(6) Appellant submitted sworn statements to postal inspector C.W., who agreed to look into the situation and investigate. On July 29, 2014 he contacted C.W. to learn the outcome of her investigation; she concluded "there was no criminal act at this time" and indicated to appellant that his supervisor should take action on this matter. Appellant indicated that he was concerned that no action was taken in light of the threat posed by H.S.;

(7) On several occasions appellant spoke to transportation manager A.A., and requested a transfer to Staten Island. On July 31, 2014 A.A told him he would look into it. Immediately after his conversation with A.A., on July 31, 2014 appellant was directed to move a box from inbound to bay 52. As he was driving around to reach the outbound side, a tractor-trailer on his left was coming towards him. All of a sudden, the other tractor-trailer cut off appellant, causing him to jam on the brakes of his tractor-trailer. He claimed that the two vehicles were within inches of hitting each other. H.S. was the driver of the vehicle that had cut him off. Appellant related that H.S. thought it was funny and had a big smile on his face. Appellant immediately went to dispatch and asked them to take him to medical since he was experiencing shortness of breath, nausea, anxiety, stress, anger and heart palpitations. This incident was witnessed by coworker V.C., who provided an August 25, 2014 statement;

(8) Appellant asserted that anxiety sets in just before he leaves for work in the morning since he knows he might experience another altercation with H.S. He was concerned that H.S. might try to retaliate against him because he filed a complaint and because H.S. had threatened other employees. Appellant alleged that H.S. got away with this behavior because of management's reluctance to take disciplinary action toward him. This inaction flew in the face of management's policy of zero tolerance for any type of harassment or aggression in the workplace, verbal or otherwise.

In a July 31, 2014 report, received by OWCP on September 22, 2014, Dr. Manuel Ceja, a specialist in internal medicine, advised that appellant had been getting into multiple altercations with a coworker for the past month. Dr. Ceja related that appellant felt the urge to physically assault his coworker because the coworker was very provocative and was being a nuisance. Dr. Ceja noted that appellant was very angry and was using a lot of profanity to describe this situation. He reported that his coworker cut him off with a tractor-trailer, an incident which occurred hours before his initial visit for his stress and anger issues. Dr. Ceja advised that appellant had informed his supervisor about the ongoing conflict he was having with his coworker and that they were conducting a thorough investigation. He indicated that the ongoing harassment resulted in an unspecified acute reaction to stress.

In a September 21, 2014 report, Dr. Malizia advised that he had treated appellant on three occasions since August 2, 2014 for evaluation and treatment of severe anxiety and anger issues related to an ongoing confrontational situation at work. He related that appellant felt he was being antagonized, baited, and threatened by a coworker because of his ethnicity, and management was not addressing the situation because of the potential consequences of taking corrective actions. Dr. Malizia reported that appellant was experiencing feelings of extreme anxiety, bordering on panic attacks, insomnia and resulting daytime somnolence and difficulty concentrating; this was extremely hazardous to public safety when operating a heavy vehicle.

Dr. Malizia opined that appellant should be removed from the current situation and reassigned to another location until the situation was resolved. He recommended that appellant be given a medical leave of absence to allow him to convalesce under the care of behavioral

health professionals, and his mental and emotional state stabilized to allow him to safely operate heavy commercial vehicles.

In a September 15, 2014 report, received by OWCP on September 22, 2014, Dr. Pakier advised that he was treating appellant for psychotherapy on a weekly basis for symptoms consistent with PTSD due to appellant's complaints of continuous harassment on the job by a coworker. He noted that appellant was experiencing nightmares, feelings of sadness and helplessness, loss of appetite, anhedonia, anxiety and extreme irritability. Dr. Pakier opined that appellant's condition was precipitated by the continuous harassment on his job by another postal employee. He related that this coworker was not disciplined, and would continue to be a threat to appellant when he was able to return to his normal duties.

In a statement received by OWCP on October 27, 2014, appellant's supervisor, A.N., rebutted his allegations. He opined that appellant was a shrewd manipulator who employed bullying tactics to get his way and would go outside the chain of command and file official paperwork when it suited him; he alleged that appellant would bend the rules and lie when necessary. A.N. asserted that appellant's witness statements were not credible because they were obtained from close friends, employees he intimidated, or employees who also had animosity toward H.S. He asserted that he treated all of his employees with respect and that his managing style was favorable with employees and his managers. With regard to the June 2014 verbal altercation over the chair in the swing room, A.N. stated that he did hear both employees utter disgusting words toward each other; he, however did tell each employee privately that this was unacceptable behavior and tried to end their ongoing dispute. A.N. alleged that it was appellant who refused to let go and try to coexist with H.S., despite his best efforts. He indicated that he was aware of other confrontations appellant had with H.S. and with other employees in which he was the instigator and the culpable party.

In a statement of accepted facts dated February 5, 2015, OWCP stipulated that it had accepted the following events as factors of employment: (1) On July 31, 2014 while driving and moving a trailer in bay 52, appellant was cut off by a tractor-trailer coming from his left, causing him to jam on the brakes of the vehicle to avoid colliding with the other vehicles, which were within inches of hitting each other. The driver of the other vehicle was H.S, who thought it was funny and had a big smile on his face, and caused appellant to believe that H.S. deliberately tried to cause an accident. Another coworker witnessed this event and stated that appellant had the right of way; and (2) On July 28, 2014 H.S. verbally threatened appellant's life. A coworker witnessed a heated argument between appellant and H.S and heard H.S. state 'he doesn't realize I can snatch his life from him.'" H.S. then motioned towards appellant. The witness stated that he was afraid someone might get hurt.

In order to determine whether appellant had an emotional disorder causally related to the accepted, compensable employment factors, OWCP referred appellant to Dr. Maryann Popiel, Board-certified in psychiatry and neurology, for a second opinion examination. In a report dated March 10, 2015, she noted findings on examination, reviewed the medical history and statement of accepted facts. Dr. Popiel opined that appellant did not meet the criteria for PTSD; at most, he had an anxiety disorder, not otherwise specified. She noted that he had ongoing interpersonal relationship issues and discord with a coworker, but opined that this was more of an anger management issue for appellant. Dr. Popiel reported that appellant was having difficulty

focusing and performing at work when he was in the company of his coworker. She believed that working in his company aggravated his emotional distress.

Dr. Popiel opined that appellant's situation did not rise to the level of a diagnosed DSM-IV condition, although she noted that it would be in his best interest if he were working at another site.

In an April 2, 2015 treatment note, Dr. Nicole Arcentales, an osteopath, advised that appellant was being treated for anxiety caused by a stressful work incident. He excused appellant from work from March 31, 2015 until further evaluation, but he failed to relate the basis for the removal from work.

By decision dated May 8, 2015, OWCP denied appellant's claim for an emotional condition. As noted above it accepted the following events as factors of employment: (1) On July 31, 2014 while driving and moving a trailer in bay 52, appellant was cut off by a tractor-trailer coming from his left, causing him to jam on the brakes of the vehicle to avoid colliding with the other vehicles, which were within inches of hitting each other. The driver of the other vehicle was H.S., who thought it was funny and had a big smile on his face, and caused appellant to believe that H.S. deliberately tried to cause an accident. Another coworker witnessed this event and stated that appellant had the right of way; and (2) On July 28, 2014 H.S., verbally threatened appellant's life. A coworker witnessed a heated argument between appellant and H.S. and heard H.S. state "he doesn't realize I can snatch his life from him," who then motioned towards appellant. The witness stated he was afraid someone might get hurt. OWCP found, however, that the medical evidence of record failed to demonstrate that the claimed medical conditions were causally related to the established work-related events.

OWCP found that the medical reports from appellant's treating physicians did not discuss detailed examples of the accepted incidents or provide any medical rationale to establish how these incidents were causally related to the claimed condition. It found Dr. Popiel's psychiatric or psychological diagnoses insufficiently rationalized to represent the weight of the medical evidence. She noted that working in the company of H.S. aggravated appellant's emotional distress, but did not rise to the diagnosis of a DSM-IV condition.

On August 31, 2015 appellant requested an oral hearing. The request was postmarked September 3, 2015. In an October 14, 2015 decision, the Branch of Hearings and Review denied the request as untimely.

By letter dated February 29, 2016, appellant, through counsel, requested reconsideration.

In a report dated October 14, 2015, received by OWCP on March 7, 2016, Dr. Robert Conciatori, a Board-certified psychiatrist, advised that he was treating appellant. He diagnosed PTSD and opined that this pathology began during the summer of 2014 while appellant was working as a truck driver for the employing establishment. Dr. Conciatori related that appellant alleged that he was continually threatened by an African-American coworker who cursed him, using racial epithets, that this coworker was aggressive and threatened to assault him and kill him, and that the coworker tried to collide with his truck on July 31, 2014, which was "the proverbial straw that broke the camel's back."

Appellant asserted that, despite a no tolerance policy, management did not take action on his complaints about this coworker. Dr. Conciatori advised that he began to experience depression, anxiety and fear of being assaulted or murdered and was unable to work from July 31 to December 15, 2014; appellant returned to work but was subject to continued harassment and threats and went off work again as of March 2015. He opined that appellant clearly met the criteria for PTSD, which was the direct result of his coworker's actions and behavior. Dr. Conciatori noted that appellant was taking antidepressants for his anxiety and insomnia and was totally disabled psychiatrically. He opined that appellant's PTSD was causally related to the harassment suffered at the employing establishment.

In an October 31, 2015 report, Dr. Jeffrey H. Newton, Board-certified in psychiatry, advised that appellant was experiencing anxiety. He advised that he was subjected to a pattern of harassment at work and that management had failed to respond to his requests for relief and that the harassment was perpetrated by a coworker, H.S., who was allegedly verbally aggressive and menacing toward him. Dr. Newton noted that there was a confrontation over control of a particular chair in the office which degenerated into an exchange of racial slurs and that similar incidents had occurred subsequently. He also recounted the July 31, 2014 incident involving tractor-trailers on postal grounds. Dr. Newton related that appellant became very anxious, had elevated blood pressure sought medical help, and was unable to return to work. He, however, did not see any indication of psychosis or organic mental dysfunction.

Dr. Newton concluded that appellant showed a significant level of constant anxiety and stress symptoms, with marked exacerbation when having to deal with anything regarding his work experience with the employing establishment. He advised that appellant required psychiatric counseling due to his PTSD and that this condition was a direct result of his experience at work of multiple and ongoing incidents of harassment from a coworker, along with the absence of an effective response from management. Dr. Newton further opined that, given these manifestations of PTSD, his condition was likely to persist, even with treatment. He therefore recommended that appellant not make an attempt to return to work, which would likely result in an exacerbation of his symptoms with further deterioration in his personal functioning and physical well being.

By decision dated June 3, 2016, OWCP denied modification of the May 8, 2015 decision.

LEGAL PRECEDENT

To establish a claim of an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.⁴ Workers' compensation law does not apply

⁴ 20 C.F.R. § 10.5(q).

to each and every injury or illness that is somehow related to an employee's employment.⁵ 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.⁶ 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

If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁸ 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.⁹

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.¹⁰ Appellant has the burden to submit rationalized medical evidence establishing that his claimed conditions were causally related to the accepted compensable employment factors.¹¹

It is not necessary to provide a significant contribution of employment factors for the purpose of establishing causal relationship.¹²

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee the Secretary shall appoint a third physician who shall make an examination.¹³ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹⁴

⁵ *L.D.*, 58 ECAB 344 (2007).

⁶ *A.K.*, 58 ECAB 119 (2006).

⁷ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁹ *Robert Breeden*, 57 ECAB 622 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *See D.R.*, Docket No. 16-0605 (issued October 17, 2016); *see also A.V.*, Docket No. 15-1394 (issued December 22, 2015).

¹² *See Richard E. Simpson*, 55 ECAB 490 (2004).

¹³ *Regina T. Pellicchia*, 53 ECAB 155 (2001).

¹⁴ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

ANALYSIS

Appellant alleged an emotional condition causally related to the accepted factors of his federal employment. In a SOAF dated February 5, 2015, OWCP accepted two compensable employment factors. By decision dated June 3, 2016, it denied his claim finding that he had failed to meet his burden of proof to establish an emotional condition causally related to the two accepted employment factors as he had failed to submit sufficient medical evidence in support of his claim.

The Board finds the weight of the medical evidence rests with Dr. Popiel, the second opinion physician, who was provided a SOAF which set forth in detail the two accepted factors. The Board has carefully considered the opinion of Dr. Popiel and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issues of the present case.¹⁵ Dr. Popiel found that appellant has established no psychiatric or psychological diagnoses and did not meet the criteria for PTSD. She found that, at best, appellant had an anxiety disorder which she attributed to appellant's ongoing interpersonal discord between appellant and a coworker which was in her opinion more of an anger management issue for appellant. Dr. Popiel found that appellant could return to work without restrictions but that it would be in appellant's best interest to work in another area away from the coworker. She did not attribute the anxiety disorder to the two accepted compensable factors of employment. The Board finds that OWCP properly relied on Dr. Popiel when it denied appellant's emotional condition claim.

Appellant's burden of proof is not discharged by the fact that compensable factors have been accepted which may give rise to a compensable disability under FECA. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to an accepted compensable employment factor or factors.¹⁶

The record of evidence contains reports from several treating physicians who examined or treated appellant and provided opinions as to whether he sustained a diagnosed psychological condition causally related to the incidents involving a coworker. The Board finds these reports of limited probative value in that they are not based on an accurate factual history and do not contain adequate medical rationale in support of their conclusions. The reports from Drs. Ceja, Malizia, Pakier, Arcentales, Conciatori, and Newton all note a diagnosis of either PTSD or an unspecified stress reaction. However, none of these physicians provide a rationalized and supportive opinion to support that appellant developed these conditions as a result of the two accepted factors of his federal employment. Instead, they each describe in their medical notes accounts of ongoing and pervasive harassment over time with varying factual complaints expressed by appellant that were never accepted as factual. Although several of the reports reference generally the two incidents which were accepted as compensable factors, their opinions did not relate appellant's conditions to these specific incidents. In his report of October 14, 2015, Dr. Conciatori gives passing mention to the two accepted conditions. Couched in a recurring theme of harassment, he recounts threats of

¹⁵ See *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

¹⁶ See *William P. George*, 43 ECAB 1159 (1992).

assault and an instance where the coworker tried to collide with appellant's truck. These instances are raised, however, there is no medical causation provided to link these specific instances to the claimed injury. Instead, they are superimposed on a larger history of interpersonal discord. The opinions on causation were based generally on pervasive harassment over an extended period of time. However, OWCP has not accepted such ongoing and pervasive harassment as factors of employment. Such generalized statements of "ongoing harassment" and "pervasive harassment" merely repeat appellant's allegations and are unsupported by the factual history. The medical evidence failed to adequately explain, with supportive rationale, how the two employment factors alone would have been sufficient to cause or aggravate the diagnosed conditions.¹⁷

The record of evidence lacks rationalized medical evidence establishing a causal relationship between appellant's accepted employment factors and the diagnosed PTSD or other psychological condition. The Board therefore finds that the medical evidence of record is insufficient for appellant to meet his burden of proof to establish his claim.

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 has not met his burden of proof to establish an emotional condition causally related to the accepted factors of his federal employment.

¹⁷ See *S.F.*, Docket No. 17-0463 (issued September 29, 2017); *K.W.*, Docket No. 10-98 (issued September 10, 2010); *Victor J. Woodhams*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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