United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 16-1133**
	)	**Issued: December 19, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 6, 2016 appellant, through counsel, filed a timely appeal from a December 2, 2015 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.

[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.*

ISSUES

The issues are: (1) whether appellant sustained an injury on February 28, 2014 in the performance of duty; and (2) whether she sustained an emotional condition on February 28, 2014 in the performance of duty.

FACTUAL HISTORY

On March 4, 2014 appellant, then a 33-year-old retail sales associate, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2014 she experienced neck, chest, and shoulder pain while in the performance of duty. She stopped work on March 1, 2014.

In a statement dated March 1, 2014, appellant advised that on February 28, 2014 while she was letting exiting customers out of the door a customer asked to come in to get a package. She told the customer the location was closed. The customer asked to see appellant's supervisor but, her supervisor, told the customer he was busy and that the station was closed. When she let more exiting customers out, the individual stopped the door from closing with her foot and yelled that she was coming inside. Appellant related, "She started to push me and we began to tussle in the doorway of the [employing establishment]. Then she ran to the other side of the door to get in." Appellant telephoned the police and told the woman that she was not going to open the door. The customer screamed at appellant and another customer yelled at appellant indicating that he wanted to get out. He kicked the glass out of the door. The police came and took appellant's statement. She related that she did not feel safe at work and that her chest, arms, and upper body were "sore from trying to stop the lady from getting in."

On March 3, 2014 Dr. Arthur Pinkhasov, an internist, related that appellant was under his care and could return to work on March 17, 2014.

L.M., a supervisor, related in a March 5, 2014 e-mail that appellant did not mention that she was injured on March 1, 2014 and performed her usual work.

In an e-mail dated March 5, 2014, C.V. related, "On Friday, February 28, 2014 while [appellant] was locking the lobby door she was allegedly bumped by a customer. I did [not] see anything, as I was at the pick-up window. Later on, she mentioned that a customer bumped her while locking the door." He indicated that appellant did not mention an injury to him on March 1, 2014.

By letter dated March 13, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a detailed medical report from a psychologist or psychiatrist addressing the causal relationship between any diagnosed condition and the identified employment incident.

Dr. Glenn Jakobsen, an osteopath and Board-certified physiatrist, advised on March 18, 2014 that appellant was unable to work. He diagnosed a cervical condition, a right shoulder condition, and right arm pain. Dr. Jakobsen noted that appellant experienced an altercation at work on February 28, 2014.

In a report dated March 21, 2014, Dr. Jonathan Levinson, a psychologist, related that while at work on February 28, 2014 appellant was "assaulted by an irate customer" causing neck and shoulder pain. Appellant also experienced insomnia, flashbacks of the attack, irritability, depression, and mild auditory and visual hallucinations. Dr. Levinson diagnosed severe major depressive disorder with psychotic features, panic disorder with agoraphobia, chronic post-traumatic stress disorder, and a pain disorder due to a general medical condition. He opined that appellant was totally disabled and that her psychological symptoms were "causally related to the accident she had while on the job."

Appellant, in a statement dated April 4, 2014, related that a female customer stopped a door from closing after she refused to let the customer in to get a package. The customer pushed her in the chest and grabbed her shoulders. Appellant related, "We started fighting in the doorway of the [employing establishment] hurting my neck, shoulders, chest, and arms."

On April 7, 2014 Dr. Levinson related that appellant "has experienced significant levels of depression, anxiety, and pain due to the assault she sustained at work." He diagnosed severe major depressive disorder with psychotic features, panic disorder with agoraphobia, chronic post-traumatic stress disorder, and a pain disorder due to a general medical condition. Dr. Levinson asserted that appellant was unable to work for a minimum of 90 days.

Dr. Jakobsen, in a report dated April 8, 2014, related that he had been treating appellant for shoulder and neck pain. He advised, "[She] sustain[ed] the injury at work, she stated she was attacked by a customer." Dr. Jakobsen diagnosed a shoulder contusion and opined that appellant was totally disabled. In an undated attending physician's report (Form CA-20), he diagnosed shoulder derangement and a cervical contusion and checked a box marked "yes" that the conditions were caused or aggravated by employment.

In an e-mail dated April 9, 2014, L.M. advised that appellant was letting out customers after closing when a customer blocked the door with her foot and yelled that she was going to come inside for a package. The supervisor related, "She started to push [appellant] and they began to tussle, she immediately came inside put the keys down and called the police." Appellant worked the following day but on March 3, 2014 indicated that her chest, arms, and upper body "were sore from trying to stop [the] lady from coming in."

On the questionnaire provided by OWCP, appellant advised that the employing establishment's police had investigated the incident, but she did not have a copy of the report.

By decision dated April 23, 2014, OWCP denied appellant's claim after finding that she had not established that the February 28, 2014 incident occurred at the time, place, and in the manner alleged.

In a report dated April 16, 2014, received by OWCP on April 28, 2014, Dr. Jakobsen advised that he was treating appellant for chest and bilateral shoulder pain as a result of her February 28, 2014 work injury. He found that she could not work until May 16, 2014. In a Form CA-20 report dated April 28, 2014, Dr. Jakobsen diagnosed a bilateral shoulder sprain and

cervical radiculitis. He checked a box marked "yes" that the condition was caused or aggravated by employment, providing as a rationale that she was "attacked while at work."[3]

Dr. Levinson, in an April 20, 2014 report, discussed appellant's work injury and symptoms and noted that he had referred her to Dr. Max Brandt, a psychiatrist, for an evaluation. He related that psychological testing did not show malingering. Dr. Levinson advised that appellant had no history of a prior psychiatric problem but did see a therapist after "the sudden death of her husband 13 years ago." He related, "[She] is suffering from significant levels of anxiety, depression, panic, restrictions of mobility outside of her home, and post-traumatic stress as evidenced by her test results and supported by a structured clinical interview." Dr. Levinson diagnosed severe major depressive disorder with psychotic features, panic disorder with agoraphobia, chronic post-traumatic stress disorder, and a pain disorder. He described how he reached the diagnoses from the test results and examination. Dr. Levinson opined, "It is this writer's clinical opinion, that the psychological symptoms [appellant] is experiencing currently are causally related to being assaulted on the job." He advised that she was totally disabled.

Appellant, on April 28, 2014, requested an oral hearing before an OWCP hearing representative. In a May 6, 2014 statement, she related that the police report indicated that the dispute was verbal. The officers stopped in the middle of questioning appellant and asked if employing establishment inspectors should be contacted as it was a federal building. She asked her supervisor who responded affirmatively and they allegedly went to talk with the police officers. After a few more questions the officers left. Appellant received the police report on March 3, 2014 and telephoned the employing establishment. She learned that it had not contacted the employing establishment's inspectors.

On May 13, 2014 OWCP received a copy of the police report regarding the February 28, 2014 incident. The police indicated that a clerk at the employing establishment "had a verbal dispute with an unknown female customer and locked the glass doors to detain the customer until police arrived." At that point a male customer kicked the door breaking the glass and left the scene.[4]

In a report dated May 14, 2014, Dr. Brandt related that he had obtained a history of appellant being attacked by a customer and sustaining injuries to her arms and chest on February 28, 2014. Appellant continued to work until March 3, 2014. Dr. Brandt noted that appellant experienced chest and arm pain, insomnia, anxiety, and a loss of concentration. He diagnosed an adjustment disorder with mixed anxiety and depressed mood which he attributed to her work injury. Dr. Brandt opined that appellant was totally disabled.

At the telephone hearing, held on June 23, 2014, appellant related that her husband was murdered in 2003.[5] On February 28, 2014 she tried to get a customer who grabbed her in the

[3] In an April 25, 2014 duty status report (Form CA-17), Dr. Jakobsen listed work restrictions.

[4] A coworker provided a statement on May 13, 2014 relating that on February 28, 2014 appellant had "an altercation with a female customer."

[5] In a disability certificate dated June 25, 2014, Dr. Jakobsen advised that appellant continued to have pain due to her February 28, 2014 injury and was totally disabled.

doorway to let go and she banged against the glass door. Appellant called the police but a man broke the glass door and the woman who assaulted her left. She had never seen the female customer before that day. The police told her that inspectors with the employing establishment were in charge as it was a federal building.

In a decision dated August 1, 2014, OWCP's hearing representative affirmed the April 23, 2014 decision. He found that appellant had not established a physical or emotional condition as a result of the February 28, 2014 work incident.

Appellant, in a statement dated August 18, 2014, related that she did not work for 13 months following her husband's murder in January 2003 in order to care for her infant son. She had not received psychological treatment after 2004 until the February 28, 2014 incident. Appellant asserted that the location of the employing establishment was dangerous.

In a report dated August 27, 2014, Dr. Levinson questioned why OWCP was concerned that he had not referred to the murder of appellant's husband. He noted that she worked for 10 years after her husband died, raised a child, worked through her bereavement with a short round of therapy. Dr. Levinson related, "Now, due to the assault at work, [appellant] is having difficulty returning to the [employing establishment], because of the threat of being attacked again -- either by the assailant or someone else." He attributed her psychological symptoms solely to the attack at work.

On September 2, 2014 appellant, through counsel, requested reconsideration. He contended that the murder of her husband was not pertinent to the issue at hand as she had not received any psychological treatment for 10 years prior to the work incident.

OWCP, in a decision dated March 11, 2015, denied modification of its August 1, 2014 decision. It accepted that on February 28, 2014 a female customer blocked the door with her foot and a male customer kicked out part of the glass door. OWCP found that appellant had not established that the female customer grabbed her shoulders or pushed her as the police report indicated that they engaged in a verbal dispute. It determined that the medical evidence of record was insufficient to show that she sustained a physical or emotional condition due to the accepted work factors of a female customer putting her foot in the door and preventing her from closing the door and a male customer breaking glass to get outside. OWCP further noted that Dr. Levinson did not explain why the February 28, 2014 incident resulted in appellant's symptoms given that her husband had been murdered.

On September 3, 2015 OWCP again received the September 2, 2014 reconsideration request. In a decision dated December 2, 2015, it denied modification of its March 11, 2015 decision.

On appeal counsel maintains that she sustained physical and emotional injuries due to the February 28, 2014 incident and that OWCP denied the claim because of her husband's death 10 years ago.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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.[6] 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.[7]

The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[8] In the course of employment relates to the elements of time, place, and work activity.[9] To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place when she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment, or engaged in doing something incidental thereto. As to the phrase in the course of employment, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to and from work, before or after work hours or at lunch time, are compensable.[10]

Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work. Assaults for private reasons do not arise out of the employment unless, by facilitating an assault that would not otherwise be made, the employment becomes a contributing factor.[11]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[12] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or

[6] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[7] *See Elizabeth H. Kramm (Leonard O. Kramm),* 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[9] *D.L.*, 58 ECAB 667 (2007).

[10] *See Idalaine L. Hollins-Williamson*, 55 ECAB 655 (2004).

[11] *S.S.*, Docket No. 13-318 (issued March 26, 2013).

[12] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

condition for which compensation is claimed.[13] An employee may establish that the employment incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident.[14]

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 which is alleged to have occurred.[15] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.[16] An employee has not met her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[17] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a case has been established.[18] However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.[19]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an injury to her neck, chest, and shoulder on February 28, 2014 as the result of an assault by a customer. At the time of the alleged incident, she was performing her regular work duties at her designated work location during her regular duty hours. There is no evidence that the alleged assault occurred as a result of an animosity or dispute imported in employment from appellant's domestic and private life but instead arose as a result of the setting of her work. Thus, the alleged incident occurred while she was in the performance of duty.[20]

OWCP found that appellant established that on February 28, 2014 a female customer stopped the door with her foot and a male customer broke glass to get out a locked door, but that

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[13] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[14] *Id.*

[15] *See Louise F. Garnett*, 47 ECAB 639 (1996).

[16] *See Betty J. Smith*, 54 ECAB 174 (2002).

[17] *Id*.

[18] *Linda S. Christian*, 46 ECAB 598 (1995).

[19] *Gregory J. Reser*, 57 ECAB 277 (2005).

[20] *See A.K.*, 58 ECAB 119 (2006).

she had not established an assault by the female customer. The Board finds, however, that appellant has established that she engaged in a physical altercation with a customer on February 28, 2014. Appellant related that she was letting exiting customers out of a door when a female customer approached the entrance to pick up a package. The next time she let customers outside, the woman stopped the door with her foot and yelled that she was coming in. The female customer pushed appellant and they engaged in a physical confrontation. The customer ran to the opposite side of the door, telephoned the police, and refused to open the door. Another customer kicked the glass out of the door and he and the female customer then left.

Appellant advised the supervisor working on February 28, 2014, C.V., of the incident immediately after it occurred. On March 5, 2014 C.V. related that he did not witness the February 28, 2014 incident but that she mentioned that a customer "bumped her while locking the door." He noted that appellant did not complain of an injury. In an April 9, 2014 e-mail, L.M. advised that a female customer pushed appellant, yelled, and blocked the door with her foot. On March 3, 2014 appellant informed L.M. that her chest, upper body, and arms were sore due to the altercation with the customer. The evidence from the employing establishment thus generally supports that she engaged in a physical confrontation with a customer.

Appellant stopped work on March 1, 2014, and completed a claim form on March 3, 2014. She sought medical treatment on March 3, 2014. Appellant also provided a consistent history of experiencing an assault on February 28, 2014 to Dr. Jakobsen and Dr. Levinson. The police report indicated that she had a verbal dispute with a customer. Appellant, however, explained that before the police finished questioning her, the officers asked whether the investigation should be conducted by inspectors with the employing establishment. She discussed the matter with her supervisor and the police left. Appellant explained that she believed that inspectors with the employing establishment were investigating the matter.

As noted, 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.[21] The record contains no strong or persuasive evidence sufficient to cast doubt on the validity of the claim.[22] The Board thus finds that appellant has established that the altercation with the customer occurred as alleged.

The next issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.[23] The Board finds that the medical evidence of record is insufficient to establish that she sustained a cervical, shoulder, or chest condition due to the February 28, 2014 employment incident.

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[21] *Caroline Thomas*, 51 ECAB 451 (2000).

[22] *See Betty J. Smith*, 54 ECAB 174 (2002).

[23] *See T.H.*, 59 ECAB 388 (2008) (the employee must submit medical evidence to establish that the employment incident caused a personal injury).

Dr. Pinkhasov indicated that he had treated appellant beginning March 3, 2014 and that she could resume work on March 17, 2014. He did not, however, provide a diagnosis or opinion on causal relationship and thus his opinion is of little probative value.[24]

On March 18, 2014 Dr. Jakobsen diagnosed a cervical condition, a right shoulder condition, and right arm pain. He opined that appellant was unable to work. Dr. Jakobsen indicated that she injured her neck and right shoulder after a February 28, 2014 altercation at work. He did not, however, provide any rationale for his opinion explaining the basis for his opinion regarding causal relationship. Consequently, Dr. Jakobsen's report is insufficient to meet appellant's burden of proof.[25] On April 8, 2014 he diagnosed a shoulder contusion and noted that appellant related a history of the injury occurring at work when she was attacked by a customer. Dr. Jakobsen advised that she was totally disabled. While he obtained appellant's history of injury, he did not provide an independent explanation regarding how her shoulder contusion occurred as a result of the attack by a customer. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[26]

Dr. Jakobsen, in an undated form report, diagnosed shoulder derangement and a cervical contusion and checked a box marked "yes" that the conditions were caused or aggravated by employment. In a form report dated April 28, 2014, he diagnosed cervical radiculitis and a bilateral shoulder sprain and checked a box marked "yes" that the conditions were aggravated by employment when she was attacked at work. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[27] On April 16, 2014 Dr. Jakobsen indicated that he was treating appellant for chest and bilateral shoulder pain as a result of her February 28, 2014 work injury. He, however, did not provide any rationale for his opinion. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[28]

On appeal counsel contends that appellant sustained a physical condition due to the February 28, 2014 work incident. As discussed, however, the medical evidence of record is insufficient to establish that she experienced a neck, chest, or shoulder injury causally related to the February 28, 2014 work injury.

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[24] *See T.O.*, Docket No. 16-0423 (issued June 20, 2016); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[25] *See T.M.*, Docket No. 08-0975 (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[26] *See Earl David Seale*, 49 ECAB 152 (1997).

[27] *Deborah L. Beatty*, 54 ECAB 3234 (2003).

[28] *See Beverly A. Spencer*, 55 ECAB 501 (2004).

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[29] 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.[30]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[31] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[32]

ANALYSIS -- ISSUE 2

As discussed, appellant has established that on February 28, 2014 a female customer blocked a door with her foot, yelled at her, and engaged in a physical altercation. She telephoned the police and a male customer who was exiting the facility broke through the glass. Appellant did not know the female customer and thus the assault was not imported into the workplace. At the time the incident occurred, she was performing her usual work duties. Consequently, appellant has established a compensable work factor under *Cutler*.[33]

Dr. Levinson, in reports dated March 21 and April 7, 2014, discussed appellant's history of an assault by an angry customer on February 28, 2014. He diagnosed severe major depressive disorder with psychotic features, panic disorder with agoraphobia, chronic post-traumatic stress disorder, and a pain disorder. Dr. Levinson attributed appellant's diagnosed conditions to the work injury and found that she was totally disabled. In a report dated April 20, 2014, he advised that psychological testing did not reveal malingering. Dr. Levinson noted that appellant briefly saw a therapist after her husband died 13 years earlier. He diagnosed severe major depressive disorder with psychotic features, panic disorder with agoraphobia, chronic post-traumatic stress

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[29] 5 U.S.C. § 8101 *et seq*.; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[30] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[31] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[32] 20 C.F.R. § 10.121.

[33] *See supra* note 28.

disorder, and a pain disorder and attributed the conditions to the assault at work. Dr. Levinson explained how he arrived at each diagnosis based on the results of testing and his examination. On August 27, 2014 he questioned why OWCP was concerned that he did not refer to the murder of appellant's husband. Dr. Levinson advised that she worked 10 years after her husband died and raised a child, receiving only a short period of therapy. He noted that appellant now feared being attacked again and determined that her condition arose only from work factors.

In a report dated May 14, 2014, Dr. Brandt reviewed appellant's history of an attack by a customer on February 28, 2014 with injuries to her arms and chest. He diagnosed an adjustment disorder with mixed anxiety and depressed mood which he attributed to her work injury. Dr. Brandt found that appellant was totally disabled.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[34] The Board has reviewed the reports from Dr. Levinson and Dr. Brandt and finds that the physicians provided detailed examination findings and a clear opinion on causation. Their reports are supportive, unequivocal, contemporaneous in time, and based on a firm diagnosis and an accurate work history. While neither Dr. Levinson nor Dr. Brandt provided sufficient rationale to establish appellant's emotional condition claim, they are sufficient to require further development by OWCP.[35] Accordingly, the Board will remand the case to OWCP. On remand, it should further develop the medical record to determine whether appellant sustained an emotional condition on February 28, 2014 in the performance of duty and, if so, any periods of disability. Following this and such further development as deemed necessary, OWCP should issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury to her neck, chest, or shoulder on February 28, 2014 in the performance of duty. The Board further finds that the case is not in posture for decision regarding whether she sustained an emotional condition in the performance of duty on February 28, 2014.

[34] *See A.F.*, Docket No. 15-1687 (issued June 9, 2016); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[35] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 19, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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