

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

B.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Canandaigua, NY, Employer)
_____)

**Docket No. 11-46
Issued: August 15, 2011**

Appearances:
Brook L. Beesley, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 6, 2010 appellant, through her representative, filed a timely appeal from the September 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for compensation. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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's psychiatric condition is causally related to the incident that occurred at work on October 14, 2008.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 17, 2008 appellant, a 39-year-old telephone operator, filed a claim for workers' compensation benefits alleging that she sustained stress and mental anguish as a result of an incident that occurred at work on October 14, 2008: "On duty armed police officer came into my office, acting violent and hostile with his behavior, trembling and shaking, shouting and pointing his finger and put his hand on his weapon, threatening me."

After developing the factual evidence, OWCP accepted that appellant was in the course of her employment on October 14, 2008 when an officer came into her office, raised his voice and indicated that he believed appellant's behavior constituted patient abuse. It accepted that the officer had his gun on him at the time and that it was visible to appellant throughout the entire incident. OWCP noted that appellant provided no witnesses but that the employing establishment did not challenge that the incident occurred as alleged.

In a decision dated December 31, 2008, OWCP denied appellant's claim for compensation on the grounds that the medical evidence provided no diagnosis of her injury and no opinion, with medical rationale, on how her diagnosed condition was related to the accepted work incident.

On January 24, 2009 Dr. John B. Schubmehl, a psychiatrist, related appellant's history, including her confrontation with an officer at work on October 14, 2008. He described his brief meetings with appellant since an initial diagnostic session in August 2008, when he diagnosed major depression and post-traumatic stress disorder.

In a decision dated July 21, 2009, OWCP's hearing representative affirmed the denial of appellant's claim for compensation. The hearing representative found that, while OWCP had accepted that appellant was subject to harassment and intimidation on October 14, 2008, the medical evidence failed to establish a diagnosed emotional condition causally related to the accepted incident. OWCP's hearing representative noted that Dr. Schubmehl offered no medical opinion on the issue of causation.

Appellant requested reconsideration and submitted a screening report from a licensed clinical social worker, discharge instructions from the F.F. Thompson Hospital Emergency Department and a May 24, 2010 report from Dr. Rida Y. Rizk, a consulting psychiatrist, who related appellant's current complaint, the history of present illness and his findings on mental status examination. Dr. Rizk diagnosed post-traumatic stress disorder.

In a decision dated September 10, 2010, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Rizk's report was insufficient to establish the element of causal relationship.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA

² 5 U.S.C. § 8102(a).

has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

ANALYSIS

OWCP accepts that appellant experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant alleged that on October 14, 2008 an on-duty police officer came into her office "acting violent and hostile with his behavior, trembling and shaking, shouting and pointing his finger and put his hand on his weapon, threatening me." When disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁸ OWCP, therefore, properly accepted that the implicated employment factor fell within the scope of FECA's coverage.⁹ The question that remains is whether this incident caused an injury.

Causation is a medical issue and no physician has submitted an opinion on whether the October 14, 2008 incident at work caused a diagnosed psychiatric injury. Dr. Schubmehl, the treating psychiatrist, related appellant's history, including a reference to a nonspecific confrontation with an officer on October 14, 2008. He offered no opinion on whether this incident caused a psychiatric injury. Dr. Rizk, the consulting psychiatrist, related appellant's

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ OWCP does not appear to accept that the officer placed his hand on his weapon, but there is no evidence to the contrary. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *Caroline Thomas*, 51 ECAB 451 (2000).

history and findings and diagnosed post-traumatic stress disorder, but he, too, offered no opinion on whether the October 14, 2008 incident caused a psychiatric injury. A social worker is not a “physician” within the meaning of FECA and is not competent to give a medical opinion.¹⁰ So the screening report appellant submitted to support her request for reconsideration has no probative value on the issue of causal relationship.

The record contains appellant’s narrative account of what happened on October 14, 2008. Her psychiatrist did not demonstrate a thorough understanding of the details and should offer an opinion on whether the incident caused a diagnosed psychiatric injury. If so, the psychiatrist must support his opinion with psychiatric reasoning, reasoning sufficient to show that the conclusion drawn is sound, logical and rational.¹¹ The psychiatrist should account for appellant’s preexisting condition and should explain how he was able to determine that the October 14, 2008 incident caused or aggravated appellant’s diagnosed condition. The rationale provided will be critical to establishing the element of causal relationship.

Because the medical evidence does not establish the element of causal relationship, the Board finds that appellant has not met her burden of proof to establish that she sustained a psychiatric injury in the performance of duty on October 14, 2008. The Board will therefore affirm OWCP’s September 10, 2010 decision.

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 that her psychiatric condition is causally related to the incident that occurred at work on October 14, 2008.

¹⁰ *Kurt R. Ellis*, 47 ECAB 505 (1996).

¹¹ It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board