

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

J.N., Appellant)
and) Docket No. 19-0215
U.S. POSTAL SERVICE, POST OFFICE,) Issued: July 15, 2019
New Orleans, LA, Employer)

)

Appearances:

Joanne Marie Wright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2018 appellant, through her representative, filed a timely appeal from a May 29, 2018 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 establish an emotional condition causally related to the accepted December 1, 2016 employment incident.

FACTUAL HISTORY

On December 8, 2016 appellant, then a 36-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2016 she sustained an emotional condition as a result of a “shooting on route that started with a gang fight.”³ She stopped work on the date of injury.⁴

In a December 1, 2016 statement, appellant explained that at approximately 10:00 a.m. on that date, she was performing her job duties when she witnessed a gang fight that led to a shooting. She described a male in the area who walked to a vehicle and grabbed a gun from the vehicle. He then walked to the crowd with the gun underneath his shirt. Appellant stated that she ran back to her work vehicle. While she was in the vehicle, shots were fired. She then called her supervisor in a panic and returned to the station.

On December 12, 2016 Dr. Dwight L. McKenna, a family practitioner, examined appellant and noted a history of injury on December 1, 2016 when she witnessed a shooting on her route. He diagnosed stress reaction and anxiety, which he attributed to appellant’s employment.⁵ Dr. McKenna advised that appellant would be able to resume her full duties on February 6, 2016. He also completed a duty status report (Form CA-17).

By development letter dated December 23, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary factual information and medical evidence.

In a report dated January 10, 2017, Dr. Angela Traylor, a Board-certified neurologist and psychiatrist, indicated that she treated appellant for complaints of depression and anxiety. She related that on December 1, 2016 appellant was on her route delivering mail when a gang fight broke out. Appellant ran back to her vehicle and heard gun shots. Dr. Traylor reported that appellant began feeling paranoid, was unable to sleep, and had difficulty thinking. She also reported additional “stressors” of the death of her sister on November 14, 2016, being accused of “making up her feelings” by a superior at work, and a December 2014 incident when a man

³ Appellant described her condition as a brain trauma.

⁴ The present claim was assigned OWCP File No. xxxxxx897. The Board notes that OWCP previously accepted a prior claim involving a December 13, 2013 employment incident where a man exposed himself. OWCP assigned that claim File No. xxxxxx309 and accepted it for anxiety state, unspecified and post-traumatic stress disorder (PTSD). These claims have not been administratively combined by OWCP.

⁵ Dr. McKenna checked the “Yes” box in the attending physician’s portion of an authorization for examination and/or treatment (Form CA-16), Part B, but left the space for an explanation regarding causal relationship blank.

exposed himself to her while she was delivering mail. Upon examination, Dr. Traylor observed that appellant's mood and affect were described as anxious and depressed. She diagnosed adjustment disorder with depressed mood.

In progress notes dated January 17 and February 9, 2017, Dr. Traylor related that appellant continued to feel paranoid, had difficulty thinking, and difficulty sleeping. Appellant reported that she had not been leaving her home because she was afraid that she would encounter the shooter from the December 1, 2016 incident. Dr. Traylor conducted an examination and diagnosed adjustment disorder with mixed disturbance of emotions and conduct.

In a January 17, 2017 work capacity evaluation form (Form OWCP-5c), Dr. Traylor noted that appellant was unable to work eight hours a day and indicated that she was "suffering from anxiety and depression after witnessing violence at work."

OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Talaat H. Mohamed, a Board-certified psychiatrist, for a second opinion evaluation to determine whether she sustained a work-related emotional condition on December 1, 2016. The SOAF noted that appellant had preexisting anxiety due to her December 13, 2013 employment injury under OWCP File No. xxxxxx309. In a report dated March 17, 2017, Dr. Mohamed indicated that he had evaluated appellant on March 6, 2017 for depression and anxiety. He related that appellant was distributing and collecting mail on her route when she witnessed a gang fight and people shooting on the side of the road. Dr. Mohamed also described another traumatic incident that occurred on December 13, 2013 when a man approached appellant while she was delivering mail and exposed himself to her.⁶

Dr. Mohamed conducted a mental status examination. He reported that appellant's affect was normal and her mood exhibited depression, mourning, and grief. Dr. Mohamed explained that appellant exhibited signs and symptoms related to the recent death of her sister and normal feelings of mourning and grief. He also reported that appellant was somewhat obsessed with the incident of a man who exposed himself to her and opined that these symptoms "appear[ed] to be due to the influence of certain unconscious conflicts due to past traumatic experience repressed in the unconscious 'Freud' since early childhood and adolescence." Dr. Mohamed diagnosed adjustment reaction of adulthood, paternal deprivation, unspecified anxiety disorder due to grief and mourning of her dead sister with generalized anxiety disorder, personality disorder (deferred), and normal physical and social condition. He concluded that appellant showed no signs or symptoms of post-traumatic stress disorder, no major depression, and no phobic reaction at the present time.

In response to OWCP's questions, Dr. Mohamed opined that appellant's emotional conditions of depression, anxiety, and fear was not due to witnessing a gang-related shooting or witnessing a man exposing himself. He indicated that appellant's incomplete mourning and grief due to the death of her sister had led to minor depression. Dr. Mohamed also reported that appellant had received adequate supportive individual psychotherapy from a psychiatrist and was receiving antidepressant medication. He related that appellant was able to be employed at the employing establishment for five to six hours a day and slowly increase to eight hours a day.

⁶ See *supra* note 4.

In a progress note dated March 14, 2017, Dr. Traylor indicated that appellant was evaluated by an OWCP doctor and felt that she needed to go back to work due to financial reasons. She related that appellant was sleeping better with medication and had been leaving her home more often. Upon examination, Dr. Traylor reported that appellant's mood was "anxious and depressed." She diagnosed adjustment disorder with mixed disturbance of emotions and conduct.

By decision dated April 6, 2017, OWCP denied appellant's claim. It accepted that the December 1, 2016 employment incident constituted a compensable employment factor, but denied her claim finding insufficient medical evidence to establish a medical diagnosis causally related to the accepted compensable employment factor. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 15, 2018 appellant requested reconsideration.

Appellant submitted additional medical evidence from Dr. Traylor dated April 11 and June 6, 2017. Dr. Traylor related that appellant had returned to work two weeks ago and was feeling "increasingly stressed" since returning to work. Appellant indicated that she was back on her same route and was worried that she could be killed. Dr. Traylor reported that upon examination, appellant's mood and affect were angry, anxious, and depressed. She diagnosed adjustment disorder with mixed disturbance of emotions and conduct.

In progress notes dated July 18 to November 28, 2017, Dr. Traylor indicated that appellant was no longer working her old route and had not had any panic attacks since her last visit. Appellant noted that she was still on her medication and was sleeping better at night. Dr. Traylor conducted a mental status examination and observed "ok" mood and that her affect was appropriate to context. She diagnosed adjustment disorder with mixed disturbance of emotions and conduct.

In a narrative psychological evaluation report dated January 15, 2018, Dr. Richard John Wakeman, a psychologist, noted that appellant worked as a letter carrier. He described that on December 1, 2016 she was delivering mail on her route when she witnessed a shooting. Dr. Wakeman indicated that appellant was now afraid that the shooter knows her face and would come to "get her." He related appellant's complaints of trouble sleeping, nightmares, "up and down" appetite, low energy, and poor short-term memory. Appellant reported that she has frequent flashbacks and gets depressed about her recall of the event. Dr. Wakeman noted that appellant's sister died in November 2016, approximately one month before the shooting. He reported that appellant's Minnesota Multiphasic Personality Inventory-II (MMPI-II) scores were invalid because she responded in a very unusual manner and that her scores suggested her endorsement of extreme items as a result of an inconsistent response pattern. Dr. Wakeman indicated that appellant's Millon Clinical Multiaxial Inventory-IV (MCMI-IV) results were valid and generated a clinical syndrome consistent with PTSD. He concluded that appellant's psychological testing data and clinical interview data were consistent with chronic, severe PTSD.

By decision dated May 29, 2018, OWCP denied modification of the April 6, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁸ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

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 condition or psychiatric disorder; (2) factual evidence identifying employment factor(s) or incident(s) alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factor(s) or incident(s).¹¹

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) or incident(s) must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s) or incident(s).¹⁴

ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP referred appellant, along with a SOAF and the medical record, to Dr. Mohamed for a second opinion evaluation to determine whether she sustained a work-related emotional

⁷ *Supra* note 2.

⁸ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004).

¹² *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ See *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *Id.*

condition on December 1, 2016. The SOAF noted that appellant had preexisting anxiety due to her December 13, 2013 employment injury under OWCP File No. xxxxxx309. It failed, however, to include appellant's preexisting PTSD, which was also accepted under OWCP File No. xxxxxx309.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.¹⁵ OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁶ As Dr. Mohamed based his March 17, 2017 opinion on an incomplete SOAF, the Board finds that the probative value of his opinion is diminished and insufficient to be afforded the weight of the medical evidence.¹⁷

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done. As OWCP undertook development of the evidence by referring appellant to Dr. Mohamed, it had the duty to secure an appropriate report based on an accurate factual and medical background.¹⁸

Accordingly, this case will be remanded to OWCP for further development of the medical evidence. On remand OWCP should administratively combine File Nos. xxxxxx897 and xxxxxx309.¹⁹ It should then refer appellant along with an updated SOAF and a list of specific questions to a new second opinion physician for a rationalized opinion regarding whether her emotional condition is causally related to the accepted December 1, 2016 employment incident. After this and any such further development as OWCP deems necessary, it shall issue a *de novo* decision.²⁰

¹⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see L.J.*, Docket No. 14-1682 (issued December 11, 2015).

¹⁷ *See L.J.*, Docket No. 16-1852 (issued March 22, 2018).

¹⁸ *See A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹⁹ OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. *See C.W.*, Docket Nos. 18-0011 & 18-1002 (issued June 11, 2019).

²⁰ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See 20 C.F.R. § 10.300(c); J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: July 15, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board