

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

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**P.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Alexandria, VA, Employer**

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**Docket No. 20-0124  
Issued: March 10, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On October 21, 2019 appellant filed a timely appeal from June 12 and September 30, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to the accepted January 8, 2016 compensable employment factor.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 30, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

This case has been previously before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 8, 2016 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2016 she sustained injuries to her upper body, chest, and right foot while in the performance of duty.<sup>4</sup> She indicated that she was "pushed/bumped by co-worker at work." Appellant stopped work on the date of injury.

In a letter dated January 15, 2016, appellant's supervisor indicated that she was involved in a verbal altercation with another employee at her duty station. He noted that she had no reason to be in the loading area and was also not authorized by a supervisor to go and retrieve mail from the other employee. The supervisor further indicated that the verbal altercation became physical because the employee felt that appellant made a disparaging comment about her. The employee bumped appellant and appellant was now claiming that she was injured by the bump.

On January 20, 2016 M.H., an employing establishment health and resource management specialist, further controverted appellant's claim based on her willful misconduct.

An incident report dated January 8, 2016 indicated that appellant was pushed by another employee.

In a February 8, 2016 narrative statement, appellant asserted that she was authorized to give mail to two coworkers on the morning of the alleged injury when she had a verbal altercation and was physically assaulted by another employee.

Following initial development of the claim, by decision dated March 2, 2016, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish an emotional condition arising from a compensable factor of employment. It accepted that appellant was in a verbal altercation with a fellow employee that escalated into a physical altercation on January 8, 2016. However, OWCP found that the accepted incident was not a compensable factor of employment because a customer service supervisor noted that appellant was not engaged in employer-authorized activities when the incident took place as she had no reason to be in the loading area to try to retrieve mail from the other employee.

On March 25, 2016 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional medical and factual evidence before and following a telephonic hearing held on November 7, 2016. In a January 12, 2016 letter, Dr. Melissa O. Smith,

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<sup>3</sup> Docket No. 17-1912 (issued December 28, 2018).

<sup>4</sup> The record establishes that appellant has two previously accepted claims for generalized anxiety disorder under OWCP File No. xxxxxx188 and right foot dermatophytosis, other specified skin disorders, bilateral plantar fibromatosis, and lesion of plantar nerve, right under OWCP File No. xxxxxx893.

a podiatrist, noted that on January 11, 2016 appellant reported that she was involved in an altercation with a fellow employee at work where the employee assaulted her and caused her to slip off the curb and twist her right foot and ankle. She diagnosed plantar fasciitis bilateral, neuroma, tinea pedis, and skin fissures. Dr. Smith found that appellant had reached maximum medical improvement.

On November 14, 2016 Dr. Smith noted that appellant presented for a follow-up examination of her right foot and ankle injury following the January 8, 2016 altercation at work.

By decision dated January 9, 2017, OWCP's hearing representative affirmed the March 2, 2016 decision, as modified to find that the factual evidence of record was sufficient to establish a compensable factor of employment, namely that on January 8, 2016 she was involved in a verbal altercation with a coworker who then bumped into her while she was in the performance of duty. However, the hearing representative, denied the claim as the medical evidence of record was insufficient to establish that appellant's diagnosed emotional conditions were causally related to the accepted compensable employment factor.

On April 10, 2017 appellant requested reconsideration and submitted additional medical evidence.

OWCP, by decision dated July 7, 2017, denied modification of its January 9, 2017 decision.

Appellant appealed to the Board on September 11, 2017. By decision dated December 28, 2018,<sup>5</sup> the Board affirmed OWCP's July 7, 2017 decision finding that appellant had not met her burden of proof to establish an emotional condition causally related to the accepted compensable factor of her federal employment. The Board explained that the medical evidence of record was insufficient to establish her diagnosed emotional conditions were caused by the accepted January 8, 2016 compensable employment factor.

On March 18, 2019 appellant requested reconsideration and submitted a March 12, 2019 medical report from Philip L. Briley, Ph.D., a clinical psychologist. Dr. Briley indicated that he first saw appellant on January 29, 2019 after Dr. Michael J. Papantones, a licensed clinical psychologist, had referred her to him. He noted that appellant had been admitted to a psychiatric ward at an area hospital in 2006 for depression and anxiety and there she was diagnosed with post-traumatic stress disorder (PTSD), she began to have problems with her feet in 2007, her previous supervisor had been verbally abusive to her in 2008, she was injured in 2009 due to her injured feet while walking her delivery route, she had been assaulted by a coworker at work on January 5, 2016, and she said that she had a torn rotator cuff because she had fallen and tripped over a flat mail carton in April 2018. Dr. Briley reviewed the records of Dr. Papantones and his clinical notes from appellant's psychotherapy and concurred with his diagnosis of adjustment disorder and opined that her clinical symptoms were primarily due to the way she had been treated by the supervisor at her job. He concluded that her mistreatment at work was severe enough and had

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<sup>5</sup> *Supra* note 3.

lasted long enough to cause her symptoms, especially because this treatment threatened her job and, therefore, her livelihood.

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

On July 1, 2019 appellant requested reconsideration.

OWCP subsequently received documentation related to appellant's grievance and Equal Employment Opportunity (EEO) complaint, including a January 8, 2016 emergency placement letter, an official request for information from the union dated February 17, 2016, a grievance resolution form dated July 15, 2016, and a dismissal of her formal EEO complaint dated August 22, 2016.

In an undated witness statement, P.M. indicated that on January 15, 2016 she was in the back of the employing establishment searching for an item for a customer that she was servicing at the window when appellant entered the building and approached supervisor J.M. Appellant went over to him and engaged in a brief conversation and then all of a sudden he started yelling and screaming at her. P.M. looked at him and he continued to berate appellant.

A January 27, 2016 disability certificate by Dr. H. Herbert Washington, a family practitioner, advised that appellant was totally incapacitated from January 27 to February 15, 2016 because of PTSD on the job.

In reports dated January 27 and February 9, 2016, Dr. Washington diagnosed PTSD, anxiety disorder, depression disorder, and hypercholesterolemia and indicated that appellant was seen for an evaluation of an ongoing work disability extension after being assaulted on January 8, 2016. He maintained that since then appellant had anxiety, chest pain, depression, agitation, fearfulness, and other symptoms related to the incident. Dr. Washington noted that she had a past history of depression and was followed off and on by her psychologist.

In an attending physician's report (Form CA-20) dated August 14, 2017, Dr. Smith diagnosed sprain of right ankle due to a January 8, 2016 work injury. She opined that appellant's injury was directly caused by a fellow employee who had assaulted her and caused her to slip off of a curb and twist her right foot and ankle.

By decision dated September 30, 2019, OWCP denied modification of its June 12, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>6</sup> that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that

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<sup>6</sup> *Supra* note 1.

any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.<sup>7</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>8</sup>

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

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted January 8, 2016 compensable employment factor.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's July 7, 2017 decision. The Board considered that evidence in its December 28, 2018 decision and found it was insufficient to establish her emotional condition claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>11</sup>

On March 18, 2019 appellant requested reconsideration and submitted a March 12, 2019 from Dr. Briley. Dr. Briley reviewed Dr. Papantones' medical records and his clinical notes from appellant's psychotherapy. He agreed with the physician's diagnosis of depression. Dr. Briley opined that appellant's clinical symptoms were primarily due to the way she had been treated by the supervisor at her job. He concluded that her mistreatment at work was severe enough and had lasted long enough to cause her symptoms. While Dr. Briley's opinion generally supports causal relationship, he did not specifically attribute the diagnosed condition to the accepted January 8, 2016 compensable employment factor. Moreover, he did not provide his medical reasoning as to

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<sup>7</sup> *O.R.*, Docket No. 20-0743 (issued January 28, 2021); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>8</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>9</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *R.R.*, Docket No. 19-0743 (issued September 20, 2019).

<sup>11</sup> *See I.S.*, Docket No. 19-1461 (issued April 30, 2020); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

how a verbal and physical altercation would cause or contribute to the diagnosed depression. Thus, the Board finds that Dr. Briley's report is insufficient to meet appellant's burden of proof.<sup>12</sup>

In reports dated January 27 and February 9, 2016, Dr. Washington diagnosed PTSD, anxiety disorder, and depression disorder. He noted that appellant was seen for an evaluation of an ongoing work disability extension after being assaulted on January 8, 2016. In a January 27, 2016 disability certificate, Dr. Washington advised that appellant was totally incapacitated from January 27 to February 15, 2016 due to PTSD on the job. Although he generally supported causal relationship in his reports, he did not provide sufficient medical rationale explaining how the accepted January 8, 2016 compensable employment factor caused or contributed to her PTSD and resultant disability. The Board has held that a mere conclusion without the necessary rationale explaining how the accepted work factors could result in the diagnosed condition or period of disability is insufficient to meet a claimant's burden of proof.<sup>13</sup> Furthermore, the Board has held that reports which lack rationale are insufficient to meet appellant's burden of proof.<sup>14</sup>

In the remaining medical report dated August 14, 2017, Dr. Smith diagnosed right ankle sprain. She attributed the diagnosed condition to the accepted January 8, 2016 compensable employment factor. Dr. Smith did not diagnose an emotional condition causally related to the compensable employment factor. Moreover, she did not provide medical rationale explaining how being verbally and physically assaulted caused or contributed to the diagnosed right ankle condition. As previously noted, a mere conclusion without the necessary rationale explaining how the accepted work factors could result in the diagnosed condition or period of disability is insufficient to meet the appellant's burden of proof.<sup>15</sup> Thus, for these reasons, the Board finds that Dr. Smith's report is insufficient to meet appellant's burden of proof.

As appellant has not submitted reasoned medical evidence explaining how her diagnosed emotional condition was causally related to the accepted January 8, 2016 compensable employment factor, the Board finds that she has not met her burden of proof.<sup>16</sup>

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 January 8, 2016 compensable employment factor.

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<sup>12</sup> See *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *D.R.*, Docket No. 15-1185 (issued October 8, 2015).

<sup>13</sup> See *J.W.*, Docket No. 19-0237 (issued July 1, 2019); *A.E., id.*; *P.B.* Docket No. 17-1912 (issued December 28, 2018), *J.V.*, Docket No. 16-1246 (issued December 9, 2016).

<sup>14</sup> *J.W., id., K.T.*, Docket No. 17-1717 (issued March 27, 2018).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *D.B.*, Docket No. 19-1543 (issued March 6, 2020); *J.W., supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30 and June 12, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 10, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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