

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

D.R., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Memphis, TN, Employer)

Docket No. 15-1185
Issued: October 8, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 28, 2015 appellant filed a timely appeal from a November 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted additional evidence accompanying her request for appeal. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1).

² 5 U.S.C. § 8101 *et seq.*

³ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from November 4, 2014, the date of OWCP's last decision, was May 3, 2015. Since using May 5, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is April 28, 2015, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

ISSUE

The issue is whether appellant established an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 27, 2013 appellant, then a 58-year-old patient relations specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2013 she sustained post-traumatic stress disorder (PTSD), depression, anxiety, and migraine headaches after her supervisor forced her to watch a female patient's YouTube video, in which the veteran described a military sexual assault and failed major surgeries. The employing establishment confirmed that appellant was in the performance of duty while watching the video, but contended that "the event did not cause the injury" as appellant had preexisting PTSD and migraines.⁴ Appellant stopped work on or about December 3, 2013.

Dr. James M. Shea, an attending Board-certified psychiatrist, provided December 17, 2013 reports diagnosing PTSD and major depressive disorder. He noted that appellant had preexisting PTSD due to a sexual assault while in military service. Dr. Shea related appellant's belief that an encounter with a hostile patient in late November 2013 exacerbated her PTSD. He held appellant off work through January 3, 2014.

In a December 18, 2013 letter, OWCP advised appellant of the evidence needed to establish her claim, including factual corroboration of the November 22, 2013 incident, and a report from her attending physician explaining how and why that incident would cause the claimed conditions.

In response, appellant submitted two January 11, 2014 statements contending that her supervisor forced her to watch the video so she would develop empathy for the patient. The supervisor did not allow her to turn her head or look away, although the patient was nude from the waist up, and displayed disfiguring surgical incisions on her chest and abdomen. The patient also described an alleged sexual assault by her superior officer. Appellant explained that she had undergone similar surgeries, as well as suffered a sexual assault by her superior officer. While watching the video, she became extremely anxious and experienced shortness of breath. After being allowed to leave her supervisor's office, appellant sought counseling from a coworker, who went with appellant to her supervisor to confront her about the experience. The supervisor alleged that she would not have made appellant watch the video had she known her history. In the hours after watching the video, appellant asserted that she developed severe anxiety, panic attacks, sleep disturbance, depression, migraine headaches, crying spells, intrusive thoughts and memories, disturbed sleep, poor appetite, and forgetfulness. Appellant continued to work until December 3, 2013, when she could no longer tolerate her PTSD symptoms and stress level.

Dr. Melanie G. Perkins, an attending Board-certified psychiatrist, treated appellant on June 18, 2013 for PTSD, dysthymia, anxiety, and stress after being stalked by a male patient. On December 5, 2013 she noted appellant's account of the YouTube video triggering her PTSD and

⁴ Appellant submitted a coworker's statement asserting that appellant was very upset on November 22, 2013 after watching the YouTube video.

traumatic memories. Dr. Perkins diagnosed PTSD due to a sexual assault while in military service, and a childhood trauma, and persistent depressive disorder (dysthymia). She prescribed medication. In a January 2, 2014 report, Dr. Perkins noted that appellant recently married, and experienced increased anxiety with panic attacks. She held appellant off work.

In a November 27, 2013 report, a nurse practitioner noted that appellant presented with a reactivation of PTSD on November 22, 2013 after a “supervisor made her watch a video of a veteran with similar issues to [appellant]” of “sexual trauma in the military and multiple surgeries.”

Dr. Terri L. Hyatt, an attending Board-certified family practitioner, diagnosed PTSD on December 3, 2013. She held appellant off work through December 17, 2013. Dr. Hyatt noted appellant’s history of PTSD and a recent flare up “because of some situations at work.”

Appellant received psychotherapy beginning on June 26, 2013 from Dr. Krystin R. Coldwell, attending licensed clinical psychologist. Dr. Coldwell related appellant’s anxiety symptoms due to a veteran holding her hands and praying over her during an advocacy session, then “stalking her.” She diagnosed chronic PTSD in reports through August 9, 2013. On December 2, 2013 Dr. Coldwell noted appellant’s frustration over her supervisor’s insistence that she watch “a video of another Veteran that triggered her anxiety from past trauma.”

On January 14, 2014 Dr. Mardi M. Smith, an attending licensed clinical psychologist, noted that appellant would begin evidence-based treatment for PTSD.⁵

By decision dated January 24, 2014, OWCP denied the claim, finding that causal relationship was not established. It accepted watching the video as a compensable factor of employment. However, the medical evidence did not explain how and why watching the video would cause the claimed conditions.

Appellant disagreed with the decision and requested a telephonic hearing before an OWCP hearing representative, held August 18, 2014. At the hearing, she testified that since the November 22, 2013 incident, the Department of Veterans Affairs increased her service-related disability rating from 30 to 70 percent. Appellant described her participation in a PTSD treatment program after the incident. She asserted that the employing establishment reassigned her as part of an Equal Employment Opportunity (EEO) grievance settlement for hostile work environment. Appellant noted that she returned to work in the new position on June 16, 2014. One of her coworkers offered testimony confirming appellant’s account of the events of November 22, 2013, and alleged that the telephonic hearing caused an additional stress reaction.⁶

Following the hearing, appellant submitted a March 19, 2014 statement asserting that on November 22, 2013 her supervisor instructed her to give preferential treatment to the female veteran in the YouTube video. After meeting with the veteran, her partner, and her service dog, appellant called a meeting with department personnel to advise them that the veteran planned to

⁵ Appellant also submitted reports from a social worker that were not signed or reviewed by a physician. Therefore, they do not constitute medical evidence. *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁶ On September 22, 2014 the employing establishment submitted comments on the hearing transcript, contending that appellant’s physicians did not provide sufficient medical rationale to establish causal relationship.

file complaints against a physician at another employing establishment facility. Appellant's supervisor then instructed her to watch the YouTube video posted by the patient. Appellant contended that she did not need to see the video as she had actually met with the patient and her family support team. Colleagues at the meeting agreed that there was no value to watching the video under those circumstances. After the meeting, appellant's supervisor called her in to her office and insisted she watch the video. Appellant emphasized that the veteran "was nude from the waist up," and had several disfiguring scars on her chest and abdomen, similar to her own "botched surgical issues at another" employing establishment facility. "This was all too close to home." The veteran then discussed a sexual assault by her superior officer. Appellant tried to look away, but her supervisor allegedly stood over her and demanded that she watch. She then became short of breath, and began to tremble and cry. Appellant's PTSD symptoms then increased markedly, such that she was no longer able to work as of December 3, 2013.

Appellant subsequently submitted additional medical evidence.

Dr. Smith provided treatment notes from January 17 to February 24, 2014 relating appellant's history of PTSD after two sexual assaults while in military service, with a triggering episode after watching the patient video on November 22, 2013. In an undated letter, Dr. Smith opined that, when appellant watched the video, she "experienced increased symptoms of PTSD specifically due to triggers related to her previous military sexual trauma." Dr. Smith explained that although appellant had work stressors prior to the incident, including being stalked by a patient, her PTSD symptoms were "directly attributable to military sexual trauma which was more likely than not triggered by watching a video of a similar trauma. It is unlikely that her nightmares of sexual trauma are attributable to other stressors on the job." Appellant was "receiving treatment for post-traumatic stress disorder directly related [to the] military sexual trauma and recent triggers of those memories and associated emotions. She is not receiving treatment for general anxiety related to job stressors."

In February 21, 2014 reports, Dr. Perkins diagnosed appellant with PTSD due to military sexual trauma and childhood sexual trauma, persistent depressive disorder, and panic disorder. She opined that watching the video on November 22, 2013 "brought back memories of [appellant's] own military sexual trauma ...," causing a recurrence of PTSD with "sleep disturbance, intrusive thoughts, anxiety, nightmares, panic attacks, and poor concentration. She was unable to function at work." Dr. Perkins stated that watching the video on November 22, 2013 "directly exacerbated her PTSD from her military sexual trauma." She found appellant totally disabled for work through May 30, 2014.

In a June 5, 2014 note, Dr. Karen A.F. Uehling, an attending osteopath Board-certified in psychiatry, approved a job offer as a vocational rehabilitation specialist. She related appellant's account of her supervisor "making her watch video that triggered [her] PTSD" related to the veteran's "sexual abuse which triggered [appellant]," causing nightmares and flashbacks. Appellant also discussed being "instructed not to attempt to deescalate patient outbursts and had to endure a significant amount of upset and frustrated patients yelling and screaming at her."

By decision dated and finalized November 4, 2014, an OWCP hearing representative affirmed the January 24, 2014 decision, finding that the additional evidence submitted was insufficient to establish causal relationship. She explained that Dr. Shea did not attribute appellant's symptom to the accepted work factor of watching the video on November 22, 2013.

Also, Dr. Perkins did not provide a reasoned medical explanation supporting her conclusion that watching the video triggered PTSD.

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 filed within the applicable time limitation; that an injury was sustained while 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.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

In *Lillian Cutler*,⁹ the Board noted that workers’ compensation law is not applicable to each and every injury or illness that is somehow related to an employee’s employment. Where disability results from an employee’s 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.¹⁰ Board case precedent demonstrates that the only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.¹¹ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹²

When working conditions are alleged as factors in causing emotional 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.¹³ If a claimant implicates 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.¹⁴

ANALYSIS

Appellant claimed that she sustained an emotional condition due to watching a patient video containing a veteran’s graphic account of her military sexual assault and surgical

⁷ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ 28 ECAB 125 (1976).

¹⁰ 5 U.S.C. §§ 8101-8193. *Id.*

¹¹ *L.R.*, Docket No. 14-0302 (issued June 6, 2014).

¹² *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹³ *See Norma L. Blank*, 43 ECAB 384 (1992).

¹⁴ *Marlon Vera*, 54 ECAB 834 (2003).

complications. OWCP accepted that watching the video constituted a compensable factor of employment, but denied the claim due to the fact that the medical evidence did not establish a causal relationship between the accepted incident and the claimed conditions.

The evidence most contemporaneous to the accepted incident is a November 27, 2013 report from a nurse practitioner, noting that appellant presented with a reactivation of PTSD on November 22, 2013 after watching the patient video. However, as nurse practitioners are not considered physicians under FECA, the report is of no probative medical value.¹⁵

Dr. Shea, a Board-certified psychiatrist, and Dr. Hyatt, a Board-certified family practitioner, attributed the triggering of appellant's PTSD to an encounter with a hostile patient or unspecified work situations, but did not mention the accepted work factor of watching the patient video on November 22, 2013. Dr. Coldwell, an attending licensed clinical psychologist, and Dr. Uehling, an attending Board-certified psychiatrist, both opined that watching the video on November 22, 2013 triggered preexisting PTSD. However, neither physician explained how or why the video would have caused the claimed emotional condition. In the absence of such rationale, their opinions are insufficient to meet appellant's burden of proof.¹⁶

Dr. Perkins, an attending Board-certified psychiatrist, explained that appellant's PTSD was initially caused by sexual assaults in childhood and in the military. In June 2013 a patient's stalking behaviors triggered appellant's PTSD. Dr. Perkins also opined that watching the video on November 22, 2013 "directly exacerbated her PTSD from her military sexual trauma." While Dr. Perkins generally supported appellant's argument for causal relationship, she did not provide her medical reasoning as to how watching the video would cause or contribute to the claimed condition. She failed to distinguish the mechanism whereby appellant's chronic PTSD, as diagnosed in June 2013, was altered or affected by the video. Therefore, Dr. Perkins' opinion is not sufficiently well reasoned to establish causal relationship in this case.¹⁷

Dr. Smith, an attending licensed clinical psychologist, explained that the veteran's video account of military sexual trauma "more likely than not" triggered appellant's recollections of her own trauma. The equivocal nature of this opinion diminishes its probative value.

None of appellant's physicians provided a reasoned explanation of how the accepted factor of watching the video on November 22, 2013 would cause the claimed emotional conditions. Therefore, OWCP's November 4, 2014 decision denying the claim is proper under the law and facts of this case.

On appeal appellant contends that Dr. Perkins' opinion supports that watching the video exacerbated her PTSD. She explained that she saw a nurse practitioner and Dr. Shea on the date of the incident, because Dr. Perkins was not at work that day. Appellant questioned why OWCP characterized Dr. Perkins' opinion as insufficiently reasoned. As stated above, while Dr. Perkins generally supported causal relationship, she did not set forth the medical basis for this opinion.

¹⁵ *Roy L. Humphrey, supra* note 5.

¹⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁷ *Id.*

She did not explain the medical reasons or principles by which watching the video on November 22, 2013 would cause the claimed conditions.

Appellant also noted that the Department of Veterans Affairs increased her service-connected disability to 100 percent as a result of the occupational incident. However, the disability ratings of other administrative agencies does not establish entitlement to benefits under FECA as there are different standards for medical proof on the question of disability.¹⁸

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 established an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 4, 2014 is affirmed.

Issued: October 8, 2015
Washington, DC

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

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

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

¹⁸ *Freddie Mosley*, 54 ECAB 255 (2002).