

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

_____)
A.D., Appellant)

and)

**U.S. POSTAL SERVICE, WEST ALLIS POST
OFFICE, Milwaukee, WI, Employer**)
_____)

**Docket No. 21-0639
Issued: October 7, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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 March 16, 2021 appellant, through counsel, filed a timely appeal from a February 26, 2021 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, following the issuance of the February 26, 2021 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to the accepted March 28, 2020 employment incident.

FACTUAL HISTORY

On April 20, 2020 appellant, then a 33-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2020 she developed stress while in the performance of duty. She explained that she was verbally threatened with physical harm by a customer. Appellant noted that the customer threatened to “kick her a** and send the dog on me.” She stopped work on the date of injury.

OWCP, in an April 20, 2020 development letter, informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for completion. In a separate development letter of even date, OWCP requested that the employing establishment comment on the accuracy of appellant’s statements. It afforded both parties 30 days to submit the necessary evidence.

In response to OWCP’s development letter, the employing establishment submitted an April 20, 2020 letter in which it challenged appellant’s claim based on a statement from L.C., a supervisor/manager. It also contended that she did not complete her Form CA-1 until 17 days later after being informed on the date of injury to provide a statement and to complete the claim form. The employing establishment noted that appellant did not provide a written statement of the alleged incident to management.

In an April 17, 2020 e-mail, L.C. controverted appellant’s claim, contending that she failed to provide a statement and cooperate with the investigation regarding the alleged incident. She noted that appellant initially related to a postal inspector that she was on her cell phone when she and a customer exchanged words that led to an argument between them because the customer overheard her comment that she was glad that he was getting his dog, but after she returned to the office she placed complete blame on the customer, claiming that he threatened to let his dog loose on her. L.C. related that employees were not allowed to use their cell phones while in the line of duty except in an emergency, and that several customers had complained about appellant being on her cell phone.

By letter dated April 24, 2020, the employing establishment submitted a copy of the postal inspector’s April 15, 2020 assault and threat specialty report, which indicated that appellant was on her cell phone when she was involved in an argument with a customer who threatened her with physical harm.

OWCP received a May 11, 2020 return-to-work report by Marcelle A. Bullard, a physician assistant, who noted a date of injury as March 28, 2020, opined that appellant sustained work-related verbal abuse from an adult, and advised that she may return to work without restrictions on May 12, 2020.

In a May 19, 2020 return-to-work report, Dr. David M. Wehby, an attending Board-certified family practitioner, noted a date of injury as March 28, 2020. He diagnosed verbal abuse of adult and anxiety in acute stress reaction and opined that the diagnosed conditions were work

related. Dr. Wehby advised that appellant may return to work with restrictions as of the date of his report.

By a June 3, 2020 decision, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that she provided a vague description of the alleged March 28, 2020 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received an additional return-to-work report by Dr. Wehby dated June 9, 2020. Dr. Wehby reiterated the date of injury as March 28, 2020, and his diagnoses of verbal abuse of an adult and anxiety in acute stress reaction and opinion that the diagnosed conditions were work related. He indicated that appellant may return to work with restrictions on June 15, 2020.

On June 19, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 3, 2020 decision.

In a May 18, 2020 response to OWCP's April 20, 2020 development letter, appellant again attributed her emotional and physical conditions to the alleged March 28, 2020 work incident. She listed employees who were aware of the alleged work incident. Appellant explained the delay in filing her claim, noting that L.C. did not believe her and refused to give her a Form CA-1. She noted that she had no prior emotional condition.

In an undated narrative statement, appellant noted that around 1:30 p.m. to 2:00 p.m. on March 28, 2020 a man came out of his house talking "very crazy" and disrespectful to her. The customer thought she had called him a profane name, which she denied. Appellant told him what she had said about his dog while she was on her cell phone and the customer disliked her comment. They both became upset and engaged in an argument. The customer physically threatened appellant stating that he was going to let his dog loose on her. Following the incident, she returned to the office shaking and an employee and a supervisor were on the telephone with L.C. who asked her to immediately write a statement regarding the alleged incident. Appellant became upset because she believed that no one cared about what had happened to her.

In an additional undated narrative statement, appellant noted her emotional and physical reaction to L.C.'s refusal to provide her with a Form CA-1 or an authorization for examination and/or treatment (Form CA-16) when she returned to work for only one hour on April 8, 2020 and a full day on April 13, 2020.

Appellant submitted witness statements from her coworker and a union steward who corroborated her account of L.C.'s refusal to provide her with a Form CA-1 and being involved in a verbal altercation with a customer who threatened to let his dog loose on her while delivering her route on March 28, 2020.

An oral hearing was held before an OWCP hearing representative on September 3, 2020.

Subsequently, OWCP received an October 27, 2020 progress note from Rebecca Bons, Psy.D., a clinical psychologist, who reported appellant's chief complaint of work-related anxiety and stress. Ms. Bons diagnosed adjustment disorder with anxious mood.

By decision dated November 18, 2020, an OWCP hearing representative affirmed the June 3, 2020 decision as modified. She accepted that the March 28, 2020 verbal and physical altercation constituted a compensable employment factor, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the accepted compensable employment factor caused her diagnosed emotional conditions.

On November 30, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a November 19, 2020 report, Dr. Bons noted that appellant was under her care for outpatient psychotherapy to resolve symptoms related to a significant work stressor in which she was verbally assaulted by an individual in the community. As a result of the incident, she exhibited a stress reaction when presented with reminders of the situation. The stress reactions presented as anxiety, fear, hypervigilance, and an array of physical symptoms (*e.g.*, shakiness, increased heart rate, heavy breathing, elevated stress response, and tearfulness). Dr. Bons related that stress reactions occurred at varying levels, were typically triggered by reminders of an event, the body's reaction to a feared situation or one's life perceived at risk, and could limit functioning. She reported that appellant expressed concern that her anxiety and stress had increased since the incident and limited her ability to perform her regular duties. Dr. Bons indicated that, through the implementation of cognitive behavioral and supportive strategies, appellant was working to decrease anxiety, depression, and stress reactions resulting from the incident.

In progress notes dated and signed November 20 and December 16, 2020, Dr. Bons restated appellant's chief complaint of work-related anxiety and stress. She diagnosed adjustment disorder with mixed anxiety and depressed mood. Dr. Bons also diagnosed moderate adjustment disorder with mixed disturbance.

OWCP also received physical therapy progress reports and daily notes dated from December 1 through 30, 2020.

By decision dated February 26, 2021, OWCP denied modification of the November 18, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have

⁴ *Supra* note 2.

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁶

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.⁷ 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.⁸

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 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.⁹

ANALYSIS

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

Appellant submitted progress notes dated October 27, November 20, and December 16, 2020 from Dr. Bons, a clinical psychologist, who diagnosed adjustment disorder with anxious mood. In a November 19, 2020 report, Dr. Bons opined that appellant's conditions were due to a work-related verbal assault by an individual in the community. She noted that, as a result of the incident, appellant exhibited a stress reaction when presented with reminders of the situation. The stress reactions presented as anxiety, fear, hypervigilance, and an array of physical symptoms (*e.g.*, shakiness, increased heart rate, heavy breathing, elevated stress response, and tearfulness). Dr. Bons related that stress reactions occurred at varying levels, were typically triggered by reminders of an event, the body's reaction to a feared situation or one's life perceived at risk, and could limit functioning. She reported that appellant expressed concern that her anxiety and stress had increased since the incident and limited her ability to perform her regular duties. Dr. Bons indicated that through the implementation of cognitive behavioral and supportive strategies appellant was working to decrease anxiety, depression, and stress reactions resulting from the incident.

The Board notes that, while Dr. Bons' November 19, 2020 report is not completely rationalized, it is consistent in indicating that appellant developed an employment-related emotional condition and is not contradicted by any substantial medical or factual evidence of

⁶ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁷ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁸ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

⁹ *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

record.¹⁰ While Dr. Bons' opinion is not sufficient to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between appellant's emotional condition and the compensable employment factor and, thus, is sufficient to require OWCP to further develop the medical evidence.¹¹

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence,¹² to see that justice is done.¹³

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, together with the case record and a statement of accepted facts, for a rationalized opinion regarding whether her emotional condition is causally related to the accepted compensable employment factor of March 28, 2020. If the physician opines that the emotional condition is not causally related to the accepted compensable employment factor, he or she must explain with rationale how or why their opinion differs from that of Dr. Bons. Following this and such other further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ See *T.D.*, Docket No. 21-0377 (issued August 25, 2021); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *Id.*

¹² *K.P.*, Docket 18-0056 (issued January 27, 2020); *A.P.*, Docket No. 17-0813 (issued January 3, 2018).

¹³ *S.C.*, Docket No. 21-0637 (issued August 12, 2021); *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 7, 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