

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

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H.C., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Philadelphia, PA, Employer )

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**Docket No. 16-0145  
Issued: March 2, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 2, 2015 appellant filed a timely appeal of an October 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she was totally disabled from April 7 through 21, 2015 due to her accepted employment injury.

**FACTUAL HISTORY**

On July 8, 2012 appellant, then a 47-year-old food service worker leader, filed an occupational disease claim (Form CA-2) alleging that she was working a temporary assignment

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

in social work services when on June 12, 2014 she was sexually harassed by a veteran. The veteran turned sideways to show he had an erection. The police came and removed him. The veteran returned 30 minutes later and approached her for help. Appellant alleged that she developed post-traumatic stress disorder (PTSD), depression, anxiety, and panic attacks.

In a letter dated July 16, 2014, OWCP informed appellant that her claim was more accurately one for a traumatic injury. It requested additional factual and medical information in support of her traumatic injury claim and allowed 30 days for a response. Appellant submitted a July 28, 2014 note from a nurse practitioner diagnosing PTSD.

Appellant also submitted a detailed narrative statement dated July 22, 2014 describing the events of June 12, 2014 in her temporary-detailed assignment at the reception desk. After recounting the incident in detail, she alleged that she was distraught and unable to leave her office while the veteran paced and yelled. About 30 minutes after the police removed him, the veteran returned to her office and asked if she could get him help. Appellant directed the veteran to sit in the waiting room and telephoned for help. The veteran eventually took a seat. Appellant sought further assistance and the assistant chief of social work came to her office and called the police to retrieve him again. She was later instructed that there was a red panic button under her desk to use in such situations. Appellant became further upset due to the lack of training she had received for this assignment. The next morning she was unable to get out of bed due to anxiety and panic attacks. Appellant's anxiety continued and she sought medical treatment on June 23, 2014 at a mental hospital. She reported that, after receiving medication, she was able to understand that her symptoms were due to PTSD resulting from prior, personal trauma as she had not had anxiety or panic attacks for 28 years. Appellant alleged that the incident with the veteran triggered things from her past trauma. She also noted that relating this information caused her anxiety and panic again.

By decision dated August 19, 2014, OWCP denied appellant's claim finding that she had failed to submit the necessary medical evidence to establish her claim.

Appellant requested reconsideration on October 17, 2014 and submitted additional medical evidence. In a report dated October 10, 2014, Dr. Mary Ann Venezia, a psychiatrist, diagnosed anxiety secondary to PTSD. She described the employment incident and opined that appellant developed anxiety as a result of the incident. Dr. Venezia opined that appellant was currently totally disabled.

In a decision dated January 22, 2015, OWCP accepted appellant's claim for a single episode of PTSD. Dr. William Greenfield, a psychiatrist, released appellant to return to work on January 12, 2015. OWCP authorized compensation benefits from October 10, 2014 through January 10, 2015 following appellant's 45 days of continuation of pay.

Dr. Greenfield completed a report on April 22, 2015 and described appellant's June 12, 2014 employment incident. He noted that appellant was released to return to work on a trial basis on January 12, 2015. Dr. Greenfield opined that during the trial period appellant experienced an increase in symptoms causing her to be unable to consistently attend her scheduled work hours. He concluded that appellant was unable to work due to her accepted condition.

Appellant filed a recurrence claim (Form CA-2a) on April 24, 2015 alleging that on April 7, 2015 she stopped work due to a recurrence of her PTSD. She noted that she had been restricted to have no direct contact with patients. Appellant alleged that after her return to work she gradually found herself worsening and eventually unable to function due to PTSD and severe depression.

On May 11, 2015 Dr. Greenfield noted appellant's June 12, 2014 employment injury and resulting depression and anxiety. He opined that since returning to work appellant experienced an increase in symptoms resulting in a return to an outpatient program. Dr. Greenfield concluded that appellant was currently unable to work and that he could not predict when she could return to work. He completed a letter dated June 5, 2015 and opined that appellant continued to experience anxiety due to PTSD as a result of the June 12, 2014 work injury. Dr. Greenfield found that she continued to experience daily intrusive memories and repetitive nightmares. He noted that appellant returned to work on a trial basis on January 12, 2015, but that her symptoms increased with her return to work and on April 7, 2015 her anxiety due to PTSD became unbearable and she left work and resumed treatment. Dr. Greenfield recommended on April 16, 2015 that appellant attends outpatient therapy three times a week, as well as weekly individual therapy and monthly medication management. He opined that appellant could not return to work due to her ongoing symptoms.

In a decision dated June 11, 2015, OWCP accepted appellant's claim for recurrence of disability effective April 7, 2015 based on Dr. Greenfield's June 5, 2015 report.

Appellant filed a Form CA-7 requesting compensation for leave without pay from April 7 through June 19, 2015. OWCP authorized compensation benefits from April 22 through June 19, 2015.

In a letter dated June 1, 2015, OWCP requested medical evidence supporting appellant's total disability for work from April 7 through 21, 2015. Appellant submitted form reports completed by Steven Weiss, a psychiatric nurse practitioner, on July 13, August 10, and October 9, 2015. On July 30, 2015 Ami Kent, a licensed clinical social worker, opined that Dr. Greenfield's June 5, 2015 letter established appellant's disability from April 7 through 21, 2015.

Appellant filed an additional Form CA-7 requesting compensation for leave without pay from July 20 through August 14, 2015. She submitted treatment notes dated March 11, 26, and April 13 and 16, 2015 from Ms. Kent and Mr. Weiss.

OWCP authorized compensation benefits from July 18 through August 14, 2015 on August 19, 2015. Appellant continued to claim compensation benefits for leave without pay from August 17 through October 16, 2015 which OWCP authorized.

By decision dated October 21, 2015, OWCP denied appellant's claim for compensation for the period April 7 through 21, 2015 finding that there was insufficient medical evidence to support her total disability for this period.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>4</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>5</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statement regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>6</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical 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.<sup>9</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>5</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>11</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from April 7 through 15, 2015 due to her accepted employment injury. The Board finds, however, that appellant has established total disability commencing on April 16, 2015 and is entitled to additional compensation from April 16 through 21, 2015.

Appellant filed a Form CA-2a on April 24, 2015 alleging that on April 7, 2015 she stopped work due to a recurrence of her PTSD. She alleged that after her return to work she gradually found herself worsening and eventually unable to function due to PTSD and severe depression. In support of this claim, appellant submitted reports from Dr. Greenfield.

Following, appellant's alleged recurrence Dr. Greenfield completed a report dated April 22, 2015 providing her history of injury. He noted appellant's return to work on a trial basis on January 12, 2015 and opined that during the trial period appellant experienced an increase in symptoms causing her to be unable to consistently attend her scheduled work hours. Dr. Greenfield concluded that appellant was unable to work due to her accepted condition. In his May 11, 2015 report, he again noted appellant's history of injury and ongoing symptoms. Dr. Greenfield concluded that appellant was currently unable to work and that he could not predict when she could return to work. These reports are not sufficiently detailed to establish a specific period of disability due to appellant's accepted recurrence of disability. Dr. Greenfield did not explain exactly when and why appellant stopped work and did not explain how her accepted condition rendered her totally disabled.

On June 5, 2015 Dr. Greenfield opined that appellant continued to experience anxiety due to PTSD as a result of the June 12, 2014 employment injury. He found that she continued to experience daily intrusive memories and repetitive nightmares. Dr. Greenfield noted that appellant returned to work on a trial basis on January 12, 2015, but that her symptoms increased with her return to work and on April 7, 2015 her anxiety due to PTSD became unbearable and she left work and resumed treatment. Dr. Greenfield recommended on April 16, 2015 that appellant attend outpatient therapy three times a week, as well as weekly individual therapy and monthly medication management. He opined that appellant could not return to work due to her ongoing symptoms. The Board finds that this report is sufficient to establish appellant's

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<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>12</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

disability for work commencing April 16, 2015. Dr. Greenfield recommended additional treatment on that date, and provided reasoning for his conclusions for recurrence of appellant's total disability, including symptoms of daily intrusive memories and repetitive nightmares. Dr. Greenfield did not, however, provide any specific details regarding appellant's disability for work from April 7, 2015 when appellant stopped work until April 15, 2015.

Appellant also submitted a series of reports from Mr. Weiss, a psychiatric nurse practitioner, and Ms. Kent, a licensed clinical social worker. As neither a nurse practitioner<sup>13</sup> nor a social worker<sup>14</sup> are considered physicians for the purposes of FECA. Reports from these practitioners thus do not constitute medical evidence, and their findings and opinions do not suffice for purposes of establishing entitlement to FECA benefits.

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 total disability for the period April 7 through 15, 2015. The Board further finds that appellant has met her burden of proof to establish total disability commencing April 16, 2015 and that she is entitled to wage-loss compensation through April 21, 2015.

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<sup>13</sup> *Supra* note 11; a nurse practitioner is not a "physician" pursuant to FECA. Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *Paul Foster*, 56 ECAB 208 (2004).

<sup>14</sup> *P.H.*, Docket No. 15-0482 (issued August 4, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 2, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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