

On appeal, appellant's counsel argues that the decision should be reversed or remanded as the hearing representative failed to address all of the medical evidence.

FACTUAL HISTORY

On February 5, 2015 appellant, then a 57-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that on February 2, 2015 a mentally disabled young man, between 16 to 18 years old and six feet tall, came in the backside of the clerk's window counter and hugged her. She alleged that as a result of this incident she suffered stress and that her "heart was pounding continually." The employing establishment controverted appellant's claim as she had not submitted adequate medical evidence in support of her claim.

Appellant submitted a February 2, 2015 duty status report (Form CA-17) signed by a nurse practitioner indicating that appellant could not work due to a stress reaction, and that she would see her primary physician for work release. She also submitted a February 5, 2015 Form CA-17 and physician's note signed by Dr. Wonsock Shin, a Board-certified internist, diagnosing post-traumatic stress disorder (PTSD) and indicating that she was currently off work, but could return to work on February 9, 2015.

By letter dated February 12, 2015, OWCP informed appellant that further evidence, including medical evidence, was necessary to support her claim. Appellant was afforded 30 days to submit additional evidence.

In a February 12, 2015 progress report and accompanying notes, Dr. Shin noted that appellant had been having chest pains on and off, which was worse during her work. He diagnosed PTSD, palpitations, undiagnosed cardiac murmurs, and chest pain. Dr. Shin noted anxiety from appellant's traumatic experience and noted that she was to be off work for two weeks for psychological counseling for PTSD. In a February 20, 2015 note, he reported that he saw appellant for an initial evaluation on February 5, 2015, that she suffered from an emotional disorder as a result of injury during her work, that she was seen in the Emergency Department for initial evaluation, and that she came to his office for further evaluation. Dr. Shin noted that she was emotionally unstable and in need of rest and medicine for her anxiety and stress, and that at the present time she was not able to go back to work. In a February 26, 2015 note, he placed appellant off work for one month.

In a February 21, 2015 note, Gemma I. Sohn, a licensed clinical social worker, indicated that appellant was seen for an initial evaluation on that date and that she showed signs of PTSD as a result of an incident at the employing establishment on February 2, 2015. She noted that appellant's physical symptoms included tension, anxiety, palpitation, flashbacks, and overall hypervigilance. Ms. Sohn also noted visible signs of psychological distress including anxiety, difficulty focusing, heightened irritability, and fear of being alone. She noted that appellant was seen by Dr. Shin, and attempted to return to work; but she experienced adverse reactions; and her accelerated return to work seemed to have added to her current difficulties. Ms. Sohn recommended that appellant continue psychotherapy and gradually increase her work hours.

In a March 4, 2015 statement, appellant indicated that the young man who appeared to have a mental disability pushed the swing door and ran through the backside window to the clerk

station, came to her station, hugged her and tried to put his face on her face. She noted that she tried to back up from him until there was no more space. Appellant stated that she felt trapped, attacked, and terrified. She noted a customer reacted and firmly told the young man to back away, which he did, but after a couple of minutes the young man again attempted to approach her and this time the customer was able to physically sustain him and pulled him back, at which point the young man ran out of the employing establishment. Appellant noted that, when she returned to work on February 9, 2015, the swing door was not secured and that when she submitted a written request, the officer in charge told her to either relocate to a different workstation, get new job training, or do window duty. She stated that his response made her nervous so she indicated she would do window duty, but that when she worked window, she kept an eye on the door and had an insecure and scared feeling. Appellant noted that she saw Dr. Shin who gave her new medication for chest pain and advised her to seek psychological counseling.

In a March 17, 2015 report, Dr. Keith Chu, a Board-certified family practitioner, diagnosed appellant with chest pain, palpitations, anxiety, and hypothyroidism. He noted that the onset of pain was sudden about six weeks ago and was precipitated by stress and exertion.

In a decision dated March 30, 2015, OWCP denied appellant's claim as she had not submitted any medical evidence containing a medical diagnosis in connection with the incidents described.

On April 19, 2015 appellant requested an oral hearing before an OWCP hearing representative. She described the incident when she was trapped by the young man who came in through the swinging doors where she worked, passed three other clerks, and then hugged her. Appellant described the stress she underwent when she returned to work. She also described her medical treatments.

In a June 17, 2015 report, Dr. Edward S. Kim, a Board-certified psychiatrist, noted that appellant has been off work from the employing establishment for four months for PTSD. He diagnosed lumbar radiculopathy -- unchanged. In a July 8, 2015 note, Dr. Kim indicated that appellant was excused from work from July 9 through August 1, 2014 due to medical reasons, but would be able to return to work on August 3, 2015.

In a March 31, 2015 report, Dr. Shin noted PTSD, palpitations, and undiagnosed cardiac murmurs.

In a July 31, 2015 report, Dr. Hei-Jung C. Kim, a Board-certified psychiatrist, noted appellant's history and indicated that on February 2, 2015 she was approached by a teenager who came behind the counter through a swing door and tried to kiss her, and that since then she has been fearful of working for the employing establishment and does not feel safe. He recommended gradual return to work, and avoidance of working where she would deal with strangers. Dr. Kim noted that appellant was attempting to overcome her fears of going back to the site of the trauma. He listed Axis 1 diagnoses as major depression, recurrent, mild; generalized anxiety disorder, moderate; PTSD, mild; and panic disorder with agoraphobia, in remission. For Axis 2, Dr. Kim listed cervical disc disease, paresthesia to right ulnar nerve areas of right arm/hands; tinnitus, indigestion, bruxism, and constipation; lumbar disc disease; sciatica

left leg; and paresthesia in left foot. For Axis 3, he listed stress, extreme; injury at work in 2013; traumatic incident at the employing establishment on February 2, 2015; son's difficulties, financial worries, and workers' compensation claim.

In a July 31, 2015 report, Ms. Sohn, a social worker, indicated that she had seen appellant on multiple occasions between February 28 and June 27, 2015. She diagnosed major depression, recurrent, moderate; PTSD, moderate to severe; generalized anxiety disorder; and panic disorder. Ms. Sohn described appellant's history of the employment incident. She noted that, at the time of the initial assessment, appellant showed moderate-to-severe psychosomatic symptoms of PTSD as a result of the reported incident, and noted that PTSD was characterized by her reexperiencing intense fear and anxiety, following exposure to a traumatic incident. Ms. Sohn noted appellant's psychological distresses included anxiety, difficult in focusing, heightened irritability, fear of being alone, and overall hypervigilance. She noted that appellant's financial status due to her not being able to work remains a contributing factor to the level of anxiety and depression.

In an August 19, 2015 report, Dr. H. Kim noted that he reviewed the incident of February 2, 2015. He noted that based upon his discussions with appellant and evaluating appellant's condition, it was his professional opinion that the workplace incident resulted in appellant's current episode of PTSD as well as major depression, generalized anxiety disorder, panic disorder and agoraphobia.

In an August 29, 2015 report, Ms. Sohn again listed diagnoses of major depression, PTSD, generalized anxiety disorder; and panic disorder with agoraphobia. She noted that appellant was able to work part time and may increase her hours in the future. If all goes well, Ms. Sohn indicated that appellant should be able to return to her full-time work capacity by the end of the year without any notable residual effects.

In a decision dated September 30, 2015, the hearing representative affirmed the March 30, 2015 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³ including that he or she is an employee within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*, *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁷

ANALYSIS

OWCP has accepted that the employment incident of February 2, 2015 occurred when a young mentally disabled man came into her work area and tried to hug her. The issue is whether appellant's PTSD and other medical conditions resulted from the February 2, 2015 incident. The Board finds that appellant has failed to meet her burden of proof to establish a causal connection between the conditions for which compensation is claimed and the employment incident.

Appellant has not submitted a well-rationalized report by a physician establishing that her accepted diagnosis of PTSD is causally related to the accepted February 2, 2015 incident. Dr. Shin's reports did not contain a description of the February 2, 2015 incident nor any opinion addressing causal relationship. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.⁸ Dr. E. Kim in his June 17, 2015 report also provided diagnoses and excused appellant from work, but offered no opinion regarding causal relationship. Similarly, Dr. Chu only gave diagnoses and did not address the employment incident. As such, lacking a rationalized medical opinion explain causal relationship, these reports are of limited probative value.⁹

Dr. H. Kim did address the incident when discussing appellant's history, and also stated multiple factors caused her PTSD and generalized anxiety, including the February 2, 2015 incident. In his August 19, 2015 report, he stated that he reviewed the incident of February 2, 2015 and that based upon his discussions with appellant and medically evaluating appellant's condition, it was his professional opinion that the workplace incident resulted in appellant's current episode of PTSD as well as major depression, generalized anxiety disorder, panic disorder and agoraphobia. Although Dr. Kim's report is generally supportive of causal relationship, he does not provide adequate medical rationale explaining the basis of his opinion

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

⁹ *Id.*

regarding causal relationship. He did not explain the process by which appellant's accepted employment incident caused the diagnosed condition and why the condition would not be due to the other multiple nonwork factors that he listed.¹⁰ 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.¹¹

The February 2, 2015 CA-17 form from a nurse practitioner indicated that appellant could not return to work due to a stress reaction. This evidence, however, has no probative value regarding causal relationship as nurse practitioners are not considered physicians as defined under FECA.¹²

Ms. Sohn addressed appellant's employment factors. However, she is not a physician but is a licensed social worker. It is well established that a social worker is not a physician under FECA and therefore her opinions are of no probative medical value.¹³

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an emotional condition causally related to her accepted employment incident of February 2, 2015, she has failed to meet her burden of proof to establish a claim for compensation.

The Board finds that counsel's arguments that the hearing representative did not address the medical evidence submitted at and after the hearing is without merit, as these reports were noted in his 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 an emotional condition in the performance of duty on February 2, 2015.

¹⁰ *J.S.*, Docket No. 14-818 (issued August 7, 2014).

¹¹ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹² *N.F.*, Docket No. 16-741 (issued July 19, 2016). The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not considered a physician as defined under FECA).

¹³ *W.C.*, Docket No. 15-1280 (issued November 13, 2015); *R.W.*, Docket No. 14-1890 (issued February 11, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2014 is affirmed.

Issued: September 2, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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