

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition as a consequence of the accepted April 17, 2012 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances of the case as presented in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

On April 19, 2012 appellant, then a 40-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2012 she sustained injuries to her knees, back, and hands when she tripped and fell when carrying boxes while in the performance of duty. OWCP assigned File No. xxxxxx181 and accepted the conditions of lumbar sprain, bilateral shoulder sprains, and aggravation of bilateral carpal tunnel syndrome.⁵

On March 25, 2015 counsel requested that acceptance of the instant claim, OWCP File No. xxxxxx181, be expanded to include depression and anxiety secondary to medical conditions. He forwarded medical evidence including reports from Dr. Gary K. Arthur, appellant's attending Board-certified psychiatrist, dated June 18 2013 to August 5, 2015, who noted that he began treating appellant in April 2011. Dr. Arthur advised that appellant's depression and anxiety had been documented since 1991, but that because her work injuries increased in disability and pain, her depression and anxiety were directly and steadily aggravated and worsened. He noted that these conditions began to affect her ability to concentrate, attend to task, and make good judgments. Dr. Arthur diagnosed depression and anxiety secondary to the accepted conditions and concluded that appellant became totally disabled from work on April 20, 2013 and remained unable to work anywhere.

By decision dated September 17, 2015, OWCP denied expansion of the claim, finding that the medical evidence submitted was insufficient. Appellant appealed to the Board and, by decision dated April 11, 2016, the Board affirmed the September 17, 2015 decision.⁶

On July 18 and December 29, 2016 appellant, through counsel, requested reconsideration and submitted additional reports from Dr. Arthur.

⁴ Docket No. 16-0404 (issued April 11, 2016); Docket No. 17-1583 (issued May 10, 2018).

⁵ Appellant stopped work on April 18, 2013 and filed an occupational disease claim (Form CA-2), adjudicated by OWCP under File No. xxxxxx325. With that claim, she described perceived hostile treatment at work, alleging that it caused depression and anxiety such that she could not work. Appellant did not allege that the conditions accepted in this case, OWCP File No. xxxxxx181, led to increased depression and anxiety. OWCP denied the claim in OWCP File No. xxxxxx325 on March 17, 2014. These claims have not been consolidated and OWCP File No. xxxxxx325 is not presently before the Board. Upon return of the case file, OWCP should consider administratively combining these claim files.

⁶ *Supra* note 4.

By decisions dated September 7, 2016 and March 28, 2017, OWCP denied modification of the prior decisions.

On July 14, 2017 appellant, through counsel, again appealed to the Board. By decision dated May 10, 2018, the Board found that appellant had not met her burden of proof to establish an emotional condition as a consequence of the accepted April 17, 2012 employment injury.⁷

On October 1, 2018 appellant, through counsel, requested reconsideration and submitted a September 7, 2018 report from Dr. Arthur. Dr. Arthur noted the conditions accepted due to the April 17, 2012 employment injury and indicated that appellant's conditions had become chronic, that she was still on medication, and required physical therapy and acupuncture. He opined that, while there were many elements that contributed to appellant's emotional condition, including her relationship with employing establishment management and a June 7, 2013 motor vehicle accident, her accepted employment injuries were the major factors that contributed to the development and severity of her depression and anxiety. Dr. Arthur referred to medical literature, maintaining that it was established that inflammation in an injured area produced chemicals, which would go to the brain and cause depression and anxiety, noting that appellant experienced pain on a daily basis which limited her ability to use her upper extremities and contributed to her anxiety and depression. He further indicated that appellant had difficulty with activities of daily living and sleeplessness due to pain, and these difficulties led to feelings of worthlessness and hopelessness which contributed to her emotional condition.

Dr. Mark A. Seldes, Board-certified in family medicine, submitted treatment notes dated October 24, 2017 to October 31, 2018. He noted appellant's complaints of pain in her lower back and shoulder, carpal tunnel symptoms, and difficulties with activities of daily living. Dr. Seldes described physical examination findings and diagnosed sprains of the lumbar region, both shoulders and arms, bilateral carpal tunnel syndrome, herniated discs at L3-4, L4-5, and L5-S1, bilateral radiculopathy of both lower extremities, internal derangement and impingement syndrome of both shoulders, depression, and anxiety disorder. He advised that appellant continued to suffer from multiple injuries due to the April 17, 2012 injury.

By decision dated November 28, 2018, OWCP denied modification.

LEGAL PRECEDENT

The claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁸

⁷ *Supra* note 4.

⁸ *S.H.*, Docket No. 18-1634 (issued May 13, 2019).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ 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.¹⁰

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 a claimant's own intentional misconduct.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition as a consequence of the accepted April 17, 2012 employment injury.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in its April 11, 2016 and May 10, 2018 decisions. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.¹³

Following the Board's May 10, 2018 decision, OWCP received a September 7, 2018 report from Dr. Arthur in which he noted the accepted conditions due to the April 17, 2012 employment injury. Dr. Arthur indicated that appellant's conditions had become chronic. He opined that, while many elements contributed to appellant's emotional condition, including her relationship with employing establishment management and a June 7, 2013 motor vehicle accident, her employment injuries were the major factors that caused the development and severity of her anxiety and depression. Dr. Arthur referred to medical literature, maintaining that it was established that inflammation in an injured area produced chemicals, which went to the brain and caused depression and anxiety, noting that appellant experienced pain on a daily basis, which limited her ability to use her upper extremities and; therefore, this contributed to her anxiety and depression. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or disability was causally related to a condition of employment.¹⁴ While Dr. Arthur generally notes that her daily pain led to impacts on her activities of daily living along with other elements, however, to establish a consequential injury the medical evidence must establish that the claimed condition was a direct

⁹ *C.V.*, Docket No. 18-1106 (issued March 20, 2019).

¹⁰ *Id.*

¹¹ *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

¹² *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹³ *T.B.*, Docket No. 19-0029 (issued June 21, 2019).

¹⁴ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

and natural result of a compensable primary injury.¹⁵ To the extent that Dr. Arthur relies upon medical literature to provide the necessary rationale, the Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and an accepted employment injury because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹⁶ Other than to opine that appellant's pain led to limitations in use of her upper extremities, Dr. Arthur offered no physiological basis to support an opinion that appellant developed consequential depression and anxiety as he did not sufficiently explain how the medical literature applied to appellant's specific circumstances.¹⁷ For these reasons the Board finds that the September 7, 2018 report of Dr. Arthur is insufficient to establish the claim.

As to Dr. Seldes' opinion that appellant continued to suffer from multiple injuries due to the April 17, 2012 injury, the Board has held that a mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁸ Dr. Seldes offered no further explanation and diagnosed many conditions that are not accepted under this claim. His opinion is, therefore, insufficient to establish consequential anxiety and depression.¹⁹

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof.

On appeal counsel asserts that OWCP erred in finding Dr. Arthur's opinion insufficiently rationalized. As explained above, Dr. Arthur failed to provide sufficient rationale explaining how these additional conditions had been caused or aggravated by the accepted April 17, 2012 employment injury.

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 appellant has not established an emotional condition as a consequence of the accepted April 17, 2012 employment injury.

¹⁵ *Supra* note 12.

¹⁶ *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁷ *Id.*

¹⁸ *M.M.*, Docket No. 18-0817 (issued May 17, 2019).

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board