

**United States Department of Labor
Employees' Compensation Appeals Board**

A.A., Appellant)	
)	
and)	Docket No. 17-0127
)	Issued: June 18, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Monroe Township, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 27, 2016 appellant, through counsel, filed a timely appeal from a July 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to expand her claim to include acceptance of an emotional condition causally related to the accepted October 9, 2015 employment injury.

FACTUAL HISTORY

On October 13, 2015 appellant, then a 61-year-old sales associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury while at work on October 9, 2015. She asserted that she sustained a chipped tooth and scratches on her face when a customer slapped her across her face with a cardboard envelope. Appellant did not stop work.

In an accompanying statement, appellant indicated that at about 1:00 p.m. on October 9, 2015 she informed a customer that the employing establishment closed for lunch from 1:00 to 2:00 p.m. She noted that she went to lock the lobby door and the customer then became belligerent and insisted that she be serviced. Appellant indicated that, when it became evident that she would not be providing service, the customer slapped her across her face with a cardboard envelope and pushed her into the glass lobby door. She sustained two cuts on her face and her front tooth was chipped.

In an October 9, 2015 report of the Jamesburg Police, appellant provided an account to the investigating police officer, which was similar to that contained in the statement accompanying her traumatic injury claim. The officer indicated that, when he arrived at the employing establishment premises on October 9, 2015, he observed that appellant had a scratch on the right side of her face near her mouth and chin.

On November 20, 2015 OWCP accepted appellant's claim for a scratch of the right side of the face near the mouth and chin.

Appellant submitted an authorization for examination and/or treatment form (Form CA-16) dated October 19, 2015 in which Dr. Paul Vaiana, an attending Board-certified internist, indicated that appellant reported injury due to being assaulted at work. Dr. Vaiana diagnosed post-traumatic stress disorder (PTSD) and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by the reported employment incident. He noted that appellant had been totally disabled since October 15, 2015. In a handwritten treatment note dated November 16, 2015, Dr. Vaiana indicated that appellant reported being assaulted at work on October 9, 2015. He diagnosed PTSD with overtones of depression and anxiety disorder.

In December 2016, appellant requested that the accepted conditions due to the October 9, 2015 employment injury be expanded to include PTSD.

By decision dated January 27, 2016, OWCP denied appellant's request to expand the acceptance of her claim to include PTSD. It determined that she failed to submit sufficient medical evidence establishing that this condition was causally related to the accepted October 9, 2015 employment injury. OWCP indicated that an emotional condition must be diagnosed by a clinical psychologist or a psychiatrist and it advised that the only diagnosis of an emotional condition in the case record was made by Dr. Vaiana, an internist.

On February 9, 2016 appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review.

Prior to the hearing being held, OWCP received a January 7, 2016 report of Steven B. Woods, a licensed clinical social worker. Mr. Woods noted that he began treating appellant on November 24, 2015 at which time she appeared anxious with associated claims of panic attacks. He detailed appellant's account of the October 9, 2015 assault at work. Mr. Woods discussed appellant's reported symptoms since October 9, 2015, including sleep disturbances and rumination about the assault. He diagnosed PTSD and posited that this condition was related to the October 9, 2015 assault at work.

Appellant also submitted a January 7, 2016 note, signed by Dr. Charles W. Park, a Board-certified psychiatrist. The note indicated:

"This is an addendum to the report on [appellant] dated January 7, 2016. The patient's case was discussed, and the report reviewed by Dr. Charles Park, M.D. (Psychiatrist) who concurs with the diagnostic impression provided in the psychotherapeutic report by Steven Woods, LCSW, CRS, DAPA. As such, Dr. Park has agreed to co-sign the report as required for submission to the [employing establishment]."

Appellant also submitted additional treatment notes of Dr. Vaiana dated between May 2015 and February 2016. The entries for October 15 and 27, 2015 and February 22, 2016 mention appellant being assaulted at work and include the diagnosis of PTSD.

During the hearing held on May 17, 2016, appellant contended that she had established PTSD due to the accepted October 9, 2015 employment injury. She testified that she took a "sucker shot" when a customer slapped a Priority Mail envelope across her face and knocked her backwards, causing her head and back to strike a door. Counsel contended that Mr. Woods produced a January 7, 2016 report in which he discussed the October 9, 2015 assault and diagnosed PTSD due to the assault. He asserted that Dr. Park, a psychiatrist, agreed with Mr. Woods' conclusion in a note dated January 7, 2016. Counsel contended that this constituted *prima facie* evidence to establish employment-related PTSD and contended that appellant should be paid compensation for total disability.

By decision dated July 29, 2016, OWCP's hearing representative affirmed OWCP's January 27, 2016 decision. He indicated that Mr. Woods' January 7, 2016 report did not constitute probative medical evidence because Dr. Park's provision of a January 7, 2016 note did not serve as a countersigning of Mr. Woods' report.

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.³ 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.⁴

A claimant has the burden of establishing 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.⁵ 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.⁶

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.⁷ 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 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand her claim to include acceptance of an emotional condition causally related to the accepted October 9, 2015 employment injury.

Appellant alleged that she sustained an emotional condition (including PTSD) due to being assaulted at work on October 9, 2015 by a customer. The Board must initially review whether this incident is a covered employment factor under the terms of FECA. The Board finds that appellant's claim relates to the performance of her regular or specially assigned duties under *Lillian Cutler*.⁹ OWCP has accepted that appellant was assaulted on October 9, 2015 while performing her job duties at work, and it accepted a physical injury in the form of a scratch of the right side of

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁶ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁸ *Id.*

⁹ See *supra* note 3.

her face near her mouth and chin. Therefore, appellant has established an employment factor in the form of being assaulted at work on October 9, 2015.

Appellant has established a compensable factor of employment with respect to the October 9, 2015 assault. However, her burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. To establish that the acceptance of her claim should be expanded to include an employment-related 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 the accepted compensable employment factor.¹⁰

The Board finds that appellant has failed to submit rationalized medical evidence sufficient to establish causal relationship between a diagnosed emotional condition and the accepted October 9, 2015 employment injury.

Appellant submitted an authorization for examination and/or treatment form (Form CA-16) dated October 19, 2015 in which Dr. Vaiana, an attending Board-certified internist, indicated that appellant reported injury due to being assaulted at work.¹¹ Dr. Vaiana diagnosed PTSD and checked a box marked “Yes” to indicate that the diagnosed condition was caused or aggravated by the reported employment incident. In treatment notes dated October 15 and 27, and November 16, 2015, and February 22, 2016, he mentioned appellant being assaulted at work on October 9, 2015 and included the diagnosis of PTSD.

The Board finds that these reports do not establish appellant’s claim for an emotional condition causally related to the accepted October 9, 2015 employment injury. Dr. Vaiana’s reports are of limited probative value on the relevant issue of this case because he does not specialize in a field peculiar to appellant’s claimed condition. He is an internist and does not specialize in evaluating emotional conditions. The Board has held that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.¹² In addition, Dr. Vaiana’s reports are of limited probative value because he did not provide any medical rationale in support of his ostensible opinion that appellant sustained PTSD due to the October 9, 2015 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹³

¹⁰ See *M.D.*, 59 ECAB 211 (2007); *William P. George*, 43 ECAB 1159, 1168 (1992).

¹¹ Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. See *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

¹² *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).

¹³ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Appellant also submitted a January 7, 2016 report of Mr. Woods, a licensed clinical social worker. Mr. Woods noted that he began treating appellant on November 24, 2015 at which time she appeared anxious with associated claims of panic attacks. He discussed appellant's account of the October 9, 2015 assault at work. Mr. Woods diagnosed PTSD and posited that this condition was related to the October 9, 2015 assault at work.

The Board finds that the January 7, 2016 report of Mr. Woods does not constitute probative medical evidence and therefore does not establish appellant's claim for a work-related emotional condition. Under FECA, the report of a nonphysician does not constitute probative medical evidence.¹⁴ The Board has held that a licensed professional counselor or social worker is not considered a physician as defined under FECA.¹⁵ The Board notes, however, that the report of a social worker can be considered medical evidence if the social worker's report is countersigned by a physician within the meaning of FECA.¹⁶

Appellant also submitted a January 7, 2016 note of Dr. Park, a Board-certified psychiatrist, but this note would not cause Mr. Woods' January 7, 2016 report to constitute probative medical evidence under FECA. Dr. Park did not countersign the January 7, 2016 report in which Mr. Woods provided his findings and opinion on causal relationship between appellant's diagnosed PTSD and the October 9, 2015 incident. He only signed a note in which he indicated that he had reviewed Mr. Woods' January 7, 2016 report and concurred with his diagnostic impression. The Board notes, however, that this is not the same as countersigning Mr. Woods' report. Only Dr. Park's countersigning of Mr. Woods' report would render the report as medical evidence under FECA.¹⁷ Furthermore, although Dr. Park noted in his January 7, 2016 note that he agreed with Mr. Woods' diagnostic impression, his note does not directly address the causal relationship between the accepted October 9, 2015 employment incident and a diagnosed emotional condition.

On appeal counsel argues that a physician making an affirmative comment on a separate signed report has the same effect as a physician directly countersigning a given report. However, counsel did not present any authority for this specific argument.

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.

¹⁴ *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁵ *T.D.*, Docket No. 15-1846 (issued September 23, 2016).

¹⁶ 5 U.S.C. § 8101(2); see also *M.B.*, Docket No. 17-1606 (issued February 14, 2018).

¹⁷ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand her claim to include acceptance of an emotional condition causally related to the accepted October 9, 2015 employment incident.

ORDER

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

Issued: June 18, 2018
Washington, DC

Christopher J. Godfrey, 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