

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

_____)	
J.W., Appellant)	
)	
and)	Docket No. 19-0237
)	Issued: July 1, 2019
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Greensboro, NC, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Joanne Marie Wright, for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 10, 2018 appellant, through her representative, filed a timely appeal from a June 13, 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 compensable factor of her federal employment.

FACTUAL HISTORY

On May 18, 2015 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2015 she developed stress and anxiety due to harassment by management. Specifically, she alleged that she was forced to sit in a wheelchair for eight hours with no duties, denied union representation, ordered to stay in an office with two supervisors, and forced to leave the building. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on May 18, 2015.³

In a development letter dated May 21, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised of the type of factual and medical evidence required to support her claim. OWCP afforded appellant 30 days to provide the requested information.

Following OWCP's request for additional information it received statements from appellant and witnesses detailing the alleged events and medical evidence.

The employing establishment, on May 19, 2015, completed an authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, dated May 25, 2015, Dr. Rupinder Kaur, a Board-certified psychiatrist, noted appellant's history of previously witnessing a coworker murder another coworker. He also noted her alleged current history of harassment at work. Dr. Kaur related appellant's symptoms of anxiety, flashbacks, nightmares, and disturbed sleep. His diagnosis included post-traumatic stress disorder (PTSD) and adjustment disorder. Dr. Kaur checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the described employment incident.

Dr. Kaur, in a May 19, 2015 duty status report (Form CA-17) noted an injury date of May 18, 2015 and diagnosed adjustment disorder, which he attributed to the employment injury. He also reported other disabling conditions of post-traumatic stress disorder (PTSD) and panic attacks.

In a May 25, 2015 report, Dr. Kaur noted that appellant has been his patient since April 2014 when she was diagnosed with PTSD and major depression. On May 19, 2015 appellant was seen for flashbacks of witnessing a coworker murdering a young woman at work and beating

³ The employing establishment listed May 18, 2015 as the date of injury and noted that appellant refused to sign a job offer (2499) from the employing establishment. The record contains evidence that appellant had been off work due to a knee injury and work restrictions had been provided by her treating physician. A May 20, 2015 memorandum to file noted that appellant had two prior claims, OWCP File Nos. xxxxxx221 and xxxxxx344. Under OWCP File No. xxxxxx344, OWCP accepted the conditions of bilateral knee chondromalacia, bilateral knee contusion, and bilateral knee sprain due to an accepted March 2, 2015 traumatic injury. Under OWCP File No. xxxxxx221, it denied her emotional condition claim, finding she failed to establish any compensable factors with respect to her allegation of witnessing a coworker murder one coworker and assault another.

another person up very badly. Dr. Kumar noted that appellant had a history of depression and anxiety since the age of 18. Currently, he related that appellant was off work as the result of an orthopedic condition. Dr. Kaur opined that appellant was very anxious from harassment and bullying at work by coworkers and work events that had occurred over the past year.

By decision dated July 1, 2015, OWCP denied appellant's claim, finding that the requirements had not been met to establish that she sustained an emotional condition "that arose during the course of employment and within the scope of compensable work factors" as defined by FECA.

On June 23, 2016 appellant requested reconsideration. She submitted a September 11, 2015 step B grievance decision, which found that management violated a section of the employing establishment handbook when it forced her to sit in a wheelchair for eight hours in the middle of the workroom floor on May 12, 2015. It found that this behavior constituted harassment as it meant to embarrass and demean appellant. The decision also noted that on May 12, 2015 managers requested that appellant come into a conference room so they could give her an employing establishment PS Form 2499 (offer of modified assignment [limited duty]) and she felt threatened when they denied her union representation.

By decision dated September 16, 2016, OWCP modified the prior decision, finding that the evidence of record established a compensable factor of employment with respect to harassment. It found management's requiring appellant to sit in a wheelchair in the middle of the workroom floor in front of coworkers constituted harassment. However, OWCP denied her claim, finding the medical evidence failed to establish that her preexisting stress condition had been caused or aggravated by the accepted employment factor.

In a September 2, 2017 report, Dr. Kaur related that since June 2014 he had provided appellant with psychiatric care for her PTSD, severe anxiety disorder, and panic disorder. He attributed her PTSD to a prior work incident involving a coworker assaulting one coworker and murdering another. On May 14, 2017 appellant was seen for a follow-up visit when she related that she had been forced to sit in the middle of a room in a wheelchair with no work to perform. She related feeling distressed and distraught from sitting in the wheelchair and being ridiculed and demeaned while in the wheelchair. Dr. Kumar opined that this incident exacerbated appellant's preexisting PTSD and her incapacitating and disabling anxiety.

On September 7, 2017 appellant requested reconsideration.

On March 23, 2018 appellant again requested reconsideration, noting her prior request of September 7, 2017.

By decision dated June 13, 2018, OWCP denied modification, finding that Dr. Kaur's September 2, 2017 opinion failed to explain how the accepted May 12, 2015 compensable factor caused or aggravated her diagnosed medical condition.

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.⁴ 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.⁵

A claimant has the burden of proof to establish 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.⁶ 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.⁷

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.⁸ 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.⁹

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.¹⁰

⁴ See *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *J.W.*, *id.*; *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ *T.G.*, Docket No. 18-1718 (issued May 9, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ See *A.A.*, Docket No. 17-0127 (issued June 18, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ *D.L.*, 58 ECAB 217 (2006); *Jerald R. Gray*, 57 ECAB 611 (2006); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ See *J.W.*, *supra* note 4; *Robert Breeden*, 57 ECAB 622 (2006).

¹⁰ *D.R.*, Docket No. 18-1592 (issued February 25, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her emotional condition was causally related to the accepted compensable factor of her federal employment.¹¹

The Board finds that the medical evidence of record does not establish a causal relationship between the accepted compensable employment factor of management requiring her to sit in a wheelchair for eight hours and her diagnosed emotional conditions.

In a Form CA-17 dated May 19, 2015, Dr. Kaur diagnosed anxiety and stress, which he attributed to a “May 18, 2015” employment incident. The Board finds that Dr. Kaur’s Form CA-17 report is of no probative value as he did not relate the diagnosed emotional condition to the accepted May 12, 2015 compensable employment factor.¹² Thus, this report is insufficient to meet appellant’s burden of proof.

Dr. Kaur provided reports dated May 25, 2015 and September 2, 2017 diagnosing PTSD, anxiety, and major depression. He opined that appellant’s PTSD, anxiety, and major depression had been aggravated by being ridiculed by coworkers when she was forced to sit in the middle of a room in a wheelchair. Dr. Kaur noted that appellant had a history of depression and anxiety since she was 18, he also noted a history of PTSD from witnessing a coworker murder one person and badly beat another coworker. In the May 25, 2015 report, he attributed her anxiety to harassment and bullying at work in addition to work events that had occurred during the past year. In his September 2, 2017 report, Dr. Kaur opined that appellant’s accepted May 12, 2015 compensable factor of being forced to sit in a wheelchair by management and being ridiculed aggravated her preexisting PTSD and anxiety. However, he did not offer a medical explanation as to how appellant’s emotional condition was caused by the accepted employment factor.¹³ Although Dr. Kaur generally supported causal relationship in his reports, he did not provide sufficient medical rationale explaining how the accepted May 12, 2015 compensable factor aggravated her preexisting PTSD, anxiety or depression. A mere conclusion without the necessary rationale explaining how the accepted work factors could result in the diagnosed condition is insufficient to meet the employee’s burden of proof.¹⁴ Furthermore, the Board has held that reports which lack rationale are insufficient to meet appellant’s burden of proof.¹⁵

In a May 25, 2015 attending physician’s portion of a Form CA-16, Dr. Kaur noted appellant’s symptoms including nightmares, sleep disturbance, and flashbacks. He checked the box marked “yes” indicating that the condition was caused or aggravated by the accepted compensable employment factor. The Board has held that an opinion consisting of a checkmark

¹¹ See *K.T.*, Docket No. 17-1717 (issued March 27, 2018); *William P. George*, 43 ECAB 1159 (1992).

¹² See *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *L.C.*, Docket No. 08-1655 (issued April 2, 2009).

¹³ See *K.T.*, *supra* note 11; *A.B.*, Docket No. 08-2508 (issued July 10, 2009).

¹⁴ *A.E.*, *supra* note 12; *P.B.* Docket No. 17-1912 (issued December 28, 2018).

¹⁵ *K.T.*, *supra* note 11.

notation supporting causation, without more by the way of supporting medical rationale, is of limited probative value and insufficient to establish causal relationship.¹⁶

As appellant has not submitted reasoned medical evidence explaining how her diagnosed emotional conditions were causally related to her accepted compensable employment factor, she has not met her burden of proof.¹⁷

On appeal appellant's representative contends that appellant has met her burden of proof with Dr. Kaur's reports, which she stated were based on an accurate history and conclusion that her emotional conditions had been aggravated by the accepted May 12, 2015 compensable factor. However, for the reasons set forth above, the Board found that Dr. Kaur failed to provide medical rationale explaining how the accepted May 12, 2015 compensable factor caused or aggravated appellant's diagnosed emotional conditions. Thus, his reports were insufficient to establish an emotional condition caused by the accepted May 12, 2015 compensable factor.¹⁸

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 her burden of proof to establish an emotional condition causally related to the accepted compensable factor of her federal employment.

¹⁶ See *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *E.C.*, Docket No. 17-0902 (issued March 9, 2018).

¹⁷ *Id.*

¹⁸ 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).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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