

FACTUAL HISTORY

On January 8, 2016 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2016 she sustained injuries to her upper body, chest, and right foot in the performance of duty.³ She indicated that she was “pushed/bumped by co-worker at work.” Appellant stopped work that day.

In a January 8, 2016 report, Dr. Jonathan M. Abraham, a Board-certified emergency medicine specialist, noted that appellant was seen and treated in the emergency room that day. Dr. Abraham advised that she was able to return to work after being cleared by a physician on January 12, 2016.

On January 12, 2016 Dr. M. Rafiq Zaheer, a Board-certified internist and cardiologist, noted that appellant was transitioning into care from the emergency room after being referred on January 8, 2016 for chest pain and right foot pain after she was in “an altercation with a coworker and was hit 3 times in the chest.” He indicated that appellant’s chest pain was located in the substernal area and radiated to the left arm. Dr. Zaheer also noted that appellant’s medical history of other conditions including anxiety disorder.

In a January 15, 2016 report, Dr. Michael J. Papantones, a licensed clinical psychologist, indicated that he saw appellant for anxiety and depression. He noted that appellant was undergoing a myriad number of physical and mental problems at the time that were very stressful. Dr. Papantones released her from work duties from January 15 to 23, 2016.

In a letter dated January 15, 2016, appellant’s supervisor indicated that she was involved in a verbal altercation with another employee at her duty station. He noted that she had no reason to be in the loading area to try and retrieve mail from the employee and was also not authorized by a supervisor to go and get mail from the employee. The supervisor further indicated that the verbal altercation became physical because the employee felt that appellant made a disparaging comment about her. The employee bumped appellant and appellant was not claiming that she was injured by the bump.

On January 20, 2016 the employing establishment controverted appellant’s claim based on appellant’s willful misconduct.

By development letter dated January 26, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In a January 29, 2016 report, Dr. Waleed Mushref, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD), anxiety disorder, and depressive disorder. He noted that appellant was recently assaulted by an employee and she had to go to the emergency room for a chest contusion. Appellant reported that this assault also triggered her symptoms of PTSD that she had suffered from in the past, since 2007, when she was abused emotionally by her ex-supervisor. She claimed this caused flashbacks, poor sleep, nightmares, irritability, and

³ The record establishes that appellant has two previously accepted claims for generalized anxiety disorder (under File No. xxxxxx188) and right foot dermatophytosis, other specified skin disorders, bilateral plantar fibromatosis, and lesion of plantar nerve, right (under File No. xxxxxx893).

avoidance of people or situations that were associated with that trauma. Appellant also reported severe anxiety, depression, and crying spells. Dr. Mushref indicated that appellant was still struggling with these symptoms and was unable to go back to work.

An incident report dated January 8, 2016 indicated that appellant was pushed by another employee.

In a February 8, 2016 narrative statement, appellant asserted that she was authorized to give mail to two coworkers on the morning of the injury when she had a verbal altercation and was physically assaulted by another employee.

On January 27, 2016 Dr. Hilary H. Washington, a family practitioner, diagnosed PTSD and depression. He noted that a traumatic event that involved a physical assault had occurred three weeks prior. Dr. Washington found that appellant's symptoms included flashbacks, emotional numbing, feeling detached, irritability, and inability to concentrate.

In a January 27, 2016 disability certificate, Dr. Washington advised that appellant was totally incapacitated from employment for the period January 27 to February 15, 2016 because of PTSD on the job.

On January 27, 2016 Dr. Mushref advised that appellant was unable to return to work due to debilitating mental health symptoms and would need a four-week leave to allow her symptoms to stabilize and for her medications to reach their therapeutic effects.

By decision dated March 2, 2016, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish an emotional condition arising from a compensable factor of employment. It accepted that appellant was in a verbal altercation with a fellow employee that escalated into a physical altercation on January 8, 2016. However, OWCP found that the accepted incident was not a compensable factor of employment because a customer service supervisor noted that appellant was not engaged in employer authorized activities when the incident took place as she had no reason to be in the loading area to try to retrieve mail from the other employee.

Appellant subsequently submitted a January 8, 2016 x-ray of her right foot which revealed no acute fracture or dislocation, no significant soft tissue swelling, and joint spaces within normal limits.

Appellant also submitted a January 8, 2016 chest x-ray that showed no acute cardiopulmonary process.

On March 25, 2016 appellant requested an oral hearing before a representative of the OWCP Branch of Hearings and Review.

In a February 26, 2016 report, Dr. Mushref continued to diagnose PTSD, depression, and anxiety and indicated that appellant was seen in follow-up and to get medication for her PTSD and depression. Appellant further indicated that she was still stressed and unable to go back to work due to her depression, anxiety, and previous assault by another employee.

On March 8, 2016 T.G., a coworker, provided a statement indicating that on January 8, 2016 appellant was assigned to route 1112 and had her mail pulled down and ready to be loaded. T.G. stated that appellant was normally on code 721 by 9:00 a.m. every day separating parcels for her route. On March 9, 2016 D.D., a coworker, provided a statement indicating that as a matter of regular routine appellant was pulled down and in the process of loading out her route 1112 assignment on or between 9:00 and 9:30 a.m. on a daily basis. D.D. stated that this required appellant to be moving in and out of the station building to the parking lot several times to complete the loading process.

A telephonic hearing was held before an OWCP hearing representative on November 7, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In response, appellant submitted a January 8, 2016 witness statement from J.S., a coworker, who indicated that he saw the employee bump appellant at 9:10 a.m.

In another January 8, 2016 statement, a coworker, J.S., indicated that she was told that she had a 45-minute bump on route 1112, appellant's route, that morning. After some confusion, she indicated that appellant started to raise her voice saying to put the bump back because it was not hers. J.S. told appellant to "figure out who was going to take the f---ing bump." Appellant responded by saying, "you're the same b---h who was going to take it in the first fuc---ing place!" Then J.S. approached her and asked her if she just called her a "b---h" and appellant started yelling and saying that she wanted to hit her and call the police. Appellant continued to walk towards J.S. and her truck until J.S. walked away, got into her truck, and left to start her route.

A notice of 14-day paper suspension dated November 27, 2015 indicated that J.S. was involved in another verbal confrontation on November 1, 2015 at work when she called another coworker a "b---h a-s n----r" and a "b---h" and then called his mother a "b---h."

In reports dated February 3, March 2, and April 1, 2016, Dr. Papanones advised that appellant was still under his care and released her back to part-time work on March 20, 2016 and full-time work on April 4, 2016.

On January 12, 2016 Dr. Melissa O. Smith, a podiatrist, indicated that on January 11, 2016 appellant reported that she was involved in an altercation with a fellow employee at work which resulted in the other person assaulting her causing her to slip off the curb and twist her right foot and ankle. She noted diagnoses and found that appellant had reached maximum medical improvement (MMI).

In a November 8, 2016 report, Dr. Christine Pletkova, a Board-certified psychiatrist, diagnosed mental conditions of PTSD and chronic psychiatric illness, medical problems. She noted that appellant had an event at work on January 8, 2016 when she was assaulted by another employee. Appellant called 9-1-1 and twisted her right ankle. She had high anxiety and her blood pressure was high. Appellant experienced chest pain and panic attacks.

On November 14, 2016 Dr. Smith advised that appellant was seen for a follow-up examination of her right foot and ankle injury following a January 8, 2016 altercation at work.

In a November 14, 2016 report, Dr. Pletkova advised that appellant was diagnosed with depressive disorder, anxiety, and PTSD. She opined that appellant's mental health issues were precipitated by the incident that occurred at work in January 2016 when she was assaulted. Dr. Pletkova indicated that appellant's symptoms included severe anxiety, reported frequent panic attacks, social isolation, difficulty falling asleep, and low energy level.

By decision dated January 9, 2017, OWCP's hearing representative affirmed the prior decision, as modified to reflect denial based on causal relationship rather than performance of duty. He found that the factual evidence was sufficient to establish that the altercation was a compensable factor of appellant's employment because she was authorized to be in the dock area on January 8, 2016 where a coworker bumped into her after a verbal altercation. However, the hearing representative further found that the medical evidence of record was insufficient to establish causal relationship between her diagnosed emotional conditions and the accepted employment factor.

On April 10, 2017 appellant requested reconsideration and submitted additional evidence in support of her claim.

In a December 15, 2009 report, Dr. Papantones indicated that appellant described her work situation as intolerable. Appellant felt disciplined for things she had not done and felt that she "always" had to prove to her supervisor and manager that she was doing a good job. She stated that it got to the point where she was not to talk to her fellow employees.

A workers' compensation worksheet from Inova Alexandria Hospital in Alexandria, Virginia identified the date of injury as January 8, 2016 at 9:40 a.m. It noted that appellant was pushed off a sidewalk by another letter carrier.

In reports dated September 23, 2014 and May 9, 2016, Dr. Papantones advised that appellant was still under his care for stress and depression and continued to receive psychotherapy as a result of an assault that took place at work.

On January 26, 2017 Dr. Pletkova reiterated the medical diagnoses and opinions from her November 14, 2016 report.

By decision dated July 7, 2017, OWCP denied modification of its prior decision.

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.⁴ 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

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

his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.⁶ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.⁷

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.⁸ 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.⁹ 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.¹⁰

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹¹ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹²

In cases involving emotional conditions, 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.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a

⁵ See *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ See *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁷ See *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁸ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹⁰ See *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹¹ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹² See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹³ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

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.¹⁴

ANALYSIS

The Board finds that the employee has not met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal employment.

Dr. Papantones and Dr. Washington, provided medical reports which offered no opinion regarding the cause of appellant's diagnosed emotional conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ Consequently, the reports of these two physicians are insufficient to meet appellant's burden of proof with respect to causal relationship.¹⁶

Dr. Pletkova diagnosed depressive disorder, anxiety, and PTSD. She noted that appellant was assaulted at work on January 8, 2016 by another employee and opined that appellant's mental health issues were precipitated by the work incident. The Board finds, however, that Dr. Pletkova's opinion on causal relationship is speculative in nature.¹⁷ The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.¹⁸ Furthermore, Dr. Pletkova did not provide medical rationale explaining how the accepted January 8, 2016 employment incident and factors of appellant's federal employment caused or contributed to the diagnosed emotional conditions. A mere conclusion without the necessary rationale explaining how work activities could result in the diagnosed conditions is insufficient to meet the employee's burden of proof.¹⁹ Thus, the Board finds that Dr. Pletkova's reports are insufficient to meet appellant's burden of proof.

In his reports, Dr. Mushref diagnosed PTSD, anxiety disorder, and depressive disorder. Dr. Mushref noted that the January 8, 2016 assault triggered appellant's symptoms of PTSD that she had suffered from since 2007. However, the Board finds that Dr. Mushref's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period 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.²⁰ Dr. Mushref did not otherwise sufficiently explain the reasons why

¹⁴ *Id.*

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See supra* notes 3-13.

¹⁷ *See J.S.*, Docket No. 17-0326 (issued February 13, 2018).

¹⁸ *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

¹⁹ *See D.P.*, Docket No. 17-0148 (issued May 18, 2017).

²⁰ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

diagnostic testing and examination findings led him to conclude that the accepted employment incident caused or contributed to the diagnosed emotional conditions. The need for rationale is particularly important as the record indicates that appellant had a prior history of generalized anxiety and PTSD.²¹ Thus, the Board finds that Dr. Mushref did not provide a fully-rationalized opinion explaining why or how the diagnosed emotional conditions were caused or aggravated by the January 8, 2016 work injury and why it was not solely attributable to nonemployment factors.

For these reasons, appellant has not met her burden of proof to establish an emotional condition causally related to the accepted factors of her federal employment.

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 her burden of proof to establish an emotional condition causally related to the compensable factor of her federal employment.

²¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). (In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.)

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2018
Washington, DC

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

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

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