United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 19-1376**
	)	**Issued: January 4, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Asheville, NC, Employer	)	

Appearances:
Erik B. Blowers, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 10, 2019 appellant, through counsel, filed a timely appeal from a May 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that, following the May 20, 2019 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand acceptance of her claim to include depression as a consequence of her accepted September 3, 2013 employment injury.

FACTUAL HISTORY

On September 4, 2013 appellant, then a 39-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 2013 she injured her shins when pushing a hamper down a ramp while in the performance of duty. She indicated that the hamper got caught on something and struck both of her shins. By decision dated December 31, 2013, OWCP accepted the claim for contusion of lower leg, bilateral.

In a hospital report dated September 4, 2013, Dr. Elizabeth McCarty, a Board-certified emergency medicine specialist, diagnosed contusion of the left lower leg due to a work-related injury when a hamper hit her shin on September 3, 2013.

Appellant returned to a modified, limited-duty assignment as a city carrier, effective November 28, 2013, and then returned to full-time, limited-duty work on September 9, 2014.[4]

By decision dated April 23, 2015, OWCP expanded the acceptance of appellant's claim to include the additional condition of reflex sympathetic dystrophy (RSD) of the lower limb, bilateral. It based the acceptance of RSD on a second opinion evaluation, dated March 23, 2015, by Dr. Glenn L. Scott, a Board-certified orthopedic surgeon, who also found that appellant had not yet reached maximum medical improvement (MMI) and required additional treatment for her accepted conditions.

Appellant subsequently submitted a March 4, 2016 report from Dr. Lawrence Ralph Jones, a Board-certified psychiatrist and neurologist, who indicated that appellant was a postal worker who had injured both shins, left greater than right, in an accident at work. Dr. Jones noted that a large wood and metal cart that rolled into her legs and caused a severe injury. He opined that, following the acute injury, appellant had developed a chronic pain syndrome diagnosed as a complex regional pain syndrome (CRPS), formally called RSD, which occurred when injured sensory nerves grew back abnormally. Dr. Jones further opined that a thorough psychiatric evaluation had not revealed evidence of psychological factors affecting her illness presentation, but the ordeal of the acute injury and subsequent CRPS had caused symptoms of depression, which had been treated as part of the effort for her rehabilitation. He requested that the diagnosis of depression secondary to CRPS be added to her list of accepted conditions.

In a letter dated January 9, 2017, counsel alleged that, as part of her requirements for obtaining a "trial cord stimulator," appellant had been seen by Dr. Jones and he asserted that, based

[4] By decision dated February 3, 2016, OWCP found that appellant was capable of working and had performed the duties of a modified carrier position for two months or more, as of September 3, 2013, with wages of $1,042.50 per week. It found that the position fairly and reasonably represented her wage-earning capacity and was considered suitable to her partially disabled condition. OWCP concluded, therefore, that appellant had no loss of wage-earning capacity.

on Dr. Jones' March 4, 2016 report, appellant's claim should be expanded to include depression, secondary to her accepted RSD condition.

In a development letter dated January 19, 2017, OWCP notified appellant that it had received the request for expansion of her claim. It requested additional evidence in support of her claim for a consequential injury, including a medical report from a physician who was treating and/or prescribing medications for her preexisting depression. OWCP also requested a physician's rationalized medical opinion fully explaining how the current diagnosis of depression was related to the accepted employment-related conditions. It afforded appellant 30 days to submit additional evidence. No response pertaining to an emotional condition was received.

By decision dated February 21, 2017, OWCP denied expansion of appellant's claim to include a consequential injury. It found that the evidence of record did not demonstrate that weakness or impairment caused by her work-related injury or illness led to an aggravation. OWCP further found that the record established that appellant had a history of depression prior to the accepted September 3, 2013 employment injury for which she was taking medication on the date of injury and it had not received medical evidence to establish that her current depressive condition was caused or aggravated by the accepted work-related injury.

On March 7, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on August 15, 2017.

On September 6, 2017 OWCP referred appellant's claim to a district medical adviser (DMA) for review of medical records dated March 4, 2016 and February 15 and 17, 2017. In a September 27, 2017 report, Dr. Charles Barnhart, Jr., a Board-certified psychiatrist and serving as a DMA, indicated that appellant was a federal employee with no psychiatric history prior to her reported assault at work by a coworker in November 2012 for which post-traumatic stress disorder (PTSD) had been attributed.[5] Appellant also experienced stress after the suicide of another coworker who had allegedly been frustrated by the employing establishment not honoring his work restrictions. The DMA opined that the clinical picture was one of a chronic pain condition that appeared to be "directly and indirectly work related" and associated with a depressive disorder that had been attributed to her persistent pain diagnosis. He noted that the history suggested that appellant also had prior treatment from November 2012 to August 2013 for a mental health condition which was tied to an assault by a coworker in the workplace, although the details of this incident were incomplete in the record presented to him for his review.

By decision dated October 6, 2017, OWCP's hearing representative affirmed the prior February 21, 2017 decision, finding that the medical evidence of record was insufficient to establish that appellant's depression was causally related to the accepted September 3, 2013 injury.

On May 1, 2018 appellant, through counsel, requested reconsideration. In support of the request, she submitted a March 5, 2018 report from Dr. James A. Smith, III, a Board-certified

[5] The DMA noted that, from November 2012 to August 2013, appellant for dysphoria. Thereafter, appellant sustained an injury to the leg and foot when she was hit by a mail cart at work in September 2013. After treatment in 2013, she was returned to limited duty and by September 2014 she was referred to a pain management clinic. The DMA noted that appellant had been diagnosed with CRPS and started medications for anxiety and mood disorders

psychiatrist, who indicated that his first appointment with appellant was on February 21, 2018 for an initial psychiatric evaluation. Dr. Smith explained that widely researched and accepted evidence-based practice concluded that conditions involving moderate-to-severe chronic pain consistently presented with co-morbid depression and anxiety. He opined that, although it was true that appellant had been treated for PTSD directly related to another workplace event prior to her traumatic injury, her chronic pain had significantly increased the intensity of her symptoms from her CRPS. Dr. Smith indicated that treatment for her CRPS, congruent with her psychiatric conditions, was a part of her treatment plan, and must be addressed simultaneously in order to have the best outcomes and recovery. He concluded that the depression appellant was currently experiencing was causally related, at least in part, to her diagnosed condition of CRPS.

By decision dated July 31, 2018, OWCP denied modification of its prior decision.

Appellant subsequently submitted reports dated August 29 and October 23, 2018 and January 21, 2019 from Dr. Charles A. Buzzanell, a Board-certified anesthesiologist and pain medicine specialist, who diagnosed CRPS of the bilateral lower limbs, neuralgia and neuritis, low back pain, psychological and behavioral factors associated with disorders or diseases classified elsewhere, and other chronic pain.

On February 19, 2019 appellant, through counsel, requested reconsideration and submitted a February 11, 2019 report from Dr. Smith. Dr. Smith reiterated his opinion that, regardless of appellant's prior psychiatric treatment, it was clear that her CRPS had exacerbated her impairment because the pain associated with her condition shared the same neurological pathways as depression, which gave rise to further impairment and poor depression outcomes. He concluded that appellant's depression was causally related to her CRPS and his objective findings were supported by the citations written in his prior report that showed the applicability of such principles to appellant's case.

Appellant also submitted reports dated February 19, March 26, and April 23, 2019 from Dr. Buzzanell who reiterated his diagnoses.

By decision dated May 20, 2019, OWCP denied modification of its July 31, 2018 decision.

LEGAL PRECEDENT

The claimant bears the burden of proof to establish a claim for a consequential injury.[6] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[7]

[6] *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

[7] *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[9]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[10]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

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

In support of her claim, appellant submitted reports from Dr. Smith dated March 5, 2018 and February 11, 2019 in which he opined that her condition of depression was causally related, at least in part, to her accepted employment injury as a result of the chronic pain she experienced post injury. In his March 5, 2018 report, Dr. Smith explained that widely researched and accepted evidence-based practice concluded that conditions involving moderate-to-severe chronic pain consistently presented with co-morbid depression. He indicated that treatment for her CRPS, congruent with her psychiatric conditions, was a part of her treatment plan and had to be addressed simultaneously in order to have the best outcomes and recovery. In his February 19, 2019 report, Dr. Smith noted his review of OWCP's initial denial of the request to accept the additional condition of depression and reiterated his opinion that, regardless of appellant's prior psychiatric treatment, it was clear that her CRPS had exacerbated her impairment because the pain associated with her condition "shared the same neurological pathways as depression, which gave rise to further impairment and poor depression outcomes." He opined that appellant's depression was causally related to her CRPS and explained that his objective findings were supported by the citations written in his prior report that showed the applicability of such principles to directly appellant's case.

The Board finds that Dr. Smith's reports are sufficient to require further development of the medical evidence in this claim. The physician is a Board-certified psychiatrist and is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. Dr. Smith

[8] *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

[9] *Id*.

[10] *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

[11] *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

provided a comprehensive understanding of the medical record and case history, and a pathophysiological explanation as to how appellant's prior diagnosis of CRPS had resulted in the consequential diagnosis of depression.

Accordingly, the Board finds that Dr. Smith's medical opinion is sufficiently rationalized to require further development of appellant's claim.[12]

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] OWCP has an obligation to see that justice is done.[14]

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment injury either caused or aggravated her diagnosed condition of depression.[15] If the second opinion physician disagrees with the explanations provided by Dr. Smith, he or she must provide a fully-rationalized explanation explaining why the accepted employment injury was insufficient to have caused or aggravated her preexisting depression. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[12] *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).

[13] *See id. See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[14] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2019 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: January 4, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board