

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

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| I.S., Appellant |) | |
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| and |) | Docket No. 19-1461 |
| |) | Issued: April 30, 2020 |
| DEPARTMENT OF THE NAVY, NORFOLK |) | |
| NAVAL SHIPYARD, Portsmouth, VA, Employer |) | |
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Appearances:

Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2019 appellant, through counsel, filed a timely appeal from a June 12, 2019 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.³

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.*

³ The Board notes that appellant has another appeal pending before the Board in Docket No. 20-0216. That appeal is not addressed in this decision and will proceed under its own docket number.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition as a consequence of his accepted May 26, 2015 employment-related injury.

FACTUAL HISTORY

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

OWCP accepted that, on May 26, 2015, appellant, then a 58-year-old rigger, sustained a sprain of the left wrist carpal joint, left hip, left thigh, left ankle, left foot, left sacroiliac ligament, and a contusion of the left chest wall when he stepped and fell into an uncovered hole aboard a ship while in the performance of duty. Appellant stopped work on the date of injury and returned to full-time light-duty work on March 22, 2016.

In a telephone call on August 17, 2016, appellant requested that OWCP expand the acceptance of his claim to include a psychiatric condition. OWCP advised him to submit medical evidence to establish a consequential condition.

OWCP received progress notes dated July 13 and August 23, 2016 and a letter dated August 10, 2016 from Dr. Patrick D. Thrasher, an attending Board-certified psychiatrist. Dr. Thrasher noted appellant's history of injury and emotional symptoms that developed since his injury, which included being significantly anxious and depressed, having flashbacks when he saw ships and submarines, and having nightmares and dreams about falling. He indicated that appellant could perform light-duty work away from piers and ships despite his post-traumatic stress disorder (PTSD) and depression symptoms. However, Dr. Thrasher indicated that appellant experienced increased anxiety and a deteriorated mood when his request to continue to work away from piers and ships was denied by his supervisor and he was assigned to work on a guard shack on a pier. Appellant continued to suffer from these symptoms when his supervisor gave him a hard hat to wear on the pier that unbeknownst to him read "Ole Crip." People began to call him "Ole Crip" or "Crip" and, when he inquired about the reason, they told him what was written on the hard hat. Appellant was extremely humiliated and embarrassed and stopped work for one week. Dr. Thrasher noted appellant's level of stress outside of work and reported findings on psychological and physical examination. He diagnosed a single episode of severe major depressive disorder and chronic PTSD and noted that appellant had no prior history of psychiatric illness or treatment. Dr. Thrasher opined that the diagnosed conditions were consequential injuries causally related to appellant's accepted May 26, 2015 employment injury. He further opined that appellant's conditions were exacerbated by being humiliated by his supervisor and by his supervisor's attitude towards his physical injuries.

In a December 14, 2016 development letter, OWCP informed appellant that it had received his "recurrence claim" for major depressive disorder, single-episode, severe, and PTSD, and disability as a consequence of his accepted work-related conditions. It noted that according to its

⁴ Docket No. 18-0134 (issued July 23, 2018).

records he had returned to light-duty work on March 22, 2016. OWCP included a questionnaire for appellant's completion. It afforded him 30 days to submit the necessary evidence.

OWCP, in a separate December 14, 2016 letter, informed appellant that the prior acceptance of his claim for sprain of the left wrist carpal joint was expanded to include sprain of the carpal joint of the right wrist.⁵

In a January 13, 2017 letter, Dr. Thrasher opined that appellant's current chronic PTSD and severe major depressive episode were consequential conditions causally related to the accepted diagnoses stemming from his May 26, 2015 work-related injury and hard hat incident. He noted that appellant's depressed mood had essentially resolved and his PTSD symptoms were minimal when not exposed to triggers that reminded him of his injury. Dr. Thrasher reiterated his prior findings that appellant experienced increased PTSD symptoms following his new work assignment on the pier around ships and on the docks. Dr. Thrasher indicated that, although appellant's anxiety at work had not fully resolved, he could function reasonably well as long as he did not have to work in the vicinity of ships on the docks. However, he remained apprehensive and vulnerable to PTSD flashbacks and being reminded of the humiliation of being called "Ole Crip." Dr. Thrasher also indicated that appellant continued to use leave to avoid work. He restricted him from working onboard ships or on the docks where he was constantly exposed to ships or submarines that reminded him of his fall and resultant injuries. Dr. Thrasher maintained that had appellant not had his employment injury he would not have had flashbacks and nightmares related to the accident. He also maintained that appellant was asymptomatic prior to his May 26, 2015 employment injury, noting that a prior episode of military service-related PTSD 30 to 40 years ago, and emotional distress following his divorce in approximately 1985 had all fully resolved. Dr. Thrasher indicated that appellant had not received treatment for either problem for decades prior to his May 26, 2015 employment injury. He advised that this new employment injury precipitated new episodes of PTSD and depression.

Dr. Thrasher continued to diagnose submitted single severe episode of major depressive disorder and chronic PTSD in his July 13 through December 21, 2016 progress notes.

By decision dated January 19, 2017, OWCP found the evidence of record insufficient to establish that appellant sustained "a recurrence of disability" causally related to his accepted May 26, 2015 work-related conditions. It noted that the medical evidence related his diagnosed emotional conditions to "new work-related exposures" and he had not responded to the December 14, 2016 factual questionnaire, and therefore, had not provided a detailed description as to how his conditions developed.

On January 20, 2017 appellant responded to OWCP's December 14, 2016 development questionnaire and provided additional information regarding the emotional symptoms he

⁵ By decision dated December 15, 2016, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity and one percent permanent impairment of the left lower extremity. By decision dated May 17, 2018, it granted him an additional schedule award for 9 percent permanent impairment of the right upper extremity and 12 percent permanent impairment of the left lower extremity. OWCP, in a June 7, 2019 decision, granted appellant a schedule award for an additional 5 percent permanent impairment of the right upper extremity, totaling 15 percent permanent impairment of the right upper extremity and 13 percent permanent impairment of the left lower extremity.

developed following his May 26, 2015 employment injury, and his prior history of depression and work duties and restrictions. He noted that initially in February 2016 he returned to light-duty work in a tool room, but later in the summer he was assigned to work at a guard shack on a pier where he worked until he was restricted from doing so by Dr. Thrasher. Since approximately, July 2016 appellant had been assigned to light-duty work in the tool room.

On February 8, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the January 19, 2017 decision.

In additional progress notes dated April 26 and June 7, 2017, Dr. Thrasher reiterated appellant's reaction to the work incidents set forth in his prior reports. He also reiterated his diagnoses of recurrent episode of unspecified major depressive disorder and chronic PTSD. Dr. Thrasher noted that appellant continued to report symptoms of PTSD related to being on the docks around the ships at the employing establishment, but that medication allowed him to use coping skills to calm his anxiety.

An OWCP hearing representative, by decision dated September 28, 2017, treated the "recurrence claim" as a consequential injury claim based on counsel's assertion during the July 28, 2017 hearing that appellant was claiming a consequential emotional condition causally related to the accepted May 26, 2015 employment injury. However, he affirmed the January 19, 2017 decision finding that the medical evidence of record was insufficient to establish that appellant sustained an emotional condition as a consequence of his accepted May 26, 2016 employment injuries.

On October 23, 2017 appellant, through counsel, appealed to the Board. By decision dated July 23, 2018, the Board affirmed the September 28, 2017 decision.⁶ The Board found that Dr. Thrasher's opinion on causal relationship was of diminished probative value as he did not sufficiently explain how appellant's diagnosed chronic PTSD and recurrent episode of severe major depressive disorder were causally related to his accepted May 26, 2015 employment injuries. The Board noted that, the need for medical reasoning or rationale was particularly important, given that the medical evidence of record indicated that appellant had preexisting nonwork-related emotional conditions. Additionally, the Board noted that rationale was needed as Dr. Thrasher had attributed appellant's conditions to a new intervening factor, for which appellant could file a new occupational disease claim.

OWCP subsequently received additional reports dated October 4, 2017 and February 7, April 11, June 13, and August 8, 2018 from Dr. Thrasher. Dr. Thrasher continued to diagnose recurrent episodes of unspecified major depressive disorder and chronic PTSD. He noted that appellant was more depressed and having stomach pain. Dr. Thrasher noted his stressors outside of his work environment and at work which created a hostile environment. He discussed findings on examination and advised that appellant's mood was stable despite ongoing stressors at work

⁶ *Supra* note 3.

and reduced use of psychotropic medications. Dr. Thrasher noted that appellant stopped work in October 2017 and retired on March 31, 2018.

On March 20, 2019 appellant, through counsel, requested reconsideration of the denial of his consequential injury claim and submitted a March 12, 2019 letter from Dr. Thrasher. Dr. Thrasher continued to opine that appellant's diagnosed major depressive disorder and chronic PTSD were causally related to his May 26, 2015 employment injury. He noted that to his knowledge his preexisting depression and PTSD related to his military service had not caused him significant problems in many years or affected his ability to work at the employing establishment. Dr. Thrasher further maintained that appellant never fully physically recovered from his significant May 26, 2015 work-related injuries as he was unable to physically resume the full responsibilities of his date-of-injury position. He also maintained that his employment-related fall and injuries met the diagnostic criteria set forth in the fifth edition of the *Diagnostic and Statistical Manual (DSM-V)* for PTSD.

Dr. Thrasher indicated that under the A-1 DSM-V criteria the experience of fear associated with a threatened or actual injury caused toxic neurochemicals to be released in the brain that changed the brain's functioning. These changes could be adaptive in the presence of ongoing external stress and threat where an individual was at risk of ongoing injury such as, in a warzone. It caused the brain to become hypersensitized to potential threat so that the person would become hypervigilant, always watching for potential threat, and leading to an avoidance of potential threats to reduce the risk of having another traumatic experience. This caused a reduction in pleasure neurotransmitters and an increase in adrenaline which could be released at the suggestion or reminder of a possible danger even if the danger was not present. In an individual whose injuries resulted in chronic pain or impairment, just going through day-to-day activities could result in having pain that refreshed the memory and fears of the traumatic event. The brain plays back the memories of the dangerous situation, reinforcing the fear. PTSD can develop abruptly or slowly over time as problems linger and the dangerous scenario is replayed frequently and constantly over many months, sometimes over many years. Dr. Thrasher noted that under the B-1 and B-2 DSM-V criteria, appellant had recurrent involuntary distressing memories and recurrent dreams about his fall that were upsetting. Under the C-1 and C-2 DSM-V criteria, he had avoidance behaviors. To avoid the feelings of overstimulation, appellant tried to avoid going close to or even seeing ships at the docks as he traveled to and from his light-duty positions. He took a path to his job that offered the least exposure to the docks and views of ships. Appellant also tried to avoid talking with people about his injuries. He reduced his socialization with coworkers who might want to talk about his injury or their work on board ships. Under the D-5, D-6, and D-7 DSM-V criteria, appellant had negative alterations in cognitions and mood. After the traumatic event, he experienced a markedly diminished interest in participating in his usual social activities. Appellant felt more distant from his family and friends. He had difficulty experiencing happiness and satisfaction. Under the E-4, E-5, and E-6 DSM-V criteria, appellant had an alteration in his arousal and reactivity. After his fall, he was more irritable toward his wife, experienced problems with concentration, and had difficulty sleeping. Under the F DSM-V criteria, appellant's symptoms persisted for many months prior to and after coming under Dr. Thrasher's care. He experienced clinically significant distress when he could not avoid situations which increased his anxiety at work and impaired his ability to function socially, as he withdrew from friends and family activities

which met the DSM-V criteria G. Under DSM-V criteria H there was no evidence that substance abuse, medication, or other medical condition contributed to appellant's symptoms.

Dr. Thrasher advised that appellant's frustration with his residual physical limitations, in addition to his PTSD, depleted his pleasure neurotransmitters which contributed to the development of his major depression and PTSD. Appellant was able to function reasonably well within his physical limitations and coped with his PTSD and depression reasonably well when he was assigned to duties away from the docks. His assignment to the dock exacerbated his PTSD symptoms as he became more anxious and apprehensive each day he went on the docks. Appellant's view of ships triggered memories of his fall with fearful panicky reactions. Dr. Thrasher indicated that these symptoms of PTSD and depression were present before appellant's transfer to duty on the docks. He noted that being present on the docks triggered anxiety and an increase in adrenalin release which exacerbated his PTSD. Dr. Thrasher indicated that while the unsupportive reaction of appellant's supervisor to appellant's concern about being assigned to the docks was upsetting, the increased exposure to the ships caused the exacerbation of his PTSD, which caused further depletion of his pleasure neurotransmitters and worsened his depressed mood. He maintained that while the "Ole Crip" hard hat experience humiliated and angered appellant, it did not involve fear that would be necessary to precipitate or exacerbate PTSD. Dr. Thrasher advised that his PTSD symptoms were present, but manageable until he was forced to resume work on the docks. While appellant's depression also worsened after assignment to the dock, the "Ole Crip" experience may have exacerbated his preexisting depression. Dr. Thrasher concluded that being on the docks was sufficient in and of itself to increase his depressive symptoms and it was not possible to quantify how much of his increased depression was from being on the docks or the "Ole Crip" event. He added that his opinion was based on a "reasonable degree of medical probability."

OWCP, by decision dated June 12, 2019, denied modification of the decision denying appellant's consequential injury claim.

LEGAL PRECEDENT

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 the claimant's own intentional misconduct.⁷ 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.⁸ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence.⁹

⁷ Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014); see *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁹ *Charles W. Downey*, *supra* note 7.

Causal relationship is a medical issue and the medical evidence generally 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 claimant, 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 claimant.¹⁰

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹¹ It has the obligation to see that justice is done.¹²

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's September 28, 2017 decision. The Board considered that evidence in its July 23, 2018 decision and found that it was insufficient to establish his consequential injury claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³

On March 20, 2019 counsel requested reconsideration and submitted a March 12, 2019 report from Dr. Thrasher. Dr. Thrasher diagnosed major depressive disorder and chronic PTSD as a consequence of the accepted May 26, 2015 employment injury. He explained that appellant's preexisting nonwork-related depression and PTSD had not caused him any significant problems in many years and did not affect his ability to work at the employing establishment. Dr. Thrasher further explained that his employment-related fall and injuries met the DSM-V criteria for PTSD. Dr. Thrasher advised that his PTSD symptoms were present, but manageable until he was forced to resume work on the docks. He also explained that although appellant's assignment to the dock exacerbated his PTSD symptoms, he had such symptoms and depression prior to his assignment. Additionally, Dr. Thrasher reasoned that being on the docks was sufficient in and of itself to increase his depressive symptoms and it was not possible to quantify how much of his increased depression was from being on the docks or the "Ole Crip" event.

Proceedings under FECA are not adversarial in nature and OWCP is not 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.¹⁴ The

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ *C.W.*, Docket No. 19-0231 (issued July 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹² *Id.*

¹³ See *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹⁴ See *supra* note 10; *John J. Carlone*, 41 ECAB 354 (1989); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

Board finds that Dr. Thrasher's opinion on causal relationship is supportive of the claim, based on an accurate history of injury, and unequivocal. Although Dr. Thrasher's opinion is insufficiently rationalized to meet appellant's burden of proof, it raises an undisputed inference of causal relationship sufficient to require further development by OWCP.¹⁵ Accordingly, the Board will remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall create and provide a statement of accepted facts and the medical evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether appellant sustained an emotional condition as a consequence of the accepted May 26, 2015 employment injury. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2019 decision of the Office of Workers' Compensation Programs is set and aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 30, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *K.D.*, Docket Nos. 17-1894 and 18-1237 (issued August 6, 2018).