

FACTUAL HISTORY

On July 31, 2015 appellant, then a 47-year-old mail carrier working light duty, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition as a result of his federal employment. On the claim form he referred to stressful and demeaning work as a telemarketer trying to sell products over the telephone. The employing establishment indicated in a July 31, 2015 letter that appellant was working light duty due to a prior work injury.³

Appellant submitted a work capacity evaluation (OWCP-5c) dated July 23, 2015 from Dr. Debra K. Sowald, a clinical psychologist. Dr. Sowald wrote that appellant had developed major depressive disorder, generalized anxiety disorder, post-traumatic stress disorder (PTSD), and pain disorder “as a result of his work injury” She reported that he felt stress having to call strangers on the telephone and trying to promote employing establishment products. Dr. Sowald concluded that appellant was totally disabled.

By letter dated August 10, 2015, OWCP requested that appellant submit additional evidence to support his claim. On September 17, 2015 appellant submitted a September 16, 2015 report from Dr. Sowald, who again opined that appellant was totally disabled. Dr. Sowald reported that appellant was upset when his vocational rehabilitation was interrupted and he had to report to the employing establishment’s sales retention center and work as a telemarketer. According to her, he was not “cut out to be a telemarketer” and customers would yell at him as they were irritated by sales calls. Customers were “verbally abusive” to appellant, and “his prior life experiences of being rejected were triggered and exacerbated, creating depression, anxiety, somatic symptoms, and an insomnia reaction within him. After one incident in September 2014, [appellant] quit calling people all together.” Dr. Sowald reported that from September 2014 to March 2015 appellant sat at his desk wearing head phones and a green blanket draped over his head. She wrote that he would benefit from completing the business associate program at the community college, and work environments that related to the degree would be suitable. Dr. Sowald reported that the “work must be meaningful” and “must not be demoralizing” as this would worsen the major depressive disorder.

Appellant submitted a witness statement dated September 14, 2015, asserting that from approximately August 2014 appellant spent most of his time at the call desk sleeping with his head covered by a blanket, and that he did not telephone anyone for approximately one year.

By decision dated October 28, 2015, OWCP denied the claim for compensation. It found that appellant’s claim was based on a desire to work in a different environment, and no compensable work factors had been established. Therefore, performance of duty was not established.

On November 27, 2015 appellant requested a hearing before an OWCP hearing representative. A hearing was held on July 13, 2016. At the hearing, appellant indicated that he

³ The record indicates that appellant had a prior claim accepted for bilateral carpal tunnel syndrome and shoulder enthesopathy. A November 15, 2013 vocational rehabilitation report indicated that appellant was enrolled in a community college, in an accounting/business administration program.

had worked as a letter carrier since 1994. He indicated that he had never worked in an office before the telemarketer job began in January 2014. Appellant reported that he worked in a cubicle in a windowless office. He alleged that it was revealed to him that “our caller ID showed that our phone calls were coming from Afghanistan,” that people yelled at him and appellant claimed that there were a couple of instances where he was threatened with physical harm. Appellant also claimed that the work environment was depressing, with poor air quality, and that he was a diabetic and making him work eight hours sitting down “is pretty much a death sentence.” He reported that from September 2014 to April 2015, when the job ended, he did nothing but sit at a computer.⁴

By decision dated September 20, 2016, the hearing representative affirmed, as modified, the denial of the claim. She found that a reaction to working indoors was not a compensable work factor, but that a reaction to assigned duties is a compensable work factor. However, the hearing representative concluded that the medical evidence of record was held to be insufficient to establish the claim for compensation.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.⁵ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁶ Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers’ compensation. These injuries occur in the course of the employment and have some kind of causal connection with it, but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee’s frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷

If a compensable work factor is established, a claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed condition and the established, compensable work factors.⁸ Rationalized medical opinion evidence must be based on

⁴ Appellant appealed to the Board on December 28, 2015. At the request of appellant, the Board dismissed the appeal, docketed as No. 16-0376, on April 11, 2016. *Order Dismissing Appeal*, Docket No. 16-0376 (issued April 11, 2016).

⁵ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁶ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *See Bonnie Goodman*, 50 ECAB 139, 141 (1998).

a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable factors identified by the claimant.⁹

ANALYSIS

Appellant has alleged an emotional condition resulting from working in a light-duty position as a telemarketer commencing January 2014.

The Board finds that while appellant has referred to the work area as windowless and depressing, and the nature of the work as demeaning, there is no compensable work factor in this regard. It is well established that frustration from not being able to work in a particular environment is not compensable.¹⁰ Unhappiness with doing inside work is not a compensable work factor.¹¹ Frustration at not being able to do meaningful work is also not compensable, as it is based on a desire to work in a different environment.¹²

As found by the hearing representative, the performance of assigned work duties is a compensable work factor. Appellant has alleged stress from the making of telephone calls to potential customers. Therefore, the medical evidence is reviewed to determine if a diagnosed condition causally related to the compensable work factor has been established.

Dr. Sowald submitted an OWCP-5c form dated July 23, 2015, and a narrative report dated September 16, 2015. The Board notes that Dr. Sowald refers to appellant being upset at having vocational rehabilitation interrupted, and how he wanted more meaningful work. As discussed above, this is not a compensable work factor. Frustration at not being able to work in a different job or continue a program of study is not compensable.¹³

To the extent that she actually refers to job duties, Dr. Sowald provides general statements such as appellant was subject to verbal abuse by customers. Although she referred to an incident in September 2014, appellant has not discussed any specific incidents regarding customers, and has made only general assertions that some customers were irritated or yelled at him. Dr. Sowald does not provide a rationalized medical opinion on causal relationship between a diagnosed emotional condition and the compensable work factor. She provides a number of diagnoses, including major depressive disorder, generalized anxiety disorder, PTSD, and pain disorder. There is no clear explanation as to how all of these conditions are related to which specific job duties or incidents. Dr. Sowald also refers to both aggravation and causation, without further explanation. In her September 16, 2015 report, she writes that appellant's "prior

⁹ See *L.L.*, Docket No. 14-1525 (issued July 7, 2015).

¹⁰ See *R.V.*, Docket No. 16-0182 (issued June 15, 2016).

¹¹ See *T.S.*, Docket No. 14-0807 (issued June 10, 2015).

¹² *L.J.*, Docket No. 12-0558 (issued October 4, 2012).

¹³ See generally *William E. Seare*, 47 ECAB 663, 665 (1996) (frustration in not given the work desired is not a compensable factor of employment); see also *J.S.*, Docket No. 16-1057 (issued May 11, 2017).

life experiences of being rejected were triggered and exacerbated” by abusive customers. To the extent Dr. Sowald is referring to aggravation by job duties, the Board has held that she must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹⁴

The Board finds the medical evidence of record is insufficient to meet appellant’s burden of proof. There is no report with a complete and accurate medical and factual history, including an opinion supported by sound medical rationale as to causal relationship between a diagnosed condition and the compensable work factor.¹⁵ Appellant has therefore not met his burden of proof in this case.

On appeal, counsel briefly argues that causation was established. For the reasons discussed above, the Board finds appellant has not established a diagnosed condition causally related to a compensable work factor.

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 appellant has not established an emotional condition in the performance of duty causally related to compensable work factors.

¹⁴ See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹⁵ See *B.B.*, Docket No. 13-0823 (issued July 17, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2016 is affirmed.

Issued: June 2, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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