

at check point number 3 while in the performance of her federal duties. She alleged that the woman punched her in the face and tried to take her down which aggravated a back injury. Appellant submitted a copy of her statement and a portion of an investigation summary.

Appellant was initially treated at Concentra Medical Center on April 5, 2013 by Dr. Darwin Chan, who noted that her past medical history was significant for a previous lumbar strain, which was a workers' compensation-related injury that occurred in February 2012. Dr. Chan obtained a history of appellant monitoring a secure area on March 30, 2013 when a homeless person knocked down some signs and began punching her in the face and grabbed her around the neck. On examination appellant had some tenderness over the left cheek area and low back and right buttock pain. Dr. Chan assessed her with facial contusion, lumbosacral strain, cervical strain, thoracic strain and sciatica. He noted that appellant's preexisting lumbosacral strain injury in February 2012 may have been aggravated. Dr. Chan placed her on modified-duty restrictions of no lifting over 20 pounds, no prolonged standing and/or walking longer than 30 minutes, no bending greater than two times per hour and no pushing and/or pulling over 20 pounds of force. In an April 10, 2013 report, he noted that appellant started having occasional pain through the right side of her jaw and to the back of her head, right side. Dr. Chan diagnosed a facial contusion, lumbosacral strain, cervical strain, thoracic strain, sciatica with history of some past temporomandibular disease and history of past knee surgery. He noted that appellant continued with a light-duty restriction.

In an April 26, 2013 report, Dr. Chan stated that, due to frequent headaches, appellant did not feel that she was able to perform her usual job duties. At her request, he placed her on no activity temporarily. Appellant also requested a work excuse for the workdays already missed; but Dr. Chan explained to her that he could not cover her for the days she was to be on light duty. Dr. Chan advised her that, if she needed modification of her light duty or to be reassessed, she should have come in on the days when she did not feel well and did not report to work. Appellant did not accept his advice and became argumentative and confrontational. She told Dr. Chan that she did not wish to see him anymore.

Appellant received treatment at Concentra Medical Center by Dr. Ronald Kienitz, an osteopath. In a May 6, 2013 report, Dr. Kienitz diagnosed an exacerbation of low back pain with low back strain; facial and jaw contusions, history of prior temporomandibular joint problems, exacerbated; recurrent headaches; some possibility of post-traumatic stress problems; and chronic radiating low back pain with fibromyalgia under chronic care. He noted that appellant did not feel that she should drive due to her headaches. Dr. Kienitz encouraged her to return to work on limited duty and seek alternate transportation. He recommended that appellant return to work on May 6, 2013 with restrictions of no lifting over 10 pounds, no pushing and/or pulling over 10 pounds of force and that she should be sitting 90 percent of the time. In a May 14, 2013 report, Dr. Kienitz diagnosed recurrent aches and pain, multiple pain complaints with exacerbation of the low back, facial and jaw pain and headaches. On May 28, 2013 he diagnosed back injuries with multiple strains and dysphonia.

On April 24, 2013 Dr. Marianne Cloren, a physician Board-certified in internal medicine and occupational medicine, reviewed the medical records for the employing establishment. She did not examine appellant. Dr. Cloren noted that she reviewed the March 30, 2013 incident that was captured on video. She noted that appellant did not seek medical care until almost a week

after the assault. Dr. Cloren opined that there was no evidence of any significant injury as a result of the assault. She stated that the diagnosed conditions were all temporary in nature and plausibly related to the reported assault and struggle. Dr. Cloren anticipated that appellant returned to her preinjury baseline within a few weeks with appropriate therapy. She noted that the medical evidence indicated that appellant was able to work with restrictions and that there was no medical explanation for her being off work. Dr. Cloren noted that, if there was evidence that appellant was afraid to return to work, referral to the Employee Assistance Program should be considered.

In a May 3, 2013 note, Dr. Morris Mitsunaga, Board-certified in occupational medicine, listed his impressions as: (1) low back strain; (2) chronic back pain; and (3) recent workers' compensation injury of March 30, 2013. He stated that the assault aggravated appellant's back pain and caused occipital headaches and a cervical strain. Dr. Mitsunaga referred her for treatment and advised that she needed further workup for her neck pain and headaches.

Appellant was treated in the emergency department at Queen's Medical Center on April 24, 2013. Dr. Sherrie M. Suzuki, Board-certified in emergency medicine, noted that appellant complained of chronic headaches with the current episode onset two weeks prior. Appellant indicated that she was punched in the left jaw. An x-ray report dated April 24, 2013, found no acute facial fracture.

In May 8 and 15, 2013 letters to OWCP, a representative of the employing establishment controverted appellant's claim. She stated that there was no significant evidence that appellant's injuries were the result of the assault. The representative noted that appellant had preexisting injuries and worked a limited-duty position at the time of the assault. She further noted that the diagnosed conditions were temporary in nature, that appellant returned to work with restrictions and that there was no medical explanation for her being out of work. The representative further noted that appellant waited six days to seek medical treatment.

By decision dated June 10, 2013, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that a medical condition was diagnosed in connection with the March 30, 2013 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

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

Appellant alleged that she sustained an injury on March 30, 2013 when she was attacked during the course of her federal employment. The evidence supports that the incident occurred as alleged.

The Board finds that the medical evidence of record, while not sufficient to discharge appellant's burden of proof, is sufficient to require further development. The question is whether the medical evidence established an injury causally related to the accepted assault. Dr. Cloren, in her report to the employing establishment, noted that her diagnosed conditions were temporary in nature and are plausibly related to the reported assault and struggle. The medical evidence of record notes other diagnoses. Dr. Chan diagnosed facial contusion, jaw contusion, tension headaches, cervical strain, lumbosacral strain and sciatica. Dr. Kienitz diagnosed exacerbation of low back pain with low back strain, facial and jaw contusion, exacerbation of temporomandibular joint problems and some possibility of post-traumatic stress problems. Dr. Mitsunaga listed appellant's diagnoses as low back strain, chronic back pain and recent workers' compensation injury on March 30, 2013 which aggravated her back pain causing occipital headaches and cervical strain. The notes by Dr. Suzuki do not indicate a medical diagnosis other than severe headaches, but do note that appellant complained of chronic problems with headaches that had an onset when she was punched in the left jaw. Drs. Chan, Kienitz, Mitsunaga and Suzuki all examined appellant and made diagnoses while discussing the March 30, 2013 employment-related assault. Although these reports could use some clarification with regard to further testing or direct statements with regard to causal relationship do not

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

provide a sufficient diagnosis of a medical condition causally related to the March 30, 2013 assault, however, they are sufficient to require further development of the case record by OWCP.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁶ While the medical records do not provide sufficient rationale to discharge appellant's burden of proof that the March 30, 2013 incident caused an injury, the reports raise an inference of injury and causal relationship sufficient to require further development of the case record by OWCP.⁷

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to the appropriate specialist for an evaluation and a rationalized medical condition regarding her condition. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

⁶ *L.C.*, Docket No. 12-941 (issued October 1, 2012); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

⁷ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2013 is set aside and the case is remanded for further action consistent with this opinion.

Issued: April 28, 2014
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board