

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition as a consequence of his accepted May 26, 2015 employment-related injury.

FACTUAL HISTORY

OWCP accepted that on May 26, 2015 appellant, then a 58-year-old rigger, sustained a sprain of the left wrist carpal joint, left hip, left thigh, left ankle, left foot, and left sacroiliac ligament and a contusion of the left chest wall when he stepped and fell into an uncovered hole aboard a ship at work. Appellant stopped work that day and returned on November 20, 2015 to full-time light-duty work.

In a telephone call on August 17, 2016, appellant requested that OWCP expand the acceptance of his claim to include a psychiatric condition. OWCP advised him to submit a medical report to indicate a consequential condition.

In progress notes dated July 13 and August 23, 2016, and in an August 10, 2016 letter, Dr. Patrick D. Thrasher, a Board-certified psychiatrist, noted that appellant was referred to him for psychiatric evaluation and treatment for possible post-traumatic stress disorder (PTSD) resulting from the May 26, 2015 employment injury. He related a history of appellant's accepted work injury, his medical treatment, and his return to work. Dr. Thrasher reported that appellant's symptoms since his accident included being significantly anxious, and depressed, having flashbacks when he saw ships and submarines, and having nightmares and dreams about falling. He noted that despite his PTSD and depression symptoms appellant was able to perform light-duty work away from piers and ships. Dr. Thrasher noted, however, that appellant experienced increased anxiety and a deteriorated mood when his request to continue to work away from piers and ships was denied by his supervisor and he was assigned to work on a guard shack on a pier. Appellant continued to suffer from these symptoms when his supervisor gave him a hard hat to wear on the pier that unbeknownst to him read "Ole Crip." He noticed that people began to call him "Ole Crip" or "Crip" and when he inquired about this they told him what was written on the hat. Appellant was extremely humiliated and embarrassed and took off work for one week. He was also very angry, but internalized his feelings. Appellant was called "Ole Crip" when he saw other employing establishment workers in public places. Dr. Thrasher noted appellant's level of stress due to family, friends, economic, occupational, housing, health, relationships, educational, and legal concerns. He reported appellant's scores on psychological testing and provided a review of systems and examination findings, which included a Beck Depression Inventory score of 52. Dr. Thrasher diagnosed single episode of severe major depressive disorder and chronic PTSD and noted that appellant had no prior history of psychiatric illness or treatment. He opined that the diagnosed conditions were consequential injuries causally related to appellant's May 26, 2015 employment injury. Dr. Thrasher further opined that appellant's conditions were exacerbated by being humiliated by his supervisor and by his supervisor's attitude towards his physical injuries.

OWCP, in a development letter dated December 14, 2016, advised appellant that it had received his claim for major depressive disorder, single episode, severe and PTSD, and disability as a consequence of his accepted work-related conditions. It noted that according to its records he had returned to light-duty work on March 22, 2016. OWCP advised appellant as to the definition

of recurrence and the type of evidence required to establish such a claim. Appellant was afforded 30 days to submit the necessary evidence.

In a separate letter dated December 14, 2016, OWCP advised appellant that the prior acceptance of his claim for sprain of the carpal joint of the left wrist was changed to acceptance of sprain of the carpal joint of the right wrist.³

In response to OWCP's December 14, 2014 development letter, Dr. Thrasher, in a January 13, 2017 letter, again related a history of the May 26, 2016 employment injury and noted the accepted conditions, and appellant's medical treatment and physical limitations. He reported that appellant initially presented with significant symptoms of PTSD and major depression which was well documented in his accompanying progress notes. Dr. Thrasher reported that, in the six months since appellant's initial evaluation on July 13, 2016, he had responded well to a combination of psychotherapy and anti-depressant medication. He related that appellant's depressed mood had essentially resolved and his PTSD symptoms were minimal when not exposed to triggers that reminded him of his injury. Dr. Thrasher further related that appellant's current psychiatric diagnoses were chronic PTSD (*i.e.*, present for more than three months) and recurrent episode of severe major depressive disorder. He restated his prior findings that appellant experienced increased PTSD symptoms following his new work assignment on the pier around ships and on the docks. Dr. Thrasher indicated that after stabilization with psychotherapy and psychotropic medication and being restricted from working on the piers and around ships appellant's mood improved and he was better able to function outside of work. Although appellant's anxiety at work had not fully resolved that he could function reasonably well as long as he did not have to work in the vicinity of ships on the docks. However, he remained apprehensive and vulnerable to PTSD flashbacks and being reminded of the humiliation of being called "Ole Crip." Appellant also continued to use leave to avoid work. Dr. Thrasher restricted appellant from working onboard ships or on the docks where he was constantly exposed to ships or submarines that reminded him of his fall and injuries. He opined that there was a direct causal relationship between appellant's PTSD symptoms of anxiety, and flashbacks, etc., and his work exposure on docks and ships, and the hat incident. Dr. Thrasher maintained that had appellant not had his accident he would not have had flashbacks and nightmares related to the accident. He also maintained that, for many years prior to appellant's May 26, 2015 work accident, appellant was anxiety free in the workplace and did not need treatment for any symptoms of PTSD, anxiety, or depression. Dr. Thrasher related that appellant's prior episode of PTSD that occurred during his military service, 30 to 40 years ago, and after his divorce from his first wife in approximately 1985 had fully resolved. Appellant had not received treatment for either problem for decades prior to his May 26, 2015 work injury. Dr. Thrasher advised that this new injury precipitated new episodes of PTSD and depression. He noted that it was not uncommon for a person who experienced a traumatic event later in life to have a recurrence of symptoms of a long past earlier trauma brought back to mind by the similarity of feelings between the old and new traumas. This in no way indicated that the new trauma was not significant and sufficient in and of itself to precipitate a new PTSD or a new episode of depression. People who responded to stresses with PTSD or depressive symptoms at one point in their life were prone to have similar responses to stresses later in their

³ By decision dated, December 15, 2016, OWCP granted appellant a schedule award for one percent permanent impairment of his left lower extremity. The period of the award ran for six weeks from April 14 to May 25, 2016.

life, not because the second response was caused by the first incident, but because they had the same genetic brain with the same vulnerability to develop characteristic symptoms in response to stress. Dr. Thrasher indicated that appellant had full resolution of his initial depressive and PTSD symptoms from decades before with decades of normal emotional functioning without medication or psychotherapy. He advised that appellant's current job related PTSD stirred up memories of the old traumatic event, resulting in psychiatric treatment to which he had responded well. Dr. Thrasher concluded that appellant's current PTSD and major depressive episode were consequential conditions causally related to the accepted diagnoses stemming from his May 26, 2015 work-related accident.

Dr. Thrasher submitted progress notes dated July 13 through December 21, 2016 in which he again related appellant's history and examination findings. He also reiterated his prior diagnoses of single severe episode of major depressive disorder and chronic PTSD. Dr. Thrasher endorsed appellant's transfer to the nightshift which would reduce his anxiety significantly.

By decision dated January 19, 2017, OWCP found that the evidence of record was insufficient to establish that appellant sustained a recurrence of disability casually related to his accepted May 26, 2015 work-related conditions. It noted that the medical evidence attributed his diagnosed emotional conditions to new work-related exposure and he had not responded to its questionnaire regarding the factual circumstances of his claimed conditions.

On January 20, 2017 appellant responded to OWCP's December 14, 2016 development questionnaire. He noted the emotional symptoms he developed following his May 26, 2015 employment injury and that he previously had depression following his divorce and during difficulties while on active duty in the service over 20 years ago. Appellant further noted his previous and current treatment for his emotional symptoms. He related that after his May 26, 2015 employment injury he initially returned to light-duty work in a tool room in February 2016, but was later assigned in the summer to work at a guard shack on a pier where he worked until he was restricted from doing so by Dr. Thrasher. Since approximately, July 2016 appellant had been assigned to light-duty work in the tool room. He indicated that Dr. Thrasher believed that appellant's emotional symptoms were related to his work.

In a letter and an appeal request form received on February 13, 2017, appellant, through counsel, requested an oral hearing before an OWCP hearing representative regarding the January 19, 2017 decision.

In progress notes dated April 26 and June 7, 2017, Dr. Thrasher reiterated appellant's reaction to the work incidents set forth in his prior reports. He reiterated his prior diagnosis of recurrent episode of unspecified major depressive disorder and chronic PTSD. Dr. Thrasher related that appellant continued to report symptoms of PTSD related to being on the docks around the ships at the employing establishment, but that medication allowed him to use coping skills to calm his anxiety.

By decision dated September 28, 2017, an OWCP hearing representative treated the recurrence claim as a consequential injury claim as counsel asserted during the July 28, 2017 hearing that appellant was claiming a consequential emotional condition. He affirmed the January 19, 2017 decision, finding that the medical evidence of record was insufficient to establish

that appellant sustained an emotional condition as a consequence of his accepted May 26, 2016 employment injuries. The hearing representative noted that Dr. Thrasher attributed appellant's diagnosed emotional conditions to several intervening work incidents rather than as a consequence of the accepted work injuries. He maintained that such repeated exposure was consistent with an occupational disease claim and recommended that appellant file an occupational disease claim.

LEGAL PRECEDENT

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.⁴ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁵ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence.⁶

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 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 claimant.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the diagnosed conditions of major depressive disorder and PTSD were a consequence of the accepted May 26, 2015 employment injury.

OWCP has accepted that appellant stepped into a hole aboard a boat on May 26, 2015 and that he sustained sprain of the left hip, left thigh, left ankle, left foot, and left sacroiliac ligament, contusion of the left chest wall, and sprain of right wrist carpal joint. Appellant returned to light-duty work following the May 26, 2015 employment injury and on August 17, 2016 he requested that the acceptance of the claim be expanded to include major depressive disorder and PTSD.

Appellant submitted a series of progress notes and reports from his attending psychiatrist, Dr. Thrasher, who diagnosed chronic PTSD and recurrent episode of severe major depressive disorder as a consequence of the accepted May 26, 2015 employment injury. Initially, Dr. Thrasher reported that appellant had no prior history of psychiatric treatment or illness.

⁴ Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 3.05 (2014); see *Charles W. Downey*, 54 ECAB 421 (2003).

⁵ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁶ *Charles W. Downey supra* note 4.

⁷ See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Subsequently, in his January 13, 2017 report, he acknowledged that appellant had prior episodes of PTSD during his military service some 30 to 40 years prior, and after his divorce in 1985. The Board has held that a physician's opinion on causal relationship must be based on a complete and accurate factual and medical background, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition(s) and appellant's specific employment event.⁸

While Dr. Thrasher provided a general opinion on causal relationship, he did not sufficiently explain how appellant's diagnosed emotional conditions were causally related to the accepted May 26, 2016 employment injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.⁹ The need for medical reasoning or rationale is particularly important given the fact that medical evidence of record indicates that appellant had preexisting conditions which were not work related.¹⁰ Dr. Thrasher related that appellant had recovered from his prior emotional conditions, however, he still had the same genetic brain, with the same vulnerability to develop symptoms in response to stress. He did not, however, provide a rationalized medical explanation as to why stepping into a hole would have caused or contributed to emotional stress sufficient to develop major depression and PTSD.

Additionally, rationale is needed in view of Dr. Thrasher's subsequent opinion provided in the January 13, 2017 report that appellant's diagnosed conditions were exacerbated by being assigned to work on a pier and unknowingly wearing a hat that read "Ole Crip" at work that was given to him by his supervisor. As noted by OWCP this is a new intervening factor, for which appellant can file a new occupational disease claim.¹¹ Dr. Thrasher did not provide a fully rationalized opinion explaining why the diagnosed emotional conditions were caused or aggravated by the May 26, 2015 work injury and why it was not solely attributable to other factors.

Dr. Thrasher's remaining progress notes addressed appellant's claimed emotional conditions, but did not offer an opinion addressing whether the diagnosed conditions were causally related to the accepted employment-related injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

Appellant has the burden of proof to establish a claim for a consequential injury through the submission of rationalized medical opinion evidence.¹³ He has not submitted evidence from a physician who, based on an accurate factual history, found that he had additional conditions as a

⁸ See *C.J.*, Docket No. 18-0069 (issued May 9, 2018).

⁹ *T.C.*, Docket No. 15-1534 (issued March 1, 2016); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ See *R.F.*, Docket No. 17-0113 (issued April 10, 2018).

¹¹ *Supra* note 4.

¹² *T.M.*, Docket No. 16-1456 (issued January 10, 2017); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹³ *Supra* note 6.

consequence of his May 26, 2015 employment injury and supports his or her opinion with medical reasoning. Consequently, appellant has not met his burden of proof.

On appeal counsel contends that Dr. Thrasher's medical opinion establishes that appellant sustained PTSD and major depression as a consequence of his accepted employment injuries. As found above, however, Dr. Thrasher's opinion that appellant's emotional conditions were a consequence of his accepted May 26, 2015 employment-related injury was not sufficiently rationalized.

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 failed to establish an emotional condition as a consequence of his accepted May 26, 2015 employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 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