

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

A.D., Appellant	)	
	)	
and	)	Docket No. 21-1076
	)	Issued: June 22, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Topock, AZ, 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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 6, 2021 appellant filed a timely appeal from a June 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 19, 2021 employment incident.

**FACTUAL HISTORY**

On April 21, 2021 appellant, then a 32-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2020 he developed difficulty breathing and felt that he was having

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

a heart attack when he was harassed while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty.

In a statement dated April 20, 2021, appellant related that on April 19, 2021 a visiting postmaster, B.J., screamed at him, gave him instructions, and told appellant not to argue with her. He indicated that B.J. was not his supervisor and should not have given him contradictory instructions. Appellant attested that he then started experiencing symptoms including difficulty breathing, shaking, a warm body, and an inability to speak normally. He alleged that he also experienced leg pain, uncomfortable breathing, and an inability to close his right eye. OWCP also received a copy of a text message from appellant, which requested that his supervisor file an official incident report.

Witness statements dated April 19, 2021 from K.C., the employing establishment's postmaster and appellant's supervisor, and B.J., as well as a May 8, 2021 from C.G., the employing establishment officer in charge, were received. These statements related that on April 19, 2021, B.J. overheard appellant tell the postmaster, K.C., that he was not going to charge a customer postage due as the insufficient postage error had been made by a postal employee when the envelope was received. B.J., then told appellant that all lost revenue should be captured, and appellant responded that he had been trained to handle this issue differently. K.C. was questioned by B.J., and she confirmed that she had previously discussed this postage issue with appellant, and she had let it go as appellant had related that he was following his training. B.J. instructed appellant to disregard his prior training policy, interrupted appellant, and told him not to argue with her, as she had given him a direct order. They contended that, during the interaction voices were raised, but there was no yelling.

In support of his claim, appellant submitted a medical report dated April 20, 2021 from Dr. Don Wagner, an osteopath, specializing in family and emergency medicine. Dr. Wagner related that appellant appeared to have an anxiety or panic attack triggered by a heated encounter with his co-worker on April 19, 2021. He diagnosed palpitations, shortness of breath, and an anxiety disorder and also provided appellant with a work release. In a work release form dated April 20, 2021, Dr. Wagner related that appellant was seen that day and would remain off work until April 28, 2021.

OWCP received an imaging report dated April 20, 2021 from Dr. Sepand Salehian, a Board-certified diagnostic radiology specialist, which found no acute cardiopulmonary process.

Appellant submitted an undated form report from Dr. Wagner. Dr. Wagner indicated that appellant was unable to perform work on site due to increased stress and physical symptoms.

By letter dated April 29, 2021, the employing establishment controverted appellant's claim. It stated that B.J. did not harass appellant. The employing establishment also stated that C.G. attested that B.J. did not yell at appellant, but instead raised her voice because they were standing over 20 feet apart.

In a development letter dated May 5, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a

questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a May 6, 2011 response to OWCP's development questionnaire, appellant attested that he was discussing postage on a large envelope with B.J., when she screamed at him in an aggressive, hostile, and abusive way. He alleged that immediately after the incident his body started to shake, he was hardly breathing, he was sweating, his heart was beating fast, and that it felt like someone slapped him on the chest. Appellant stated that this was solely due to the incident at the employing establishment.

Appellant submitted an April 28, 2020 report from Dr. Wagner which related that appellant had been off work for a week following an acute episode of chest pressure. Dr. Wagner diagnosed anxiety, chest pain, palpitation and shortness of breath. Appellant also provided a referral for a cardiology consultation dated April 30, 2021, wherein Dr. Wagner noted chest pain and systemic symptoms with a high risk of morbidity without treatment, including palpitations, shortness of breath.

In a May 10, 2021 statement, appellant asserted that B.J. overstepped her boundaries and screamed at him in an office that was open to the public.

By decision dated June 14, 2021, OWCP accepted that the April 19, 2021 incident occurred as alleged, namely a verbal interaction and disagreement between appellant and a visiting postmaster regarding how to process postage due. It, however, denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical condition(s) and 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 FECA<sup>2</sup> 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> 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

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<sup>2</sup> *Id.*

<sup>3</sup> *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).

to the employment injury.<sup>4</sup> 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.<sup>5</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> 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 factors identified by the employee.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 19, 2021 employment incident.

In a medical report dated April 20, 2021, Dr. Wagner related that appellant appeared to have an anxiety or panic attack triggered by a heated encounter with his co-worker on April 19, 2021. He diagnosed appellant with anxiety, chest pain, palpitations, and shortness of breath. The Board finds that Dr. Wagner's opinion is speculative. The Board has held that medical opinions, which are equivocal or speculative are of diminished probative value.<sup>9</sup> Thus, this evidence is insufficient to establish the claim.

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<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *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).

<sup>6</sup> *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *M.D.*, Docket No. 21-0080 (issued August 16, 2022); *R.B.*, Docket No. 19-0204 (issued September 6, 2019); *see N.B.*, Docket No. 19-0221 (issued July 15, 2019).

In an April 28, 2021 report and an undated form report, Dr. Wagner again diagnosed appellant with anxiety, chest pain, palpitations, and shortness of breath. He also related that appellant should not work on site as he had experienced stress. However, Dr. Wagner did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.<sup>10</sup> This evidence, is therefore, insufficient to establish the appellant's claim.

OWCP received an imaging report dated April 20, 2021 from Dr. Salehian, which related normal cardiopulmonary findings. The Board has held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.<sup>11</sup> For this reason, Dr. Salehian's report is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment incident, the Board finds that appellant has not met his 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to the April 19, 2021 employment incident.

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<sup>10</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2023  
Washington, DC

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

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

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