

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

S.B., Appellant)	
)	
and)	Docket 20-1220
)	Issued: July 21, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
INDEPENDENCE ANNEX, Charlotte, NC,)	
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, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 28, 2020 appellant filed an appeal from a March 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant's Application for Review (AB-1) Form indicates that she was also requesting an appeal from a purported September 19, 2019 merit decision of OWCP. However, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. 20 C.F.R. § 501.3(e). The 180th day following the September 19, 2019 decision was March 17, 2020. As appellant did not file an appeal with the Board until May 28, 2020, more than 180 days after the purported September 19, 2020 OWCP decision, the Board lacks jurisdiction to review that decision. To the extent that appellant's May 28, 2020 appeal may be construed as a petition for reconsideration of the Board's September 19, 2019 decision in Docket No. 22-1378, the Board notes that its decision became final 30 days after its issuance. 20 C.F.R. § 501.6(d). Further, as appellant did not file his disagreement with the Board's September 19, 2019 decision until May 28, 2020, this submission may not be deemed a timely petition for reconsideration as it was filed in excess of 30 days from the date of issuance. *See id.* at § 501.7(a). Thus, the petition for reconsideration of the September 19, 2019 Board decision must be dismissed as untimely filed.

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 met his burden of proof to establish expansion of the acceptance of the claim to include aggravation of post-traumatic stress disorder (PTSD), aggravation of anxiety, aggravation of bipolar disorder, major depressive disorder, and adjustment disorder, as causally related to the accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference.

On August 15, 2017 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on August 12, 2017, she injured her right ankle, right hip, and right shoulder when she stepped out of her vehicle onto uneven pavement and fell, striking the side of her vehicle, while in the performance of duty.⁵ She stopped work on August 13, 2017. By decision dated October 3, 2017, OWCP accepted appellant's claim for right ankle sprain.

OWCP subsequently received an October 3, 2017 report from Dr. Jason Silva, a Board-certified orthopedic surgeon. He related that appellant was seen for right hip and shoulder pain due to an August 12, 2017 injury. Dr. Silva noted that: "On August 12, 2017 she fell getting out of a[n] [employing establishment] truck. Her ankle twisted and she fell back in the truck hitting her shoulder and hip."

In a report dated October 27, 2017, Larry P. Lease, a physician assistant, diagnosed lateral vestibular neuronitis. He noted that appellant had a three-week history of intermittent vertigo and

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 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 Docket No. 19-0634 (issued September 19, 2019).

⁵ OWCP assigned the present claim OWCP File No. xxxxxx368. Appellant has several other emotional condition claims before OWCP. Under OWCP File No. xxxxxx341, appellant filed an occupational disease claim (Form CA-2) on April 17, 2018, alleging an emotional condition due in part to abuse by her supervisor in withholding FECA benefits. Under OWCP File Nos. xxxxxx435, xxxxxx066, and xxxxxx767, she further attributed emotional conditions due to factors of her federal employment. Appellant's claims under OWCP File Nos. xxxxxx341, xxxxxx435, xxxxxx066, xxxxxx767, and xxxxxx368 have been administratively combined, with the latter serving as the master file.

a feeling of persistent imbalance, for which she had spent several days in a hospital due to “stroke protocol.”

In a statement dated December 30, 2017, appellant requested that the acceptance of her claim be expanded to include injuries to her right hip, right shoulder, back, and inner ear as a result of the accepted August 12, 2017 employment injury. She related that she hit her head inside her vehicle which caused inner ear damage resulting in severe and “permanent” vertigo, and binaural hearing loss.

On January 11, 2018 OWCP expanded the acceptance of appellant’s claim to include sprain of her right rotator cuff capsule.

In a letter dated February 16, 2018, appellant indicated that, due to her inner ear damage, hearing loss, severe vertigo, and migraines, she was unable to drive her mail vehicle and requested reasonable accommodations from the employing establishment.⁶

In a report dated September 25, 2018, Dr. Karen E. Daniels-Mitchell, a Board-certified family practitioner, examined appellant and diagnosed “bilateral hearing loss,” migraines, tinnitus, and vertigo, and referred appellant to an otolaryngologist for further evaluation.

In a letter dated September 28, 2018, appellant requested that her accepted medical conditions be expanded to include binaural hearing loss, tinnitus, vertigo, migraines, “vision issues,” sinus tachycardia, elevated blood pressure, paresthesia, and depression.

In a development letter dated November 29, 2018, OWCP informed appellant of the deficiencies of her claim for expansion to include “consequential” injuries. It advised her of the type of evidence necessary and afforded her 30 days to submit the necessary evidence.

In a report dated December 18, 2018, Dr. William H. Roberts, a Board-certified otolaryngologist, evaluated appellant who complained of binaural hearing loss. He noted that appellant related that she was in an automobile accident on August 12, 2017 and struck her head on the metal portion of her vehicle. Dr. Roberts indicated that she immediately noticed the onset of hearing loss with tinnitus, and subsequently had episodes of vertigo with headaches. He reviewed an audiogram from October 15, 2018, and diagnosed “bilateral” sensorineural hearing loss. Dr. Roberts opined that there was causal relationship between appellant’s hearing loss and her trauma.

By decision dated January 7, 2019, OWCP denied expansion of the acceptance of appellant’s claim to include binaural hearing loss, finding that the evidence of record did not demonstrate that the employment-related incident occurred as she described. It noted that appellant had not mentioned a head injury when she first filed her claim or in her initial narrative statement, and that the medical evidence did not support a work-related head injury.

⁶ By decision dated April 12, 2018, OWCP terminated appellant’s wage-loss compensation, as her disability due to the accepted employment injury had ceased. The claim remained open for medical benefits.

Appellant appealed to the Board on January 30, 2019. By decision dated September 19, 2019, the Board set aside OWCP's January 7, 2019 decision and remanded the case to OWCP for a *de novo* decision, to include findings of fact and a clear and precise statement of reasons as to whether appellant's claim should be expanded to include additional conditions, including any claimed emotional conditions.⁷

In a January 6, 2020 development letter, OWCP informed appellant of the deficiencies of her claim for expansion to include consequential conditions causally related to the accepted August 12, 2017 employment injury, including the alleged emotional conditions. It advised her of the type of factual and medical evidence and afforded her 30 days to submit the necessary evidence.

Appellant subsequently submitted additional evidence that did not address her claimed emotional conditions in relation to her August 12, 2017 fall.

By decision dated March 16, 2020, OWCP denied expansion of the acceptance of the claim to include aggravation of PTSD, aggravation of anxiety, aggravation of bipolar disorder, major depressive disorder, and adjustment disorder and any claimed compensation following April 13, 2018.

LEGAL PRECEDENT

Where 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.⁸

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁹ 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.¹⁰ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

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

⁷ Docket No. 19-0634 (issued September 19, 2019).

⁸ *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *T.K.*, *supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish expansion of the acceptance of the claim to include aggravation of PTSD, aggravation of anxiety, aggravation of bipolar disorder, major depressive disorder, and adjustment disorder, as causally related to the accepted August 12, 2017 employment injury.

In a January 6, 2020 development letter, OWCP informed appellant of the deficiencies of her claim for expansion to include consequential conditions causally related to the accepted August 12, 2017 employment injury, including the alleged emotional conditions. It advised her of the type of evidence necessary to establish her claim and afforded her 30 days to respond.

Appellant subsequently submitted additional evidence. However, none of the evidence substantiated her allegations regarding her claimed emotional conditions in relation to the accepted August 12, 2017 fall. The case record does not contain a detailed statement from appellant or medical evidence describing how she allegedly developed the claimed emotional conditions due to the accepted August 12, 2017 employment injury.¹³

As the evidence of record is insufficient to establish expansion to include emotional conditions causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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 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 expansion of the acceptance of the claim to include aggravation of PTSD, aggravation of anxiety, aggravation of bipolar disorder, major depressive disorder, and adjustment disorder, as causally related to the accepted August 12, 2017 employment injury.

¹² See *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

¹³ *Supra* note 8.

ORDER

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

Issued: July 21, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board