

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

K.S., Appellant)	
)	
and)	Docket No. 13-221
)	Issued: April 18, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Martinsburg, WV, Employer)	
)	

Appearances: *Case Submitted on the Record*
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 7, 2012 appellant, through her attorney, filed a timely appeal from a July 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence of disability commencing January 25, 2010 causally related to her June 20, 1994 employment injury.

FACTUAL HISTORY

On June 22, 1994 appellant, then a 34-year-old customer services supervisor, filed a traumatic injury claim (Form CA-1) alleging that she sustained an emotional condition resulting from a June 20, 1994 employment incident. She stated that she had been informed by the postmaster that an employee, Mr. Jones, had threatened to kill appellant. OWCP accepted the

¹ 5 U.S.C. § 8101 *et seq.*

claim for acute post-traumatic stress disorder (PTSD) and acute anxiety reaction. Appellant returned to work on February 1, 1999. She filed a claim for a recurrence of disability commencing April 14, 2000, which was denied by decision dated July 25, 2000.

On August 30, 2010 appellant filed a claim for a recurrence of disability (Form CA-2) commencing January 25, 2010. She stated on the claim form that she was not permitted to return to her office of record and felt she was being punished. Appellant stated that she filed an Equal Employment Opportunity (EEO) complaint in September 2009 against a supervisor, who was abusive and began showing up in public places to intimidate appellant. According to appellant, she began to have nightmares about her original trauma.

With respect to medical evidence, appellant submitted a form report (CA-20) dated September 6, 2010 from Dr. Shanoor Khan, a psychiatrist, who provided a history of a death threat and stalking by a coworker in 1994. Dr. Khan diagnosed PTSD, acute anxiety and major depression. He checked a box marked “yes” that the conditions were employment related and indicated that appellant was disabled from January 28, 2010. Appellant also submitted duty status reports dated September 17 and 24 and October 6, 2010 from Dr. Khan indicating that appellant was disabled for work. The record also contains an undated CA-20 report from Dr. Jamshid Bakhtiar, a psychiatrist, indicating that appellant could resume regular work on May 1, 2000.

By decision dated January 13, 2012, OWCP found that the evidence did not establish a recurrence of disability.²

Appellant requested a hearing before an OWCP hearing representative, which was held on April 25, 2012. She submitted a report dated April 9, 2012, wherein Dr. Khan referred to an incident in August 2008 when appellant searched for her name on her computer, and saw that her former “coworker/assailant” had received a court decision in his suit against the EEO Commission and Postal Union upholding his termination but indicating that he could return to work in three years. Dr. Khan stated that this retriggered appellant’s previous PTSD. He then referred to actions of the employing establishment in 2009 regarding appellant’s “exempt status” and stated that appellant’s supervisor allegedly began appearing at a bowling alley on nights when appellant bowled there. According to Dr. Kahn, appellant perceived this as intimidating and hostile, with more frequent flashbacks to her 1994 trauma. He noted that appellant had filed an EEO complaint. Dr. Khan opined that appellant’s current episode was an acute exacerbation of an underlying chronic condition that resulted from her original workplace injury.

In a report dated April 9, 2012, Dr. Bob Lizer, a Board-certified psychiatrist, provided a history and diagnosed PTSD and major depressive disorder. He indicated that appellant was angry with the employing establishment and that ongoing conflicts with her employer and specific coworkers had “superseded” her original injury.

By decision dated July 12, 2012, the hearing representative affirmed the January 13, 2012 decision. The hearing representative found that the evidence did not establish a recurrence of disability commencing January 25, 2010.

² OWCP noted that appellant had also filed a claim for an emotional condition on January 25, 2010.

LEGAL PRECEDENT

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”³

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

In the present case, OWCP accepted acute PTSD and acute anxiety reaction resulting from a June 1994 incident regarding a coworker and a death threat. The Board notes that, according to the hearing representative, appellant had filed a new claim for an emotional condition and had alleged work factors that included removal of rights related to her exempt status and the appearance of her supervisor at a bowling alley when appellant was also at the bowling alley. This claim is not before the Board on this appeal. The issues of whether the allegations are compensable work factors are issues properly pursued with respect to that claim.

As noted above, a recurrence of disability is an inability to work caused by a “spontaneous change” in the employment-related condition. There are circumstances where an exacerbation of an accepted PTSD condition could be a recurrence of disability, if it is the direct and natural result of the original condition.⁵ In this case the medical evidence clearly indicated that appellant’s flashbacks to the 1994 trauma were not the direct and natural result of the accepted acute PTSD and anxiety reactions. Dr. Khan and Dr. Lizer specifically refer to intervening events as the trigger for any flashbacks. The receipt of information regarding the former coworker on appellant’s home computer is an intervening nonindustrial incident.⁶ The allegations of stress resulting from alleged administrative errors by the employing establishment or actions of a supervisor are properly pursued in the claim for compensation based on those allegations.

³ 20 C.F.R. § 10.5(x).

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ See *Charlet Garrett Smith*, 47 ECAB 562 (1996), where the medical evidence established that appellant attended a required training session where reference was made to an employment incident that had caused claimant’s PTSD condition and brought back memories of the incident. The Board found this was a consequential injury that was the direct and natural result of the accepted PTSD condition.

⁶ A worsening of an employment-related condition produced by an independent nonindustrial cause is not compensable. See *Stuart K. Stanton*, 40 ECAB 859 (1989).

The evidence of record does not establish a recurrence of disability on or about January 25, 2010. It is appellant's burden of proof to establish a recurrence of disability and the Board finds appellant did not meet her burden in this case.

On appeal, appellant's representative refers to a 2000 OWCP decision denying a recurrence of disability claim, which is not before the Board on appeal. The representative also argues there were administrative errors by the employing establishment. The issue on appeal is a recurrence of disability commencing January 25, 2010. For the reasons stated, the Board finds that appellant has not established a recurrence of disability.

Appellant may submit new evidence or argument with a written application 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 established a recurrence of disability commencing January 25, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2012 is affirmed.

Issued: April 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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