

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

Z.P., Appellant)	
)	
and)	Docket No. 23-0692
)	Issued: November 20, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
EDITH NOURSE ROGERS MEMORIAL)	
VETERANS' HOSPITAL, Bedford, MA,)	
Employer)	

Appearances:
Marc J. Levy, Esq., for the appellant¹
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 April 18, 2023 appellant, through counsel, filed a timely appeal from an April 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition causally related to the accepted March 22, 2022 employment incident.

FACTUAL HISTORY

On March 30, 2022 appellant, then a 39-year-old air conditioning equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 22, 2022 he sustained an exacerbation of post-traumatic stress disorder (PTSD) as a result of sexual assault that occurred during a meeting with D.M., a business manager, who he alleged touched him twice in an unwelcome and inappropriate manner while in the performance of duty. He stopped work on March 24, 2022.

In an employing establishment report of contact form, appellant indicated that on March 22, 2022 on or about 10:14 a.m., he was in a meeting with D.M. He reported that D.M. was sitting across from him and reached over and placed his left hand on appellant's right foot and leg. Appellant informed D.M. not to touch him. He indicated that D.M. removed his hand from appellant's foot, but then put it back on the top of appellant's foot. Appellant indicated that he immediately left the office and proceeded to the police station to file a report.

OWCP received a police form dated March 22, 2022 by J.H., a police officer. In an attached narrative, he indicated that on March 22, 2022 at approximately 10:17 a.m., he was notified of a walk-in report of an assault on a staff member. J.H. recounted that appellant was in a meeting with D.M. when D.M. reached over and put his hand on appellant's right boot. He reported that after he conducted his investigative interview with appellant, he contacted the sexual assault investigator.

In a narrative statement dated March 22, 2022, police officer J.H. indicated that on March 22, 2022 at approximately 12:30 p.m., he met with D.M. regarding the meeting with appellant earlier that day. D.M. explained that he met with appellant to discuss the discipline of one of D.M.'s employees. J.H. reported that D.M. explained that he tapped appellant's boot in order to get his attention because appellant was reading the union agreement. He indicated that D.M. became visibly upset, told D.M. not to touch appellant, and exited the office.

In a nurse triage report dated April 8, 2022, Lisa Ladd, a nurse, noted a date of injury of March 22, 2022 and indicated that appellant was sexually assaulted. She reported that appellant was not working due to PTSD exacerbation.

In a letter dated April 8, 2022, the employing establishment controverted appellant's claim for continuation of pay (COP) alleging that appellant's disability was not caused by a traumatic injury.

In an April 12, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information, including

comments from a knowledgeable supervisor, regarding his emotional condition claim. It afforded both parties 30 days to respond.

In a work capacity evaluation psychiatric/psychological condition (Form OWCP-5a) dated April 11, 2022, Katherine E. Madden, a clinical psychologist, indicated that appellant was unable to work. She explained that the severity of appellant's current symptoms of PTSD and major depressive disorder prevented him from working, "particularly in consideration of the worker's [sic] compensation injury, which severely exacerbated these symptoms." Ms. Madden reported that appellant felt unsafe interacting with his supervisors and was hyper anxious and vigilant.

Appellant responded to OWCP's development letter and submitted a completed questionnaire dated May 3, 2022. He provided a detailed description of the March 22, 2022 employment incident and explained that his health had deteriorated since the incident. Appellant noted that he had anxiety, panic attacks, and physical manifestations of hives, shakiness, and sleeplessness at the same time. He reported that he had flashbacks to the employment incident and to his past incidents of abuse. Appellant explained that he had a history of PTSD, depression, and anxiety stemming from a prior sexual assault that occurred in the military in 2004. He indicated that his condition had been stable with ongoing treatment until the March 22, 2022 employment incident. Appellant described the medical treatment that he had received and noted that his psychologist was recommending inpatient care.

In a letter dated May 6, 2022, S.A., an employing establishment workers' compensation program specialist for the employing establishment, responded to OWCP's development letter. She indicated that the supervisor had no additional knowledge of the claim other than the information on the claim form. S.A. reported that the employing establishment did not concur with appellant's allegations.

The employing establishment provided e-mails dated April 15 and 18, 2022 between S.A. and D.M. regarding the March 22, 2022 employment incident, voluntary witness statements from D.M. and appellant, an e-mail between D.M. and R.V. regarding the March 22, 2022 employment incident, and a copy of the messages between appellant and D.M. on March 21 and 22, 2022.

In a letter dated May 10, 2022, the employing establishment controverted appellant's claim alleging that he had failed to establish fact of injury and causal relationship.

By decision dated May 19, 2022, OWCP accepted that the March 22, 2022 employment incident was a compensable employment factor and that a condition was diagnosed. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed PTSD and major depressive disorder were "caused or aggravated by compensable work factors."

On September 14, 2022 appellant, through counsel, requested reconsideration.

Appellant submitted a report dated May 25, 2022, wherein Ms. Madden indicated that she had provided psychotherapy to appellant from December 2014 through November 2017. Ms. Madden explained that appellant was diagnosed with PTSD originating from multiple instances of trauma that he experienced during his military service. She noted that on March 22, 2022 he experienced an assault in the workplace, which led to acute symptoms of PTSD, including

difficulties with emotion regulation, hypervigilance, memory impairment, and episodes of panic. Ms. Madden reported that these acute symptoms exacerbated appellant's chronic symptoms of PTSD. She pointed out that the March 22, 2022 assault was an independent episode of trauma. Ms. Madden reported that although appellant had preexisting symptoms of PTSD, these symptoms became more acute following the March 22, 2022 employment incident. She concluded that these symptoms interfered with appellant's ability to attend and engage in work since the March 22, 2022 employment incident.

Appellant submitted a March 24, 2022 emergency department form by Dr. Steven D. Salhanick, Board-certified in emergency medicine, who indicated that appellant was seen for anxiety after his PTSD was triggered by an event at work. Dr. Salhanick conducted an examination and diagnosed acute anxiety.

In a letter dated September 27, 2022, the employing establishment reiterated that it was controverting appellant's claim. It further indicated that appellant's alleged injury did not occur in the performance of duty because he did not acquire this illness while performing his employment duties, but through his own emotional reaction and self-generated thoughts.

By decision dated December 7, 2022, OWCP denied modification of the May 19, 2022 decision.

On February 23, 2023 appellant, through counsel, requested reconsideration.

Appellant submitted a February 11, 2023 report by Dr. Edward Szteinbaum, a Board-certified psychiatrist, who recounted that appellant felt unsafe going into the employing establishment since March 22, 2022 after he was inappropriately touched by D.M. Dr. Szteinbaum described the March 22, 2022 employment incident and indicated that appellant reported high blood pressure about 30 to 45 minutes after the incident. Appellant also informed him that he had massive anxiety after the incident with hives all over his body. Dr. Szteinbaum indicated that since the March 22, 2022 employment incident, appellant reported that his depression and anxiety had worsened and required him to take the maximum dosage of medication. He discussed appellant's history of psychiatric illness and post-traumatic stress symptoms. Dr. Szteinbaum conducted a mental status examination and indicated that appellant's mood was anxious and sad at times, and at one point, became irritable and angry. He diagnosed PTSD, recurrent major depressive disorder, intermittent explosive disorder, generalized anxiety disorder, panic disorder with agoraphobia, social anxiety, and alcohol use disorder.

Dr. Szteinbaum explained that appellant was severely traumatized before the March 2022 event, which included being sexually assaulted by his platoon leader for six months, watching his friend die during the Iraq war, and being a victim of an improvised explosive device. He noted that appellant's March 2022 event, taken by itself, did not appear to be a severe trauma or sexual assault, but in the context of his severe PTSD from the past, it had severely exacerbated his PTSD symptoms. Dr. Szteinbaum noted that appellant's symptoms had improved prior to March 2022, but he appeared to be very sensitive to any inappropriate touch such as what occurred in March 2022. He explained that the sexual harassment and unwelcome touching exacerbated his prior history of being abused. Dr. Szteinbaum reported that an episode of inappropriate touching

can trigger a response, which in this case, was a recurrence of severe PTSD symptoms that had been under control for a long period of time.

In a letter dated March 7, 2023, the employing establishment alleged that Dr. Szteinbaum's report should not be considered probative, because he was not appellant's physician of record. It also asserted that Dr. Szteinbaum's opinion lacked medical rationale, and had an inconsistent description of the alleged March 22, 2022 employment incident.

By decision dated April 12, 2023, OWCP denied modification of the December 7, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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, 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.⁴ 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.⁵

To establish an emotional condition in the performance of duty, appellant 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) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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

³ *Id.*

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.⁸

ANALYSIS

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

Appellant submitted a February 11, 2023 report by Dr. Szeinbaum, a Board-certified psychiatrist, who described that on March 22, 2022 appellant was inappropriately touched by D.M. Dr. Szeinbaum noted that following the incident appellant reported high blood pressure about 30 to 45 minutes after the incident and massive anxiety. He discussed appellant's prior psychiatric illness and noted that appellant was severely traumatized before the March 2022 event. Dr. Szeinbaum conducted a mental status examination and diagnosed PTSD, recurrent major depressive disorder, intermittent explosive disorder, generalized anxiety disorder, panic disorder with agoraphobia, social anxiety, and alcohol use disorder. He indicated that appellant's March 2022 event, taken by itself, did not appear to be a severe trauma or sexual assault, but in the context of his severe PTSD from the past, it had severely exacerbated his PTSD symptoms. Dr. Szeinbaum explained that the sexual harassment and unwelcome touching exacerbated his prior history of being abused. He reported that an episode of inappropriate touching can trigger a response, which in this case, was a recurrence of severe PTSD symptoms that had been under control for a long period of time.

The Board finds that this report from Dr. Szeinbaum is sufficient to require further development of the medical evidence. Dr. Szeinbaum provided an understanding of the medical record and case history. While Dr. Szeinbaum's opinion is not sufficient to meet appellant's burden of proof to establish his claim, it raises an uncontroverted inference between appellant's emotional condition and the accepted employment incident. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rationale, sound and logical.⁹ Accordingly, Dr. Szeinbaum's medical opinion is, therefore, sufficient to require further develop of the medical evidence.¹⁰

⁸ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *L.P.*, Docket No. 18-1252 (issued June 4, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹⁰ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ OWCP has an obligation to see that justice is done.¹²

The case must, therefore, be remanded to OWCP. On remand, OWCP shall prepare a statement of accepted facts and refer the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether the March 22, 2022 employment incident aggravated appellant's PTSD and major depressive disorder.¹³ If the physician opines that the emotional condition is not causally related to the compensable employment factor, he or she must explain with rationale how or why their opinion differs from that of Dr. Szteinbaum. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹² See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation of Medical Evidence*, Chapter 2.810.9.b(1) (June 2015).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 20, 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