United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 18-1718**
	)	**Issued: May 9, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2018 appellant filed a timely appeal from an August 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to the accepted compensable factor of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On July 2, 2018 appellant, then a 29-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she developed an emotional condition due to an argument with her supervisor that day while in the performance of duty. On the claim form, L.C., the manager of customer services, acknowledged that the incident occurred in the performance of duty, but she noted that appellant wanted to return to her former station and did not like that she was instructed to throw mail.

In a July 2, 2018 statement, appellant alleged that her supervisor, called her a derogatory name during a conversation that related to break times and throwing mail. She also alleged that during the same conversation, her supervisor raised her voice and warned her that "you don't come at me like that, you don't want to mess with me." Appellant indicated that she felt threatened and that Manager S.B. did not defuse the situation.

In a July 2, 2018 statement, appellant's supervisor acknowledged calling her a derogatory name that day. In a July 2, 2018 statement, an unidentified coworker confirmed that the supervisor had called appellant the derogatory name.

In a July 2, 2018 report, Dr. Nicole Huntress, Board-certified in pediatric sports medicine, noted a history that appellant felt stress after a supervisor used profane langue towards her that day. Appellant indicated that she had worked at the current branch for one month, but with the employing establishment since 2015. Dr. Huntress noted the events as reported by appellant and provided an assessment of emotional stress reaction. She indicated that appellant could return to work her regular shift, but that she could not work at the current location. In July 5 and 10, 2018 work status notes, Dr. Huntress opined that appellant was able to work her entire shift, but not at the current location.

In a development letter dated July 17, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish her claim and advised her of the type of evidence needed. It asked her to respond to an attached questionnaire and provide a medical opinion from an attending psychiatrist or clinical psychologist with a detailed description of findings and symptoms, results of all psychological testing, diagnoses and clinical course of treatment followed, and an opinion supported by a medical explanation regarding the cause of her emotional condition. OWCP afforded appellant 30 days to respond.

In response, OWCP received July 10 and 24, 2018 reports from Dr. Huntress which diagnosed emotional stress reaction. In the July 24, 2018 report and accompanying work status note, appellant was provided a full-duty work status and released from care. In an August 2, 2018 physician's report, Dr. Huntress indicated that appellant was released to full duty on July 24, 2018.

By decision dated August 20, 2018, OWCP denied appellant's claim. It found that she was called a derogatory name by her supervisor on July 2, 2018, but did not accept that she was threatened by her. OWCP further found that the medical evidence was signed by Dr. Huntress,

who was neither a psychiatrist nor a clinical psychologist, and was thus insufficient to establish a diagnosed medical condition to the accepted work event.

LEGAL PRECEDENT

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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties, or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[6]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[8]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by

[3] *See J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *See J.W., id*.; *J.F.*, 59 ECAB 331 (2008); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *See A.A.*, Docket No. 17-0127 (issued June 18, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *D.L.*, 58 ECAB 217 (2006); *Jerald R. Gray*, 57 ECAB 611 (2006); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *See J.W., supra* note 3; *Robert Breeden*, 57 ECAB 622 (2006).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted factor of her federal employment.

OWCP accepted one compensable factor of employment that appellant was called a derogatory name during a conversation with her supervisor, on July 2, 2018. It denied her claim that during the same conversation the supervisor threatened her. The Board has recognized that verbal threats when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.[10] Appellant has not, however, established with corroborating evidence that a specific threat was made against her and has not alleged or established that management ignored or tolerated alleged threats or that it failed to take preventative action.[11]

While OWCP accepted that appellant was called a profanity by her supervisor, to establish the acceptance of her claim for an employment-related emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder was causally related to the accepted compensable employment factor.[12]

The only medical evidence of record were reports from Dr. Huntress, a physician Board-certified in pediatric sports medicine. Dr. Huntress' reports are of reduced probative value on the relevant issue of this case because she does not specialize in a field particular to appellant's claimed condition. She is a pediatric specialist and does not specialize in evaluating emotional conditions. The Board has held that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.[13] In addition, Dr. Huntress' reports are of limited probative value as she did not provide any medical rationale in support of her opinion that appellant sustained an emotional reaction in response to the profanity from the July 2, 2018 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment incident could have caused or aggravated a medical condition.[14] As her reports lack necessary rationale, they are insufficient to establish her claim.

An award of compensation may not be based upon surmise, conjecture or upon appellant's belief that there is a relationship between her medical conditions and her employment. As

[9] *D.R.*, Docket No. 18-1592 (issued February 25, 2019).

[10] *See J.W.*, Docket No. 17-0999 (issued September 4, 2018); *T.G.*, 58 ECAB 189 (2006).

[11] *C.G.*, Docket No. 15-0909 (issued April 5, 2016).

[12] *See M.D.*, 59 ECAB 211 (2007); *William P. George*, 43 ECAB 1159, 1168 (1992).

[13] *See A.A.*, *supra* note 6; *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

appellant has not submitted sufficient probative medical evidence to establish that she sustained an emotional condition causally related to the accepted compensable employment factor, she has not met her burden of proof.[15]

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 her burden of proof to establish an emotional condition causally related to the accepted compensable factor of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2019
Washington, DC

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

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

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

[15] *See C.A.*, Docket No. 18-0824 (issued November 15, 2018); *S.R.*, Docket No. 14-0238 (issued May 6, 2014).