

and/or tinnitus, which in turn worsened his preexisting sleep disorder (insomnia). He also claimed to have suffered from anxiety due to tinnitus.² Appellant identified October 6, 2015 as the date he first realized his disease or illness was caused or aggravated by factors of his federal employment. The employing establishment indicated that when an alternative work space was located he was relocated to a private office.³

In an undated statement, appellant indicated that he developed anxiety out of concern over his worsening tinnitus/hearing loss, and associated sleep disorder. He further noted that he previously suffered some minor anxiety while serving on active duty in the military. Appellant also reported a history of service-connected chronic headache. He explained that he was diagnosed with anxiety on October 6, 2015.

Appellant submitted employing establishment outpatient notes dated July 9 and 24, 2015 by Eugenia S. Cray, a nurse practitioner. Ms. Cray noted that appellant complained of sinusitis, sore throat, headache, cough/congestion, bad breath, loose stools, and insomnia. She reviewed appellant's medications and provided examination findings. In a July 9, 2015 note, Ms. Cray related that appellant requested a hearing evaluation because he could not hear the television when he watched it. Appellant also indicated that he was not sleeping well and opined that some of the problem may be due to worrying about his job, family, and pregnant wife.

In an October 6, 2015 report, Dr. Christine E. Jacobsen, a Board-certified family practitioner, indicated that appellant was treated for complaints of insomnia. Appellant informed her that over the past several months he experienced difficulty sleeping. He explained that he had increased stressors in his life, including his job and pregnant wife. Dr. Jacobsen noted that appellant also complained of increased panic-type symptoms when driving next to a truck. She reported that he may have some depression as well. Dr. Jacobsen reviewed appellant's history and conducted an examination. She noted a positive depression screening score. Dr. Jacobsen also observed normal mood and affect. She indicated that appellant seemed to be trembling at times. Dr. Jacobsen diagnosed other insomnia and anxiety and prescribed medication.

Dr. Jacobsen related in a November 6, 2015 report that appellant's insomnia and anxiety had improved since taking medication. Appellant indicated that on most occasions he was able to sleep through the night, and when he occasionally awakened he had been able to fall right back asleep. Dr. Jacobsen reviewed appellant's history and provided examination findings. She

² OWCP separately adjudicated appellant's claim(s) for insomnia, hearing loss, and tinnitus (OWCP File No. xxxxxx565). By decision dated May 8, 2017, the Board affirmed OWCP's July 15, 2016 decision denying appellant's claim for insomnia, hearing loss, and tinnitus. Docket No. 16-1639 (issued May 8, 2017). As the Board's decision became final upon the expiration of 30 days from the date of issuance, and as OWCP has not rendered a subsequent merit decision regarding that issue, the findings made in the Board's May 8, 2017 decision are *res judicata* and not subject to further review. 20 C.F.R. § 501.6(d). Therefore, the issue in this appeal is limited to appellant's claim for anxiety. Appellant also has another occupational disease claim for work-related hearing loss with an August 1, 2015 date of injury, which OWCP denied under File No. xxxxxx430.

³ An October 2, 2015 e-mail with the subject line "Sound Testing" noted readings from 59.7 to 63.1 dBA (A-weighted decibels). It further noted that most of the window air conditioners were at that level or higher. The author of the e-mail, E.C., reported that it could be irritating when running full time, but she did not think it would cause hearing loss, unless the individual already had some sort of hearing loss. She further noted that the window air conditioning units would soon be removed.

diagnosed insomnia due to other mental disorder, anxiety, and screening for cardiovascular condition.

In a December 11, 2015 report, Dr. Jacobsen noted that appellant was having problems with his hearing. Appellant related that he saw an audiologist five months ago and was borderline, but he felt like his hearing had worsened. Upon physical examination, Dr. Jacobsen observed normal external ear canals and tympanic membranes, bilaterally. Nasal discharge was clear and nasal congestion was moderate. Dr. Jacobsen reported that psychiatric examination showed normal mood and affect. She diagnosed insomnia due to other mental disorder, anxiety, and difficulty hearing, bilaterally. Dr. Jacobsen noted that appellant should work on decreasing his congestion to see if his hearing might improve.

OWCP received a January 13, 2016 letter by Dr. Jacobsen. Dr. Jacobsen related that appellant had informed her that sitting near a running air conditioner at work had caused ringing in his ears and hearing loss. She reported that because of this, he had experienced added pressure in his job and home life, causing anxiety and insomnia.

By letter dated May 6, 2016, J.B., a human resources specialist at the employing establishment, reported that appellant had previously submitted a Form CA-2 for hearing loss, which OWCP denied under File No. xxxxxx430.⁴

In an undated statement, the employing establishment related that the primary function of the clinical pharmacist specialist was to provide pharmaceutical care to patients taking anticoagulation medication and to evaluate medication therapy through direct patient care involvement. It reported that appellant filed for a reasonable accommodation on or about July 15, 2015 and was provided interim accommodation on or about July 9, 2015. The employing establishment indicated that appellant worked eight hours per day, five days a week with minimal overtime. OWCP also received a position description for a pharmacist.

J.B. further related, in form of a May 20, 2016 letter, that the employing establishment did not concur with appellant's claim of tinnitus/hearing loss brought on by working in an office near a window air conditioner. He noted that the air conditioner was evaluated by an environmental health technician and the readings were from 59.7 to 63.1 dBA. J.B. explained that appellant was a pharmacist working in an office setting not exposed to loud noises.

By development letter dated June 23, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to the attached questionnaire in order to substantiate the factual element of his claim and provide additional medical evidence to establish that he sustained a diagnosed condition causally related to his federal employment. OWCP afforded appellant at least 30 days to submit the requested factual and medical evidence.

No additional information or medical evidence was received within the allotted timeframe.

⁴ See *supra* note 2.

OWCP denied appellant's claim for anxiety by decision dated October 20, 2016. It accepted as a compensable factor of employment that appellant sat by an air conditioner at work. However, OWCP denied appellant's claim because the medical evidence of record did not establish that appellant's anxiety was caused or aggravated by the accepted compensable employment factor. Specifically, it found that Dr. Jacobsen did not adequately explain how appellant's anxiety was causally related to his work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁷ To establish an emotional condition causally related to factors of federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁸ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

OWCP accepted that appellant sat in close proximity to an air conditioner at work. It denied his claim, however, because appellant failed to submit rationalized medical evidence explaining how the diagnosed anxiety was either caused or aggravated by the accepted employment exposure. The Board finds that appellant has failed to meet his burden of proof to establish that he suffered from employment-related anxiety.

Appellant submitted a series of reports and letters dated October 6, 2015 to January 13, 2016 from Dr. Jacobsen. Dr. Jacobsen related that appellant sought treatment because he had

⁵ *Supra* note 1.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See L.W.*, Docket No. 17-1070 (issued August 7, 2017); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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

difficulty sleeping over the past several months. Appellant had informed her that he had increased stressors in his life, including his job and pregnant wife. Upon initial examination, Dr. Jacobsen reported a positive depression screening score. She also noted normal mood and affect and indicated that appellant seemed to be trembling at times. Dr. Jacobsen diagnosed insomnia due to other mental disorders, anxiety, and difficulty hearing, bilaterally. In a January 13, 2016 letter, she related that appellant had informed her that sitting near a running air conditioner at work had caused ringing in his ears and hearing loss. Dr. Jacobsen reported that because of this appellant had experienced added pressure in his job and home life, causing anxiety and insomnia.

Dr. Jacobsen provided findings upon examination and diagnoses of insomnia due to mental disorder and anxiety based upon these findings. Although she provided an opinion that vaguely supported causal relationship between appellant's employment and his anxiety, the Board finds that she did not provide any medical rationale or explanation as to how the accepted employment factor would have caused his emotional condition.¹¹ Dr. Jacobsen merely repeated appellant's belief that his insomnia and anxiety were related to the hearing loss he reportedly developed sitting next to an air conditioner at work. She did not support her statements with adequate medical rationale explaining how appellant's proximity to the air conditioner at work actually caused or contributed to his anxiety.¹² The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹³ The need for adequate medical evidence is particularly important in this case where appellant mentioned additional stressors in his life, including his pregnant wife. Dr. Jacobsen's reports, therefore, are of limited probative value and are insufficient to establish appellant's claim for employment-related anxiety.

OWCP also received employing establishment outpatient notes dated July 9 and 24, 2015 by a nurse practitioner. The nurse practitioner diagnosed sinusitis, sore throat, headaches, diarrhea, and insomnia. Evidence from a nurse practitioner, however, does not constitute competent medical evidence under FECA as nurse practitioners are not considered physicians as defined under section 8102(2) of FECA.¹⁴ Thus, these notes are also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence sufficient to support his allegation that he sustained an emotional condition causally related to his accepted employment factor, he has failed to meet his burden of proof to establish his claim.

¹¹ See *D.F.*, Docket No. 17-1543 (issued January 29, 2018).

¹² *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹³ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁴ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016) (nurse practitioners and physician assistants are not considered physicians under FECA).

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 that he suffered from employment-related anxiety causally related to the accepted compensable factor of employment.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2018
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