

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 an 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.

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

ISSUE

The issue is whether appellant has established that the acceptance of her claim should be expanded to include additional or consequential conditions of major depression and anxiety, or a cognitive disorder as a result of her accepted November 21, 2013 employment injury.

FACTUAL HISTORY

On December 13, 2013 appellant, then a 62-year-old social services assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2013 she sustained a right shoulder strain with rotator cuff tearing when moving a large cabinet to retrieve documents which had fallen from the printer while in the performance of duty. She did not initially stop work. OWCP accepted the claim for right shoulder and upper arm acromioclavicular sprain, right shoulder and arm rotator cuff sprain, right rotator cuff tear, and subsequently expanded acceptance of the claim to include consequential conditions of right shoulder stress fracture and right shoulder rotator cuff tear or rupture.⁴

OWCP paid appellant wage-loss compensation on the supplemental rolls as of February 5, 2014. On June 28, 2016 it granted her a schedule award for 12 percent permanent impairment of the right upper extremity for 37.44 weeks from April 12 through December 30, 2016. OWCP paid appellant wage-loss compensation on the periodic rolls as of October 15, 2017.

OWCP authorized a right shoulder arthroscopic rotator cuff repair, and biceps tendon repair surgery, which occurred on February 7, 2014, a right shoulder rotator cuff repair and removal of foreign body from humeral head, which occurred on January 23, 2015, and a right total shoulder arthroplasty, which occurred on April 17, 2017. On October 4, 2018 appellant underwent an OWCP authorized surgery for removal of right support implant.

In a letter dated November 20, 2018 appellant, through counsel, requested that the acceptance of appellant claim be expanded to include additional conditions of major depression and anxiety. In support of her request, appellant submitted a neuropsychological evaluation dated March 9, 2016 from Philip Tate, Ph.D. and licensed clinical psychologist, which noted her mild neurocognitive disorder and moderate-to-severe major depression. Dr. Tate related that she had moderate-to-severe symptoms of depression that worsened during the holidays due to her

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the November 16, 2020 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.*

⁴ Appellant retired from the employing establishment effective April 30, 2015.

daughter's death four years prior. He also related that it was possible that depression and chronic pain from appellant's industrial injury adversely affected her auditory working memory somewhat, but would not account for her deficits in visual and spatial memory. OWCP also received a work capacity evaluation psychiatric/psychological conditions form (Form OWCP-5a) dated November 15, 2018 from Vanessa J. Honn, Ph.D. and clinical psychologist, who noted severe depression and anxiety, with chronic stress related to physical disability as a significant factor contributing to depression and anxiety. In a work capacity evaluation musculoskeletal conditions form (Form OWCP-5c) dated November 14, 2018 Dr. Matthew Jenkins, a Board-certified orthopedic surgeon, related appellant's permanent restrictions due to her accepted right shoulder condition.

On January 3, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, to Dr. Michael Friedman, an osteopath and Board-certified psychiatrist, for a second opinion examination. It requested that he address whether she suffered from an emotional condition that was a direct and natural result of her accepted work conditions. OWCP also requested that Dr. Friedman evaluate whether any diagnosed cognitive disorder was an aggravation of a preexisting condition, and if so whether the aggravation was temporarily or permanently aggravated by appellant's employment-related conditions. In a report dated February 12, 2019, Dr. Friedman reviewed her history of injury and medical reports of record. He diagnosed mild neurocognitive disorder due to multiple factors, generalized anxiety disorder, recurrent-moderate major depressive disorder, and predominant somatic symptoms disorder, pain persistent. Dr. Friedman opined that appellant did not suffer from an employment-related emotional condition. He also opined that her mild neurocognitive disorder was unrelated to her employment injury and had not been aggravated by her accepted employment injury.

By decision dated March 8, 2019, denied appellant's request to expand the acceptance of her claim to include major depression and anxiety, or a cognitive disorder as causally related to her November 21, 2013 work injury.

In a report dated March 20, 2019, John A. Ernst, Ph.D. and clinical neuropsychologist, detailed treatment provided and attributed appellant's neurocognitive functioning to medical and psychosocial factors.

On April 6, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 16, 2019.

In a report dated September 27, 2019, Dr. Honn agreed with Dr. Friedman's diagnoses of mild neurocognitive disorder due to multiple factors, generalized anxiety disorder, somatic symptoms disorder, recurrent major depressive disorder-of-moderate severity, and persistent predominant pain. She opined that appellant "suffers from the consequences shoulder injury in 2013 and subsequent surgical treatment of this injury as well as limited use of [appellant's] right arm as a result of the injury have contributed substantially to the diagnosed conditions mentioned above." While appellant's depression and anxiety were preexisting conditions, Dr. Honn explained that the severity of these conditions had dramatically increased due to appellant's pain, loss of self-esteem after appellant stopped working, and financial worries. She noted that at the time of appellant's injury her depression was not disabling. Dr. Honn disagreed with Dr. Friedman's opinion that appellant's diagnosed cognitive disorder had not been aggravated by

appellant's employment injury. In support of her opinion, she explained that appellant's pain and distress due to the shoulder injury appeared very distracting for appellant, decreased her capacity for functional cognitive capacity, and reduced her capacity to be gainfully employed.

By decision dated October 31, 2019, OWCP's hearing representative found an unresolved conflict in the medical opinion evidence between Dr. Honn and Dr. Friedman on the issue of whether appellant's preexisting depression and anxiety, or cognitive impairment had been aggravated by the November 21, 2013 work injury. She vacated the March 8, 2019 decision and remanded the case to OWCP for referral to an impartial medical examiner (IME).

On November 1, 2019 OWCP referred appellant along with the medical record, a SOAF, and series of questions to Dr. Douglas Robinson, a Board-certified psychiatrist, to resolve the conflict in the medical opinion evidence between Drs. Honn and Friedman. Dr. Robinson was asked by OWCP to address whether appellant had sustained any emotional condition that was a natural and direct result of her accepted employment injury. OWCP also asked him to address whether her cognitive disorder was an aggravation of a preexisting condition and if so whether this condition was temporary or permanent.

In a report dated October 13, 2020, Dr. Robinson noted appellant's complaints of depression and worsening cognitive loss. Appellant related that she first became aware of her emotional problems before she retired. According to her she had cognitive problems at the time of her injury, which she described as lapses of memory such as being unable to recall personal data or her PIN number. Dr. Robinson diagnosed bereavement, possible history of major depressive disorder currently resolved, and history of panic disorder, currently in remission. He noted a history of depression beginning in 1981 when appellant's brother died. At the date of the examination, Dr. Robinson found no symptoms of depression, but noted that it was clear that her bereavement over her daughter's death, who died in 2011 from breast cancer, was substantial. He reported appellant's cognitive functioning appeared normal during his examination and there was no evidence of any symptoms of depression. Based on his review of the records, Dr. Robinson noted that her cognitive problems began in 2014 and were aggravated by her anxiety and panic attacks. He opined that appellant's panic attacks were unrelated to any pain from her accepted work injuries because they tend to occur intermittently over the course of an individual's life. Thus, Dr. Robinson concluded that her panic attacks were unrelated to her work injury with an unknown cause, which he opined that was most likely biological.

By decision dated November 16, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include consequential conditions of major depression and anxiety, or a cognitive disorder.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ 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.⁷

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether 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

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional or consequential conditions of major depression and anxiety, or a cognitive disorder as causally related to the accepted November 2, 2013 employment injury.

OWCP found a conflict in the medical opinion evidence between appellant's treating physician, Dr. Honn, who opined that appellant's preexisting emotional and cognitive disorders had been aggravated by the November 21, 2013 employment injury, and its second opinion

⁵ See *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ See *D.E.*, *id.*; *S.L.*, *id.*; *T.E.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁷ See *D.E.*, *id.*; *S.L.*, *id.*; *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁸ *B.P.*, Docket No. 19-1376 (issued January 4, 2021); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁹ *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

physician, Dr. Friedman, who opined that appellant's preexisting major depression and anxiety, and cognitive disorder were unrelated to her accepted November 21, 2013 employment injury. It properly referred appellant to Dr. Robinson, serving as the IME, to resolve the conflict, pursuant to 5 U.S.C. § 8123(a).

In his October 13, 2020 report, Dr. Robinson found that appellant's major depression and anxiety, and cognitive disorder were not causally related to the accepted November 21, 2013 employment injury. He noted that her major depressive disorder began at the time of her brother's death in 1981. Dr. Robinson reported no current symptoms of depression and normal cognitive functioning. He reported appellant's first mention of panic attacks was in 2014. Dr. Robinson indicated that her cognitive problems began in 2014 and that they had been aggravated by her anxiety and panic attacks. He opined that appellant's anxiety and cognitive issues were unrelated to any pain from her accepted work injuries. Dr. Robinson explained that panic attacks tend to occur intermittently over the course of an individual's life and, thus, they were unrelated to her work injury. He opined that the panic attacks were due to an unknown cause which he opined was most likely biological.

The Board finds that Dr. Robinson's impartial medical examination report represents the special weight of the medical opinion evidence as his opinion is based on a proper factual and medical history, and his report contained a detailed summary of appellant's complex medical and psychiatric history. Dr. Robinson addressed the medical records and provided his examination findings to reach a reasoned conclusion regarding her employment-related conditions.¹⁰ The Board, therefore, finds that his opinion is entitled to the special weight accorded to an IME with regard to the issue of whether acceptance of appellant's claim should be expanded to include depression and anxiety, or a cognitive disorder due to her accepted employment injury.¹¹ Consequently, appellant has not met her burden of proof to expand the accepted conditions of her claim.

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 that the acceptance of her claim should be expanded to include additional or consequential conditions of major depression and anxiety, or a cognitive disorder as a result of her accepted November 21, 2013 employment injury.

¹⁰ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *Michael S. Mina*, 57 ECAB 379 (2006); *Kathryn Haggerty*, 45 ECAB 383 (1994) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

¹¹ *F.A.*, *id.*; *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *M.M.*, Docket No. 16-1655 (issued April 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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