

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

K.T., Appellant)
and) Docket No. 17-1717
U.S. POSTAL SERVICE, PROCESSING &) Issued: March 27, 2018
DISTRIBUTION CENTER, Little Rock, AR,)
Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2017 appellant filed a timely appeal from a July 24, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence following the July 24, 2017 decision. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is unable to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ISSUE

The issue is whether appellant met his burden of proof to establish an emotional condition causally related to the accepted compensable factor of his federal employment.

FACTUAL HISTORY

On December 26, 2013 appellant, then a 47-year-old building maintenance mechanic, filed a traumatic injury claim (Form CA-1)³ alleging that his placement on administrative leave on May 16, 2012, and his termination of employment on August 17, 2012 aggravated his depression and anxiety.⁴

In support of his claim, appellant submitted an arbitration decision dated August 1, 2013. The arbitrator concluded that the employing establishment had just cause to discipline appellant, but not to remove him from employment. The decision instructed that appellant's removal be reduced to a suspension. The arbitrator noted that appellant's return to work was conditional and based on his providing acceptable medical documentation regarding the resolution of his medical issues.

On January 3, 2014 OWCP received a form, which was completed by a supervisor, documenting the May 16, 2012 investigation. The supervisor related that appellant was not completing his given work assignment and was, therefore, interviewed in a supervisor's office with a steward present. He was placed on administrative leave following the interview.

In a letter dated January 15, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence required to establish his claim and afforded him 30 days to provide the requested information.

In response, OWCP received statements from appellant, statements from managers and coworkers, disciplinary action information, and appellant's Equal Employment Opportunity complaint of discrimination. It also received additional medical evidence.

³ On December 26, 2013 appellant also filed an occupational disease claim (Form CA-2), assigned File No. xxxxxx005, referencing the dates April 2006 and May 16, 2012 as the dates he first became aware of his condition and its relationship to factors of his federal employment. He noted that the April 2006 date was the original date of injury. As to the May 16, 2012 date, he referenced the events he claimed on his Form CA-1 for the May 16, 2012 date.

⁴ The record contains evidence from another traumatic injury claim filed by appellant, assigned OWCP File No. xxxxxx098. OWCP accepted appellant's April 5, 2004 claim for adjustment disorder with mixed anxiety and depressed mood. It denied appellant's claim for a recurrence of disability (Form CA-2a) beginning May 16, 2012 as it found appellant had alleged a new factor of employment, being placed on administrative leave for failure to follow instructions. By decision dated October 9, 2014, the Board found that OWCP improperly denied appellant's request for a merit review as he had submitted relevant and pertinent new evidence. Docket No. 14-0613 (issued October 9, 2014). Specifically, the Board found the arbitration decision constituted relevant and pertinent new evidence as the arbitrator raised the issue of whether appellant's recurrence of disability was due to an accepted employment factor and not a new factor of employment. The Board noted that the arbitration decision also discussed the issue of administrative error with respect to appellant's removal by the employing establishment.

In an October 11, 2012 report, Dr. James M. Sims, a treating psychiatrist, noted that he had been treating appellant since 2006 for anxiety and recurrent severe major depression with psychotic behavior. He noted that appellant had major conflicts with his supervisor, which he opined aggravated his condition. Dr. Sims noted that he had recommended that appellant retire on disability, but appellant rejected his recommendation. He observed that appellant's condition had worsened over the past year due to increasing conflict with his supervisor, which aggravated his depression and paranoia. Appellant had expressed his belief that his supervisor was attempting to have him fired, which then occurred on August 17, 2012. Dr. Sims recommended appellant be returned to work, but under a different supervisor.

In a September 16, 2013 report, Dr. Sims recommended that appellant be transferred to a different supervisor due to the conflict with his current supervisor. He opined that appellant was disabled from work due to his anxiety and major depression, recurrent episode, severe with psychotic behavior. Dr. Sims observed that appellant's past conflicts with his supervisor continued to cause him stress, as he worried about possible future contact with this supervisor. An October 31, 2013 progress note by Dr. Sims observed that appellant continued to be worried about returning to work, was worried about the world situation, and was not sleeping well. He opined that appellant was not ready to return to work.

By decision dated June 23, 2014, OWCP denied appellant's claim, finding that he failed to establish that his alleged emotional condition occurred in the performance of duty. Specifically, it found that he had not established any compensable factors of employment. OWCP accepted that appellant was sent home on administrative leave on May 16, 2012, but it found that this was not a compensable factor of employment.

In a form dated July 10, 2014, appellant requested an oral hearing before an OWCP hearing representative, which was held on February 17, 2015.

In an October 15, 2014 report, Dr. Phillip A. Tracy, a treating Board-certified family physician, opined that appellant continued to be totally disabled from work due to his severe recurrent deep depression and anxiety with psychotic features.

On October 30, 2014 Dr. Tracy opined that appellant's depression and anxiety were worsening and that he continued to be disabled from work. Appellant had related that he was being forced out as the employing establishment cleared out his locker.

On March 13, 2015 OWCP received a September 9, 2013 note from Dr. Sims noting appellant had not been released to return to work. Dr. Sims opined that appellant required a supervisor who understood his anxiety and depression and was not biased.

In a March 24, 2015 report, Dr. Tracy opined that appellant remained disabled from work due to his employment-related major depression with recurrent episodes, psychosis, and general anxiety.

By decision dated May 7, 2015, an OWCP hearing representative affirmed the June 23, 2014 decision, as modified. She found appellant had established a compensable employment factor with respect to administrative error when the employing establishment terminated his employment. However, she denied the claim, finding that the medical evidence of record failed

to establish causal relationship between the accepted employment factor and the diagnosed conditions.

On November 2, 2015 appellant requested reconsideration and submitted additional medical evidence.

Dr. Sims detailed appellant's treatment in progress notes covering the period January 6, 2011 to July 24, 2012. On May 29, 2012 he observed that appellant was very agitated due to conflicts at work and expressed fear about returning to work. Dr. Sims noted that appellant sounded paranoid and therefore he recommended that appellant not return to work. During a June 18, 2012 session appellant requested a release to return to work, which Dr. Sims provided. On June 26, 2012 Dr. Sims reported that appellant continued to experience problems at work. In a July 10, 2012 session, appellant noted that he had been suspended from work. He expressed concern that his supervisor was attempting to get him fired. On July 24, 2012 appellant came in with a letter of removal from work, which he was very upset about. Dr. Sims noted that the events of the past few months had caused a marked deterioration in appellant's condition.

Dr. Tracy, in the August 27, 2012 report, observed that appellant had a deepening depression and worsening paranoia due to a hostile work environment, which resulted in disability from work.

In a September 10, 2012 report, Dr. Sims noted that appellant expressed concern that he has been under undue observation and scrutiny for the past year by his supervisor. His diagnosis included recurrent major depression with psychotic features. Dr. Sims explained that this condition could vary in intensity and could recur at any time, particularly in times of stress. He opined that appellant would not fully recover, but would be able to perform his job and function adequately the majority of the time.

Dr. Sims, in an August 7, 2013 report, recommended that appellant be reassigned to a new supervisor due to conflict with his current supervisor. He noted that the reassignment would avoid his current stress-related anxiety caused by conflicts with his supervisor.

In a February 3, 2014 report, Dr. Sims detailed appellant's medical history as well as his history of injury. He noted that appellant's recurrent depression and anxiety had been aggravated by being sent home from work on May 16, 2012. As a result of the aggravation, caused by the May 16, 2012 employment incident, appellant became totally disabled from work. Dr. Sims noted that he recommended that appellant be reassigned to a different supervisor as appellant believed his current supervisor created stress and conflict for him. He concluded that appellant was totally disabled from May 16, 2012 and it was uncertain as to when appellant could return to work.

Dr. Tracy, in a March 24, 2015 report, indicated that appellant remained disabled due to his work-related generalized anxiety and depression with recurrent severe episodes and mention of psychosis. On July 27, 2015 he reported that appellant's psychiatric condition was stable and that appellant wanted to return to work.

On October 6, 2015 Dr. Tracy diagnosed unspecified anxiety, major depression with severe recurrent episodes with psychosis, and mixed adjustment disorder with depressed mood. He opined that these conditions had been aggravated by the hostile work environment and

harassment appellant endured at work. Dr. Tracy further opined that OWCP should have accepted an aggravation of his previously accepted work-related emotional condition. He concluded that appellant was disabled from returning to work due to the accepted work-related conditions and his continued stress concerning return to work. In October 28, 2015 progress report, Dr. Tracy opined that appellant was currently disabled due to aggravation of his work-related condition caused by the employing establishment's administrative error. He noted that appellant could not work with his harassers as it would impede his recovery from depression and anxiety.

By decision dated February 4, 2016, OWCP denied modification of its prior decision. It found that the medical evidence appellant submitted failed to establish causal relationship between the compensable factor of administrative error and his diagnosed conditions.⁵

Dr. Tracy, in an April 7, 2016 report, noted that he had treated appellant for his work-related conditions for almost 10 years. During this time, he had consistently indicated on OWCP forms that appellant's interpersonal relationships were impacted by his psychiatric condition and affected his ability to meet deadlines and receive supervision. Dr. Tracy concluded that appellant's disability as the result of his psychiatric conditions on and after May 16, 2012 was work related.

On May 18, 2016 Dr. Tracy noted that he had treated appellant for approximately 10 years and was fully aware of the history appellant had with his supervisor. He opined that appellant sustained a worsening of his psychiatric condition following his placement on administrative leave on May 16, 2012. Dr. Tracy observed that appellant became depressed, withdrawn, and anxious due to the stress and harassment he experienced at work. He opined that the July 17, 2012 removal notice and the August 17, 2012 termination of appellant's employment were directly responsible for aggravating his mental conditions and causing his disability.

On September 26, 2016 appellant requested reconsideration.

On October 17, 2016 OWCP received an October 30, 2015 report from Dr. Tracy in which he related that he had treated appellant for his work-related emotional condition for many years. Dr. Tracy observed that appellant had been so mistreated by his two supervisors that he was afraid to either look or talk to them. He opined that appellant's anger, delusions, anxiety, and paranoia had been aggravated by the daily harassment and hostility he endured from these two supervisors. Dr. Tracy noted that the employing establishment's administrative error in removing appellant from his employment on May 16, 2012 increased appellant's depression and made him anxious about losing his job. He concluded that there was no doubt, but that the employing establishment's termination of appellant's employment aggravated his accepted mental condition and contributed to his disability.

Dr. Tracy, in an October 26, 2016 report, opined that appellant continued to be totally disabled due to an accepted employment-related psychiatric condition, which included unspecified anxiety disorder and major depressive disorder with severe recurrent episodes with psychotic

⁵ On March 15, 2016 OWCP received a notification of personnel action (SF-50) dated February 1, 2016 removing appellant from the employing establishment based on appellant's being in a leave without pay status for more than one year. The form noted that appellant's last day in pay status was June 17, 2012.

features. He disagreed with OWCP's characterization of appellant's psychiatric condition as preexisting and self-generated.

On October 27, 2016 OWCP received a May 29, 2012 report from Dr. Sims which noted that appellant was seen for a follow-up examination. Dr. Sims observed that appellant was more depressed, and had possible paranoid ideation, which were related to the accepted diagnosis of recurrent major depression with psychotic features. He recommended that appellant remain off work for two weeks to reduce his stress level.

On November 10, 2016 OWCP received Dr. Tracy's October 22, 2014 report, which diagnosed a worsening of appellant's anxiety and depression and concluded that appellant remained disabled from work. By report dated December 7, 2016, Dr. Tracy opined that appellant was currently totally disabled from work in any capacity due to his psychiatric conditions from work.

In a progress note dated December 20, 2016, D. Kenneth Counts, Ph.D., a treating clinical psychologist, noted appellant's history of depression and chronic pain. He diagnosed recurrent severe major depression without psychotic features and unspecified anxiety disorder. In a February 14, 2017 report, Dr. Counts noted that appellant had a long history of recurrent major depressive disorder. He diagnosed severe recurrent-type major depressive disorder without psychotic features. Dr. Counts opined that appellant was totally disabled from any type of work and he did not anticipate any date of full or partial recovery even though appellant's condition was chronic and static.

By decision dated July 24, 2017, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed psychiatric conditions and the accepted compensable employment factor.

LEGAL PRECEDENT

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the

⁶ *V.W.*, 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

compensable employment factors.⁸ 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his emotional condition was causally related to the accepted factor of his federal employment.¹⁰

While it is undisputed that appellant has anxiety and depression, the Board finds that the medical evidence of record does not sufficiently establish a causal connection between the accepted employment factor regarding error in the termination of his employment, and his diagnosed emotional conditions.

In support of his claim appellant submitted numerous reports from Dr. Sims and Dr. Tracy attributing appellant's disability on and after May 16, 2012 to an aggravation of a preexisting adjustment disorder with mixed anxiety and depression. Both physicians noted that these conditions had been accepted under another claim and that the conditions had been aggravated by appellant's removal from employment by the employing establishment. Histories and examination findings were provided by both physicians. However neither physician offered a medical explanation as to how appellant's emotional condition was caused by the accepted employment factor.¹¹ Although both Dr. Sims and Dr. Tracy supported causal relationship in their reports, they did not provide sufficient medical rationale explaining how the termination of appellant's employment aggravated his preexisting adjustment disorder with mixed anxiety and depression. The Board has held that reports which lack rationale are insufficient to meet appellant's burden of proof.¹²

Appellant also submitted a February 14, 2017 report from Dr. Counts, a treating clinical psychologist, diagnosing severe recurrent major depressive disorder without psychotic features. Dr. Counts did not offer any opinion on the cause of the diagnosed medical conditions. A medical report that does not provide an opinion on causal relationship is of little probative value.¹³

⁸ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ See *William P. George*, 43 ECAB 1159, 1167 (1992).

¹¹ See *A.B.*, Docket No. 08-2508 (issued July 10, 2009).

¹² *Supra* note 9.

¹³ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014).

The Board finds that appellant has not submitted rationalized medical evidence establishing that his claimed conditions were caused or aggravated by the accepted compensable employment factor.¹⁴

On appeal appellant contends that his emotional condition was aggravated when the employing establishment terminated his employment. As discussed above, OWCP accepted a compensable factor of employment with respect to administrative error by the employing establishment in terminating appellant's employment. However, none of the medical evidence appellant submitted contained sufficient rationale explaining how the compensable factor caused or aggravated the diagnosed psychiatric conditions.

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 an emotional condition causally related to the accepted compensable factor of his federal employment.

¹⁴ See *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2017 is affirmed.

Issued: March 27, 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