United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 21-0661**
	)	**Issued: July 20, 2023**
U.S. POSTAL SERVICE, DAVENPORT-NORTHWEST POST OFFICE, Davenport, IA, Employer	)	

Appearances:
Sarah Kretsinger, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 15, 2021 appellant, through counsel, filed a timely appeal from a September 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] The Board notes that following the September 23, 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*.

Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish panic disorder, an aggravation of anxiety, and/or an aggravation of preexisting irritable bowel syndrome (IBS) causally related to the accepted June 16, 2015 employment incident.

FACTUAL HISTORY

On April 18, 2017 appellant, then a 30-year-old distribution, sales, and service associate, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2015 he experienced a panic attack and aggravated his preexisting anxiety and IBS while in the performance of duty. He stopped work on December 20, 2016. Appellant retired on disability effective May 15, 2017.

In a May 5, 2017 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's contentions. It afforded the parties 30 days to respond.

On August 1, 2013 Dr. Gonchigari Narayana, a Board-certified psychiatrist, diagnosed unspecified bipolar disorder.

On December 24, 2015 Dr. Ronald B. Fiscella, a Board-certified family practitioner, diagnosed IBS and found that working with the public exacerbated appellant's condition. He indicated that appellant could not work overtime and should maintain his current schedule.

On January 16, 2017 Dr. Narayana evaluated appellant for bipolar panic disorder complicated by IBS. He noted that medication for appellant's condition caused insomnia. Dr. Narayana diagnosed bipolar II disorder and panic disorder without agoraphobia.

In a March 20, 2017 narrative report, Dr. Fiscella related that appellant developed gastrointestinal issues in 1997 identified as IBS. In 2015 he was diagnosed with anxiety and major depression most likely due to "his severe irritable bowel syndrome and chronic abdominal pain." Dr. Fiscella advised that appellant had also received treatment for bipolar depression with panic disorder. He found that appellant was unable to perform job duties, including supervising others, due to his "psychiatric diagnosis and medical problems."

In a May 10, 2017 response to OWCP's development questionnaire, appellant attributed his emotional condition to inadequate training and to his job duties. He reported that he was hired on May 30, 2015. Appellant alleged that during his on-the-job training, he had to also perform other work, was not instructed how to use the computer and was not provided with the required online training class. He observed the trainer and performed window transactions but was not

[3] 5 U.S.C. § 8101 *et seq*.

given the proper instructions regarding the cash drawer, selling stamps, issuing money orders, and calculating postage without the proper online training. On June 16, 2015 the trainer instructed him to work alone at the customer service window at lunch time when there was a long line of customers. Appellant repeatedly asked his trainer questions, but she told him to keep working because customers were waiting. He became panicked with a racing heartbeat, sweating, had difficulty breathing, and intense abdominal pain and diarrhea. Appellant informed the employing establishment that he was not being trained properly and asked for help, but he was told to work at the customer service window or lose his job. He continued to work the customer service window without help.

Appellant asserted that his physicians diagnosed panic disorder due to his work on June 16, 2015. He advised that since that date he had experienced numerous panic attacks, worsening of his anxiety, and worsening of his IBS. Appellant alleged that his preexisting conditions were aggravated by the events of June 16, 2015. He noted that his physician prescribed light-duty work without exposure to the public beginning October 30, 2015, but that he continued to be required to talk to customers, answer the telephone, and deliver express mail.

In a May 18, 2017 report, Dr. Narayana diagnosed bipolar II disorder and panic disorder. He explained that appellant's preexisting bipolar II disorder included functional consequences, and that appellant's panic attack disorder was triggered by both temperamental and environmental factors. Dr. Narayana opined that the temperamental tendency for appellant "may have been exacerbated by demands on the job of being forced to perform a task or tasks on the job without specific training deemed necessary" by the employer. He further asserted that the lack of training left appellant "vulnerable to excessive stressors both environmentally and temperamentally provoking panic attacks on the job." Dr. Narayana opined that he was unable to perform most of the duties of a sales, services, and distribution associate.

By decision dated June 6, 2017, OWCP denied appellant's claim. It found that he was not injured in the performance of duty.

On March 9, 2018 appellant, through counsel, requested reconsideration. Counsel asserted that appellant's stress arose from performing his job duties on June 16, 2015.

In support of his request, appellant submitted a September 19, 2017 report from Dr. Narayana, who diagnosed panic disorder without agoraphobia and bipolar II disorder. He found that on June 16, 2015 appellant sustained traumatic psychological injuries while training for his position. Dr. Narayana explained that appellant was forced to work at the customer service window during lunch hour and that he attempted to receive clarification on some of the transactions, as he lacked training, knowledge, and experience, but his supervisor refused to answer his questions. Appellant found these duties stressful due to the long line of customers and his inexperience. He developed an accelerated heart rate, sweating, trembling, shortness of breath, pressure in the chest and neck, light-headedness, IBS symptoms, and extreme fear of losing control. Dr. Narayana opined that the work incident of June 16, 2015 caused appellant's diagnosed panic disorder and aggravated his IBS. He noted that certain factors and situations creating extreme stress such as a crowd of people or handling demanding tasks with no training could trigger a panic attack. Dr. Narayana found that the demands of the job and being forced to perform tasks without specific guidance or adequate training led to a severe anxiety attack triggering panic disorder and that appellant's panic disorder was related to the work events of June 16, 2015. He

further noted that psychological conditions were known to aggravate IBS. Dr. Narayana explained that abnormalities in the gastrointestinal nervous system could be induced by stress and could contribute to greater than normal discomfort with symptoms of IBS. He found that appellant was totally disabled from work.

In an October 18, 2017 report, Dr. Linda Tong, a gastroenterologist, noted that on June 16, 2015 appellant sustained traumatic psychological injuries during the performance of his work duties. She described his task of working at the customer service window during the lunch hour, the lack of training, and the refusal of his supervisor to respond to his questions. Dr. Tong noted that appellant developed intense abdominal pain and diarrhea. She indicated that he was diagnosed with IBS in 1998, but that following his work incident his symptoms had worsened and he was diagnosed with Crohn's disease. Dr. Tong diagnosed panic disorder without agoraphobia, IBS, and Crohn's disease. She opined that the events of June 16, 2015 aggravated appellant's preexisting IBS and Crohn's disease. Dr. Tong explained that one of the triggers of IBS and Crohn's disease was stress, as when a person experienced stress the nerves become more active causing the intestines to be more sensitive and contract. She opined that since June 16, 2015 appellant's abdominal symptoms had not subsided and he had experienced recurrent diarrhea and abdominal pain, exacerbated by the panic disorder he developed from the events of June 16, 2015. Dr. Tong concluded that the work-related events of June 16, 2015 aggravated appellant's IBS and Crohn's disease. She advised that he was totally disabled from work.

By decision dated May 24, 2018, OWCP denied modification of its June 6, 2017 decision.

On March 27, 2019 appellant, through counsel, requested reconsideration. Counsel provided witness statements from two coworkers, both noting that on June 16, 2015 appellant worked at the customer service window while the other clerks were at lunch, that there was a long line of customers, that appellant informed his supervisor that he did not know how to operate the computer and asked other questions, but was told to keep working, that appellant became upset, and that he described his difficulties to his supervisor and coworkers.

Appellant provide a list of the online training classes he had completed from February 13, 2012 through September 28, 2016, which did not include the online training. He also provided the employing establishment training guide for sales and service associates which included a requirement for online training.

By decision dated June 21, 2019, OWCP modified its May 24, 2018 decision to find that the requirement that appellant work at the customer service window on June 16, 2015, without the appropriate online training, was a compensable factor of employment. However, it denied his claim, finding that he failed to submit medical evidence establishing that his diagnosed conditions were caused or aggravated by the compensable employment factor. OWCP noted that there was no medical evidence contemporaneous to the events of June 16, 2015.

On June 19, 2020 appellant, through counsel, requested reconsideration. Counsel asserted that appellant sought medical treatment shortly after the accepted June 16, 2015 employment incident. She further maintained that he continued to perform light duty as long as possible before he was totally disabled on December 24, 2016. Appellant submitted medical records dated October 22, 2014 through May 27, 2020, including notes from Dr. Fiscella dated July 10, September 17, October 10, 23, and 31, 2015 diagnosing IBS and generalized anxiety disorder.

In an October 27, 2015 note, Dr. Jill R. Snuggerud, a clinical psychologist, noted appellant's history of both anxiety and depression. She diagnosed IBS, chronic abdominal pain, major depressive disorder, recurrent, and anxiety with features of phobias.

In treatment notes dated October 6, 22 and 26, 2015, Dr. Shounak Majumder, a Board-certified gastroenterologist, evaluated appellant for gastrointestinal issues. He noted some improvement, but that appellant had experienced an exacerbation of abdominal pain. Dr. Majumder recommended long-term pain management. By decision dated September 23, 2020, OWCP denied modification of its June 21, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.[9]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation,

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[4] *Id*.

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

[6] 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

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

In reports dated August 17 and September 19, 2017, Dr. Narayana diagnosed panic disorder without agoraphobia and bipolar II disorder. He attributed appellant's panic disorder to the events of June 16, 2015. Dr. Narayana explained that the demands of working at the busy customer service window and being forced to perform tasks without specific guidance or adequate training led to a severe anxiety attack triggering panic disorder. He further noted that psychological conditions were known to aggravate IBS. Dr. Narayana opined that abnormalities in the gastrointestinal nervous system could be induced by stress and could contribute to greater than normal discomfort with symptoms of IBS.

In an October 18, 2017 report, Dr. Tong found that appellant sustained traumatic psychological injuries during the performance of his work duties on June 16, 2015. She described his assigned duties and lack of training and opined that the events of June 16, 2015 aggravated appellant's preexisting IBS and Crohn's disease. Dr. Tong diagnosed panic disorder, IBS, and Crohon's disease. She explained that one of the triggers of IBS and Crohn's disease was stress, noting that when a person experienced stress the nerves become more active causing the intestines to be more sensitive and contract. Dr. Tong opined that the June 16, 2015 work incident exacerbated appellant's panic disorder, IBS, and Crohn's disease.

The Board finds that, although the opinions of Dr. Tong and Dr. Narayana are insufficiently rationalized to meet appellant's burden of proof to establish that he sustained a stress-related condition due to the compensable employment factors, these reports are sufficient to require further development of the claim by OWCP.[11] Both Dr. Tong and Dr. Narayana provided reports containing a history of appellant's lack of training and work duties on June 16, 2015. Dr. Tong and Dr. Naraya diagnosed panic disorder and IBS and opined that the accepted compensable factors caused, contributed to, or aggravated his stress-related conditions and resulted in disability.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.[12] It has the obligation to see that justice is done.[13]

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see E.W.*, Docket 20-0760 (issued January 11, 2021); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

[11] *See D.H.*, Docket No. 20-0041, 20-0261 (issued February 5, 2021); *M.C.*, Docket No. 19-0624 (issued December 8, 2020); *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *L.E.*, Docket No. 18-0761 (issued December 30, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *M.C., id.; J.W.*, Docket No. 19-0627 (issued June 1, 2020).

[13] *Id.*

The Board will therefore remand the case to OWCP for further development of the medical evidence to obtain a rationalized medical opinion as to whether appellant sustained panic disorder, an aggravation of anxiety, and/or an aggravation of preexisting IBS causally related to the accepted June 16, 2015 employment incident. On remand, OWCP shall obtain a second opinion from a physician in the appropriate field of medicine regarding causal relationship. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: July 20, 2023
Washington, DC

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

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

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