

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

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T.W., Appellant)	
)	
and)	Docket No. 21-0279
)	Issued: October 12, 2021
DEPARTMENT OF AGRICULTURE, FARM)	
SERVICE AGENCY, Harrodsburg, KY,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 14, 2020 appellant filed a timely appeal from an October 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that oral argument should be granted because she would like to discuss her case if paperwork was not sufficient to prove her case. The Board, in exercising its discretion, denies her request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the caserecord. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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 employment factor.

FACTUAL HISTORY

On November 8, 2019 appellant, then a 52-year-old program technician, filed an occupational disease claim (Form CA-2) alleging that she was attacked in the employing establishment in July 2017 and had suffered post-traumatic stress disorder (PTSD), anxiety attacks, depression, and headaches since that time. She indicated that she first became aware of her condition and that it was related to factors of her federal employment on October 28, 2019. Appellant stopped work on October 28, 2019.

In a development letter dated November 13, 2019, OWCP advised appellant that it had not received any documentation with her claim form. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a report dated May 15, 2019 from Dr. Courtney D. Maiden, an osteopath specializing in family medicine. Dr. Maiden noted that appellant related that she had anxiety, panic attacks, confusion, and thoughts of death which started in February due to significant stress at work after she brought issues to her supervisor's attention. She also related that appellant's husband currently had family members who were ill and that appellant's husband's family responsibilities caused appellant to handle extra duties on her farm.

In a report dated May 31, 2019, Dr. Maiden related that appellant continued experiencing headaches triggered by stress and was not sleeping well.

On June 19, 2019 Dr. John A Allahham, a Board-certified psychiatrist and geriatric specialist, related that appellant had a history of depression, anxiety, worries, tension, and decreased sleep. He noted that she had related that all of these symptoms began a few months ago due to work-related stress over a conflict with a producer who physically threatened her. Dr. Allahham diagnosed adjustment disorder with mixed anxiety and depressed mood.

OWCP received a report dated July 5, 2019 from Dr. Maiden wherein she related that appellant was still experiencing panic attacks, severe anxiety, and shortness of breath. Appellant also related that she suffered debilitating headaches.

In a report dated July 12, 2019, Dr. Maiden noted that appellant reported dizziness which she attributed to stress. She also stated that appellant also suffered from migraines and had a hard time finding words and had blurry vision. Dr. Maiden related that she had advised appellant to follow up with her psychiatrist and to stop blaming herself for everything going on at work.

In a report dated August 16, 2019, Dr. Allahham, related that appellant complained of headaches and insomnia related to her job. He noted that she was now being asked to drive to different offices to perform her work and that she did not like to drive. Dr. Allahham diagnosed adjustment disorder with mixed anxiety and depressed mood.

OWCP received a report dated September 24, 2019 from Dr. Maiden wherein she related that appellant had undergone a magnetic resonance imaging (MRI) scan and that no abnormalities were found.

In a therapy assessment dated October 2, 2019, Nathan Mayo, a licensed professional clinical counselor, related that appellant complained of anxiety, panic, depression, PTSD, and headaches and also had a previous history of bipolar disorder. He stated that she felt retaliated against because she was a whistleblower at work, and that she had related an incident when someone threatened her at work. Appellant had related that loud noises and screaming has triggered flashbacks and she has not been able to sleep, avoided going places, and has been hyper vigilant. She also related that her husband was verbally abusive, but she may have been too sensitive since the attack at work.

In reports dated October 8 and 21, 2019, Erica Cecil, a registered nurse, related that appellant had been diagnosed with bipolar disorder and currently was diagnosed with PTSD after appellant was attacked by a coworker, her brother-in-law, in 2017. Appellant related that he had hit her with crutches and called her donkey ears. She also related that she was afraid she that was going to lose her job.

In a report dated October 11, 2019, Dr. Maiden noted appellant's diagnoses of bipolar disorder, PTSD, and anxiety.

In a report dated October 15, 2019, Dr. Allahham again diagnosed adjustment disorder with mixed anxiety and depressed mood.

On November 1, 2019 appellant filed a claim for traumatic injury (Form CA-1) alleging that on July 17, 2017 she was attacked at work and that she had sustained a mental breakdown in May 2019. A witness, T.H., noted on the claim form that he was present when a producer was held by two police officers. Appellant's supervisor indicated on the reverse of the claim form checked a box marked "No" that appellant was not injured in the performance of duty. He explained, "Not to my knowledge. I was not present during the event."

Appellant provided a narrative statement wherein she alleged that she was mentally and physically attacked by producer, L.W., who was also her brother-in-law. She stated that L.W. was mad over a mistake on his crop report and swung his crutch over the counter at her and called her many derogatory names, while she was alone in the office with him. Appellant related that someone heard her scream and called the police. After the incident, she asked her manager to transfer the producer to a different office, however, this did not happen and she was forced to wait on him until she was transferred to a different office. Appellant stated that after the incident she had PTSD, anxiety attacks, and depression.

OWCP received witness statements. In one witness statement, L.L., a worker in a nearby office, stated that she heard the producer, L.W., screaming at appellant on the day of incident. In a separate letter, appellant's husband, J.W., stated that he saw the producer, his brother, go into the office on the day of the incident. Appellant's brother, R.H., also submitted a witness statement which stated that appellant called him about the incident. OWCP received a letter from a producer,

B.W., who recounted that when he came into appellant's office that day, he saw L.W., with two police officers.

In a letter dated November 26, 2019, the employing establishment controverted appellant's claim. It challenged the claim asserting that it took appellant two years to seek treatment and that the alleged incident was committed by her brother-in-law. The employing establishment also submitted a response to the questionnaire dated December 12, 2019. It confirmed that the appellant's brother-in-law entered the office and verbally berated her; however, it indicated that appellant did not report a physical assault until 2019.

Appellant submitted a letter dated December 16, 2019 from Dr. Getulio Tovar, a Board-certified psychiatrist, who diagnosed panic disorder, bipolar disorder, and PTSD. Dr. Tovar confirmed that appellant had been treated in his office since October 2, 2019.

OWCP received a letter dated January 15, 2020, accepting and referring appellant's Equal Employment Opportunity (EEO) complaint for further investigation. The complaint alleged discrimination and harassment towards appellant based on age following the 2017 incident.

By decision dated May 6, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition that arose during the course of employment and within the scope of compensable work factors as defined by FECA.

On June 2, 2020 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

A police incident report on July 17, 2017 indicated that appellant wanted L.W. to leave the premises.

Appellant submitted an additional statements and notes. OWCP received a statement she made to the employing establishment's personnel misconduct investigator. Appellant recounted that she was verbally and physically attacked by a producer, L.W., on July 17, 2017 and that L.W. verbally attacked her again in 2019. She also stated that she filed an EEO complaint.

Appellant submitted several documents regarding her EEO complaint, including an affidavit, an EEO claim acknowledgement letter dated May 20, 2019, a reasonable accommodation request dated August 7, 2019, an e-mail dated September 13, 2019 granting her a new workplace assignment, and a letter dated December 6, 2019 from OPM approving her disability retirement due to bipolar disorder.

OWCP received a letter dated December 20, 2019 from Dr. Maiden, which related that appellant was diagnosed with panic/anxiety disorder, bipolar disorder, and PTSD.

Appellant submitted a statement dated May 25, 2020 from a coworker, E.G., who related that L.W. continued to come into the office and harass appellant through March 2019. L.W. made rude remark.

In a letter dated September 9, 2020, the employing establishment confirmed that a verbal altercation had occurred between a producer, L.W., appellant's brother-in-law, and appellant, that

police had been called, and that L.W. had been escorted from the building. No physical assault had occurred. The employing establishment indicated that it had never retaliated or threatened appellant.

By decision dated October 30, 2020, OWCP's hearing representative affirmed as modified OWCP's May 6, 2020 decision. The hearing representative found that the verbal altercation was a compensable employment factor as the evidence showed that the incident occurred and that its origin was work related and not a personal matter between the parties in the workplace. The hearing representative, however, continued to deny appellant's claim as she failed to submit a medical opinion establishing causal relationship between the diagnosed condition and the accepted compensable employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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.⁴

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.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

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

³ *Id.*

⁴ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁷ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

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.⁸

ANALYSIS

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

OWCP accepted that appellant was verbally assaulted on July 17, 2017 by L.W., in the performance of duty. In support of her claim, appellant submitted reports from Dr. Maiden, who noted appellant's symptoms of anxiety, panic attacks, confusion, headaches, and in her October 11, 2019 report she diagnosed bipolar disorder, PTSD and anxiety. Dr. Tovar also diagnosed bipolar disorder, PTSD, and anxiety. Dr. Allahham diagnosed adjustment disorder, with mixed anxiety and depressed mood. However, these physicians did not provide their own rationalized medical opinion explaining the causal relationship between appellant's diagnosed conditions and the accepted compensable employment factor. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ As such, these reports are insufficient to establish appellant's claim.

OWCP also received an October 2, 2019 therapy assessment from Mr. Mayo, a licensed professional clinical counselor, and records dated October 8 and 21, 2019 from Ms. Cecil, an advanced practice registered nurse. Section 8101(2) of FECA defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law.¹⁰ Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and mental health counselors are not considered physicians as defined under FECA.¹¹ Consequently, Mr. Mayo and Ms. Cecil's records will not suffice for purposes of establishing entitlement to FECA benefits.¹²

⁸ *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ 5 U.S.C. § 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," 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); *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

¹¹ *See L.H.*, Docket No. 18-1217 (issued May 3, 2019) (finding that licensed social workers and mental health counselors are not considered physicians as defined by FECA).

¹² *Id.*; *see also M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

As appellant has not submitted rationalized medical evidence explaining how her diagnosed emotional conditions were causally related to the accepted June 17, 2017 compensable employment factor, the Board finds that she has not met her burden on proof.¹³

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 employment factor.

¹³ *D.B.*, Docket No. 19-1543 (issued March 6, 2020); *J.W.*, Docket No. 19-0237 (issued July 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2021
Washington, DC

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

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

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