

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

L.H., Appellant)	
)	
and)	Docket No. 23-0326
)	Issued: July 3, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Hapeville, GA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 3, 2023 appellant filed a timely appeal from a December 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal

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 his oral argument request, appellant asserted that oral argument should be granted because he followed the instructions given by OWCP, that he did not get the help needed, and that he and his family were facing homelessness due to no fault of his own. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can be adequately addressed in a decision based on a review of the case record. 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.

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 met his burden of proof to establish a diagnosed medical condition in connection with the accepted October 24, 2022 employment incident.

FACTUAL HISTORY

On October 26, 2022 appellant, then a 48-year-old city carrier assistant 2, filed a traumatic injury claim (Form CA-1) alleging that he suffered trauma and emotional injury on October 24, 2022 when, during an attempted robbery, suspects “pulled guns” on him while in the performance of duty. He alleged that the assailants made two attempts to fire the guns which “jammed one to the head and abdomen.” On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty and that its knowledge of the facts of his injury was consistent with his statements. Appellant stopped work on October 24, 2022.

In an October 26, 2022 treatment note, Dr. Svathi Reddy, a Board-certified psychiatrist, noted that appellant was under his care and in need of medical treatment. He requested that appellant be excused from work due to his appointment and recommended that appellant remain off work until further notice/evaluation. Dr. Reddy noted that he advised appellant to apply for medical leave due to acute medical need.

In a development letter dated November 3, 2022, OWCP informed appellant that the medical evidence was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In a November 2, 2022 report, Dr. Reddy noted that appellant was being treated for major depression, severe, recurrent and post-traumatic stress disorder (PTSD). He also provided a November 11, 2022 report, noting that appellant would remain off work from October 24, 2022 to January 26, 2023.

OWCP received an October 24, 2022 police incident report describing the attempted robbery on that date. It noted that appellant was in shock from the incident and could only provide limited information. Appellant explained that he was approached in his vehicle by two males with guns pointed towards him. The individuals were approximately 18 to 25 years old and told him that they wanted his mail keys and told him they were going to kill him if he resisted. Appellant

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the December 16, 2022 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.*

explained that it was difficult to remove the keys from his belt, that the individuals pulled the trigger of a gun aimed at his stomach, but the gun jammed. He was then able to resist, break free, and flee back to the employing establishment.

By decision dated December 16, 2022, OWCP found that appellant had established that the October 24, 2022 incident occurred as alleged, but denied his traumatic injury claim. It explained that the medical evidence did not contain a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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

⁴ *Supra* note 2.

⁵ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *V.L.*, *supra* note 5; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *C.H.*, *supra* note 6; *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incidents identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted October 24, 2022 employment incident.

OWCP has accepted that the October 24, 2022 attempted robbery incident occurred as alleged. It denied appellant's claim finding that the medical evidence of record did not establish a diagnosed medical condition in connection with this incident. The Board finds that, in his November 2, 2022 report, Dr. Reddy diagnosed major depression, severe, recurrent; and PTSD.

Consequently, the case must be remanded for consideration of the medical evidence as to whether appellant has met his burden of proof to establish that his diagnosed medical conditions are causally related to the accepted October 24, 2022 employment incident.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish diagnosed medical conditions in connection with the accepted October 24, 2022 employment incident. The Board further finds, however, that the case is not in posture for decision with regard to whether his diagnosed medical conditions are causally related to the accepted employment incident.

¹⁰ *V.L.*, *supra* note 5; *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).

¹¹ *J.W.*, Docket No. 23-0080 (issued May 23, 2003); *see also D.F.*, Docket No. 20-0631 (issued September 23, 2020); *M.B.*, Docket No. 20-0265 (issued June 17, 2020); *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2022 decision of the Office of Workers' Compensation Programs is reversed and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 3, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board