

On appeal appellant maintains that the medical evidence submitted is sufficient to establish his claim.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 30, 2013 appellant, then a 56-year-old supervisor of maintenance operations (SMO), filed an occupational disease claim (Form CA-2) alleging that working alone on weekends and at night with an understaffed, unqualified, and untrained workforce caused work-related stress and anxiety disorders. He indicated that he first became aware of his illness on May 14, 2013 and of its relationship to his federal employment on May 28, 2013. Appellant's regular work hours on Tour 1 were from 9:45 p.m. to 6:45 a.m. Sunday through Thursday. In an attached narrative statement, he related that, from January 14 to February 24, 2013, he was the only supervisor on Tour 1 over the weekends when he averaged 10.5 hours daily, without a lunch break, and that he also worked long hours during the regular work week. Appellant indicated that he had similar work-related stress in 2005.

In May 2013 the employing establishment referred appellant to the District Reasonable Accommodation Committee (DRAC) to consider whether an accommodation for his medical condition was appropriate. The record also includes evidence concerning an investigation and appellant's subsequent removal for an incident when he punched a toolbox, and other incidents when he allegedly threatened acts of violence and made comments about shooting or killing. This included a May 24, 2013 notice of enforced leave that described a postal inspector interview with appellant. The enforced leave was finalized on July 25, 2013.

The relevant medical evidence includes a March 27, 2013 report in which Edward A. Peck, III, Ph.D., noted performing psychological testing. He reported a history that appellant had service-related knee and head injuries, and claimed disability dating to 2005 when appellant had mental health treatment.⁴ Following testing, Dr. Peck indicated that there was a consistent pattern of reporting from others which indicated that there was an elevated probability that appellant displayed mental health and/or behavioral issues which could lead to an increased potential for disruption in the workplace. He advised that appellant should not return to work due to this threat potential, and opined that there was no indication that his work itself caused his mental health condition to develop and/or worsen. Dr. Peck recommended anger management therapy.

In a May 30, 2013 report, Dr. Shireesha Narla, a Board-certified internist, diagnosed hypertension, diabetes, hyperlipidemia, and generalized anxiety disorder and possible post-

³ Docket No. 16-1443 (issued February 23, 2017).

⁴ The record includes information regarding appellant's 2005 psychiatric diagnosis. By decision dated July 20, 2006, OWCP denied a claim filed on September 16, 2005, adjudicated under File No. xxxxxx809. The instant case was adjudicated by OWCP under File No. xxxxxx865.

traumatic stress disorder (PTSD). She indicated that a mental health clinic should assess appellant's needs for his psychiatric disorders and that his medical diagnoses required monitoring and medication.

In a report dated July 24, 2013, Dr. Lajuana M. Collins-Morgan, a Board-certified psychiatrist, noted that appellant was hospitalized from July 15 to 20, 2013.⁵ She diagnosed bipolar disorder, generalized anxiety disorder, PTSD (provisional), prescribed medication, and advised that appellant was incapacitated from February 23, 2013 to present, noting that appellant had not fully recovered and could not return to work.

By decision dated December 4, 2013, OWCP denied the claim, finding that appellant did not establish a compensable factor of employment.

Appellant timely requested a hearing before a representative of OWCP's Branch of Hearings and Review. OWCP received an undated report from Dr. Suresh Gharse, a psychiatrist, who provided a fitness-for-duty examination. Dr. Gharse noted appellant's 2005 psychiatric history and advised that appellant was stressed because he felt he was always short-staffed and had to run around to get work done, which was beyond his capacity. He maintained that appellant was losing control, which was compromising his ability to deal with work in a rational manner, and that he needed to be transferred to another area with less stress. Dr. Gharse noted that appellant felt that others were getting away with shady performance and strange practices and that he denied making threats to anyone. He diagnosed adjustment disorder with anxiety and possible mood or bipolar disorder. Dr. Gharse advised that appellant was not fit to work at the current location, but could work in another area of the employing establishment where he would feel that he could handle the stress and work, and management could realistically address the situation with, for example, increased manpower or increased training. He opined that appellant did not pose a clear and direct threat to an identifiable target. Dr. Gharse concluded that appellant was suffering from work-related anxiety and angrily reacting to stress, noting that appellant was feeling overwhelmed and cornered by his coworkers and supervisors. He indicated that appellant clearly needed psychotherapy and perhaps medication along with appropriate changes at work.

On November 3, 2014 an OWCP hearing representative set aside the December 4, 2013 decision and remanded the case for OWCP to obtain information from the employing establishment regarding appellant's supervisory duties and staffing. The employing establishment furnished additional information, including a lengthy statement from J.Y., maintenance manager. By decision dated May 4, 2015, OWCP denied the claim finding that, as appellant had not established a compensable employment factor, he did not sustain an injury in the performance of duty.

On May 18, 2015 appellant requested a hearing. On June 5, 2015 he requested subpoenas for employing establishment records and for personal testimony of named employing establishment personnel. In a January 5, 2016 letter, an OWCP hearing representative denied appellant's subpoena requests. In a February 22, 2016 decision, she modified the May 4, 2014 decision, finding that appellant had established that he worked as the lone supervisor on some

⁵ The record includes discharge plans from this hospitalization.

occasions. The hearing representative reviewed the medical evidence of record, but denied the claim because the evidence did not establish that his diagnosed condition was caused by that one accepted employment factor. She also advised that appellant could appeal the decision if he disagreed with the denial of the requested subpoenas.

By February 23, 2017 decision, the Board found that OWCP properly denied appellant's subpoena request.⁶ The Board, however, set aside OWCP's February 22, 2016 denial of the claim, and remanded the case to OWCP to analyze and develop the medical evidence. OWCP found that the case was not in posture for decision with respect to the emotional condition issue, as the evidence of record established two compensable factors of employment -- that he frequently had to work as the sole SMO on busy Tour 1, and that Tour 1 was understaffed. The Board indicated that OWCP must base its decision on an analysis of the medical evidence as it related to those two factors. After such further development, OWCP was to issue a *de novo* decision on the merits of appellant's claim.

Appellant did not submit additional evidence after OWCP's February 22, 2016 decision.

By decision dated June 13, 2017, OWCP found the medical evidence of record insufficient to establish that appellant's claimed emotional condition was causally related to the accepted compensable factors of employment.⁷

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or stress-related 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 or her stress-related condition.⁸ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁹ 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.¹⁰

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable

⁶ *Supra* note 3.

⁷ OWCP initially denied the claim by decision dated May 24, 2017. However, as appeal rights were not included with the May 24, 2017 decision, OWCP reissued it on June 13, 2017.

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁰ *Id.*

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.¹² 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.¹³

ANALYSIS

Appellant, who alleged that employment factors caused an emotional condition, has established two compensable factors of employment. The factors are that he frequently had to work as the sole SMO on busy Tour 1, and that Tour 1 was understaffed. The medical evidence of record, therefore, must be analyzed as it relates to these two factors.¹⁴

In his March 27, 2013 report, Dr. Peck opined that work did not cause appellant's mental health condition. Neither Dr. Narla, nor Dr. Collins-Morgan provided an opinion on the cause of appellant's diagnosed emotional condition. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ These opinions are, therefore, insufficient to meet appellant's burden of proof to establish that his emotional condition is caused by the two accepted employment factors.

Nonetheless, the Board finds that this case is not in posture for decision. In his report, Dr. Gharse, who diagnosed adjustment disorder with anxiety and possible mood or bipolar disorder, noted that appellant indicated that he was short-staffed and was forced to work beyond his capacity. He indicated that appellant could not work at the current location, but could work in another area where he would feel less stressed and that management could realistically address the situation with, for example, increased manpower or increased training. Dr. Gharse opined that appellant was suffering from work-related anxiety and indicated that he clearly needed psychotherapy and perhaps medication along with appropriate changes at work.

The Board finds that Dr. Gharse provided an affirmative opinion on causal relationship and accurately identified accepted compensable employment factors. While Dr. Gharse's opinion is not sufficiently rationalized to meet appellant's burden of proof, it is sufficient to require further development of the medical evidence.¹⁶

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁷ While the claimant has the burden of proof to establish

¹² *Supra* note 8; *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *Supra* note 9.

¹⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁶ *See J.J.*, Docket No. 16-1580 (issued April 4, 2017).

¹⁷ *See Vanessa Young*, 56 ECAB 575 (2004).

entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁸ Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's emotional condition is causally related to the accepted compensable employment factors. After this and such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: March 6, 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

¹⁸ *Supra* note 9.