

breathing and shortness of breath as a result of harassment and retaliation by his supervisor, E.P., and a coworker, D.M., over the past one year and 11 months. He claimed that he sustained a panic attack on the date of injury after being threatened by E.P. with a November 22, 2019 notice of proposed five-day suspension from work. Appellant noted that he was rushed and admitted to a hospital on November 25, 2019. On the reverse side of the claim form, the employing establishment indicated that he stopped work on the date of injury and returned on December 3, 2019. It controverted appellant's claim, alleging that he was not subjected to any threats, harassment, or retaliation. The employing establishment explained that the proposed discipline was based on his unprofessional conduct which involved unfounded claims he made against a coworker.

In support of his claim, appellant submitted a November 27, 2019 letter from Dr. Gladys Hammond, an attending licensed clinical/counseling psychologist. Dr. Hammond noted that appellant had been under her professional care since 2014. She provided a history of injury that on November 25, 2019 appellant was taken to a hospital for stress resulting from retaliation by his supervisor and a coworker. Based on her examination and evaluation, Dr. Hammond advised that he was fit for duty and indicated that appellant could return to work on December 3, 2019. She recommended that he telework three days per week and get a new supervisor.

Federal occupational health forms dated November 25 and 28, 2019 from a registered nurse with an illegible signature related appellant's chief complaints of chest pain, shortness of breath, anxiety, and depression. The nurse noted examination findings and an assessment of acute pain related to/as evidenced by anxiety/depression and aggressive chest pain.

A work/school note dated November 25, 2019 by Dr. Philippa N. Soskin, a Board-certified emergency medicine physician, certified that appellant was treated in the emergency department on that date. In patient discharge instructions of even date, Dr. Soskin diagnosed anxiety.

OWCP, in a development letter dated December 20, 2019, informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On December 26, 2019 appellant responded to OWCP's development questionnaire. He indicated that he had a life-long mental disability with triggers of sweating, trembling, racing heartbeats, and shortness of breath. Appellant again claimed that he sustained a work-related traumatic injury.

Appellant submitted additional medical evidence from Dr. Hammond. In a January 25, 2018 letter, Dr. Hammond noted her diagnosis of post-traumatic stress disorder (PTSD). She indicated that appellant's PTSD symptoms resulted from the violent death of appellant's father. Dr. Hammond indicated that his hostile biased work situation causes the return of his PTSD symptoms with bouts of depression for which he took medication. She opined that appellant's work environment caused him severe anxiety. Dr. Hammond further advised that he could perform all of his required duties, but recommended that he be given his own office when at work.

and continue to telework three days per week. She noted that appellant's anxiety symptoms were raised when he was in crowded areas of public transportation.

In a letter dated July 16, 2018, Dr. Hammond indicated that appellant was seen for a follow-up evaluation of his PTSD.

E-mails dated December 23, 26, 2019 between the employing establishment and appellant, and a summary of a December 12, 2019 meeting addressed appellant's allegation of harassment and retaliation by the staff and management and reasonable accommodation request to telework three days per week and be assigned to a new supervisor.

A November 25, 2019 D.C. Fire and Emergency Medical Service (EMS) Department conversion record indicated that, on that date, appellant was transported to a hospital for the treatment of his insomnia and emotional stress.

By decision dated January 29, 2020, OWCP found that the evidence of record was sufficient to establish the November 25, 2019 incident as a compensable factor of employment, but denied appellant's claim because the medical evidence was insufficient to establish a diagnosed medical condition causally related to the accepted compensable work factor.

On February 4, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He submitted a January 16, 2020 letter in which Dr. Hammond noted that appellant was treated at an Emergency Clinic on January 10, 2020 due to serious, stressful work conditions. Dr. Hammond again reported that his stress was due to retaliation by a supervisor and a coworker. She indicated that appellant was treated with medication and allowed to return home on the day of treatment. Dr. Hammond advised that her examination and evaluation revealed that he was fit for duty and that he could return to work on January 21, 2020. She concluded that appellant would remain under her care until the stress from his five-day suspension from work was totally relieved.

Appellant also submitted additional hospital records indicating his treatment, diagnosis of anxiety, and discharge on November 25, 2019.

By decision dated April 10, 2020, an OWCP hearing representative set aside the January 29, 2020 decision and remanded the case to OWCP for further adjudication of the factual aspect of appellant's claim, specifically identification of a compensable factor of employment. The hearing representative instructed that, upon return of the case record, OWCP should make findings of fact regarding which working conditions are deemed compensable factors of employment.

In a development letter dated April 15, 2020, OWCP requested that appellant provide a detailed description of the workplace activities that led to his claimed traumatic injury.

In an undated letter, appellant responded to OWCP's development letter. He alleged that he had to call the employing establishment police on D.M. because she threatened him with physical harm. Appellant further alleged that he was sexually harassed by T.B.

Appellant submitted the November 22, 2019 notice of proposed five-day suspension issued by the employing establishment. The employing establishment noted the proposed suspension was based on appellant's unprofessional conduct in the workplace. It indicated that on November 13, 2019 he became loud and unprofessional when D.M. tried to give him feedback on a work product. Appellant told her that he did not want to hear anymore. As D.M. left his work area, he only heard her say "next time" and not the rest of her sentence or know the meaning of her comment. The employing establishment noted that at no time on the date of the incident or on the following day appellant claim that he was threatened by D.M. On November 15, 2019 appellant contacted the Federal Protective Service (FPS) claiming that he was threatened or felt threatened by D.M. FPS investigated his complaint and determined that it was unfounded.

In his undated response to the proposed action, appellant acknowledged that he and D.M. displayed somewhat unprofessional conduct during the November 13, 2019 incident, but requested that the employing establishment take much lesser disciplinary action against him. He explained that he believed his safety was at risk based on D.M.'s threatening remark, which led him to contact FPS.

OWCP received an additional report dated November 25, 2019 by Dr. Soskin who recounted a history that appellant suffered from anxiety and PTSD related to work stresses, noting the issuance of a notice of possible suspension by the employing establishment because he called the police after being threatened by a coworker. Dr. Soskin discussed examination findings and reiterated her prior diagnosis of anxiety.

By decision dated August 7, 2020, OWCP found that the November 25, 2019 incident was a compensable employment factor of appellant's employment, but denied the claim finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted compensable employment factor.

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,² 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 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.³

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

² *Id.*

³ *O.R.*, Docket No. 20-0743 (issued January 28, 2021); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52ECAB 357 (2001).

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.⁴

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁵ 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.⁶

ANALYSIS

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

Appellant has established as a compensable employment factor in that the employing establishment issued him a November 22, 2019 notice of proposed five-day suspension from work. The issue, consequently, is whether the medical evidence of record is sufficient to establish that appellant sustained a diagnosed physical or emotional condition due to the accepted compensable employment factor.

In support of his claim, appellant submitted medical evidence from Dr. Soskin. In a November 25, 2019 report, Dr. Soskin diagnosed anxiety. She noted that appellant related that he suffered from anxiety and PTSD related to work stresses, including the issuance of a notice of proposed suspension by the employing establishment because he called the police on a coworker. Dr. Soskin, however, merely repeated the history of injury as reported by appellant without providing her own opinion of whether the condition was employment related. The mere recitation of a patient's history does not suffice for the purpose of establishing causal relationship between a diagnosed condition and the employment incident.⁷ In a work/school note and patient discharge instructions of even date, Dr. Soskin continued to diagnose anxiety, but failed to provide a history of injury or offer an opinion on causal relationship.⁸ For these reasons, the Board finds that her reports are insufficient to meet appellant's burden of proof.

⁴ 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).

⁵ *M.B.*, Docket No. 20-1160 (issued April 2, 2021); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *R.R.*, Docket No. 19-0743 (issued September 20, 2019).

⁷ See *D.B.*, Docket No. 19-1543 (issued March 6, 2020); *D.L.*, Docket No. 19-1053 (issued January 8, 2020).

⁸ See *D.B.*, *id.*; *B.P.*, Docket No. 19-1054 (issued November 14, 2019); *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

Additionally, appellant submitted reports from Dr. Hammond. In a January 25, 2018 report, Dr. Hammond diagnosed PTSD and related that his PTSD symptoms were caused by the violent death of his father. She attributed his current PTSD symptoms with bouts of depression to his hostile/biased work environment, which caused him anxiety. Dr. Hammond addressed appellant's work capacity and recommended work accommodations. In reports dated November 27, 2019 and January 16, 2020, she noted that appellant related that he suffered from stress due to retaliation by his supervisor and an employee. Dr. Hammond reiterated her opinion regarding his work capacity and work accommodations. In the January 16, 2020 report, she noted that appellant would remain under her care until the stress from his five-day suspension from work was totally relieved. Although Dr. Hammond noted appellant's history, and diagnosed PTSD, such generalized statements do not establish causal relationship.⁹ She did not specifically discuss the accepted employment incident or provide a reasoned opinion explaining how the accepted incident caused or aggravated a diagnosed condition.¹⁰ Dr. Hammond merely repeated the history of injury as reported by appellant without providing her own opinion of whether the condition was employment related. As noted, the mere recitation of a patient's history does not suffice for the purpose of establishing causal relationship between a diagnosed condition and the employment incident.¹¹

Dr. Hammond's remaining July 16, 2018 report noted that appellant was seen for a follow-up evaluation of his PTSD. She did not provide a history of injury or offer an opinion as to whether appellant's diagnosed condition was caused or aggravated by the November 25, 2019 employment incident.¹² For the stated reasons, the Board finds that Dr. Hammond's reports are insufficient to establish meet appellant's burden of proof.

The November 25, 2019 D.C. Fire and EMS and hospital records noted appellant's diagnoses of insomnia, emotional stress, and anxiety, but failed to provide an opinion on whether the diagnosed conditions were caused or aggravated by the accepted employment factor.¹³

Appellant also submitted federal occupational health forms dated November 25 and 28, 2019 signed solely by a registered nurse. Registered nurses, however, are not considered

⁹ See *D.B., id.*

¹⁰ *Id.*; *M.G.*, Docket No. 19-1199 (issued December 19, 2019); *C.M.*, Docket No. 18-1166 (issued July 9, 2019).

¹¹ See *supra* note 8.

¹² See *supra* note 9.

¹³ *Id.*

“physician[s]” as defined under FECA and thus their reports do not constitute competent medical opinion evidence.¹⁴

As appellant has not submitted reasoned medical evidence explaining how his diagnosed emotional condition was casually related to the accepted compensable employment factor, the Board finds that he has not met his burden of proof.¹⁵

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

¹⁴ Section 8101(2) provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *D.S.*, Docket No. 19-1657 (issued July 20, 2020) (nurse practitioners and registered nurses are not considered physicians under FECA).

¹⁵ *D.B.*, *supra* note 7; *J.W.*, Docket No. 19-0237 (issued July 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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