

FACTUAL HISTORY

On July 1, 2016 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 23, 2016 he sustained acute stress disorder when someone pulled a gun on him while he was making a delivery. He stopped work on the date of injury and has not returned to work.

In a June 10, 2016 narrative statement, appellant further described the May 23, 2016 incident. He stated that he passed a man in a building where he was about to deliver a parcel to an apartment when the man mouthed something and pointed a gun at him. Appellant related that the man looked at him, and another individual in the stairwell, up and down. The gunman then went downstairs. Appellant related that he continued to deliver packages in the building and shortly afterwards contacted a coworker and his supervisor about the incident. He returned to the employing establishment and informed his supervisor that he was unable to continue his assignment.

In a June 15, 2016 report, Lisa Braun, a licensed clinical social worker, noted appellant's history which included having a gun pulled on him as he delivered packages at work. She provided findings on mental examination and diagnosed acute stress disorder. In a June 17, 2016 letter, Ms. Braun reiterated her diagnosis of acute stress disorder. She related that appellant's symptoms would interfere with his ability to work for at least one month and possibly longer.

A New York City Police Department complaint noted that on May 23, 2016 an unknown perpetrator pointed a gun at appellant and mumbled an unknown statement to him while he was delivering packages. The perpetrator looked at him, as well as an unknown man in the stairway, up and down and then fled in an unknown direction.

In a July 18, 2016 letter, OWCP advised appellant of the deficiencies in his claim and requested that he submit additional factual and medical evidence, including a rationalized report from his physician, which explained the cause of his emotional condition. It also requested that the employing establishment respond to his allegations and submit evidence regarding his work duties and any medical evidence, if he had been treated at its medical facility. OWCP advised that medical evidence must be submitted by a qualified physician and noted that a social worker was not considered to be a physician under FECA.

In response to the questions posed by OWCP and in undated narrative statements, appellant provided, among other things, additional details about the May 23, 2016 incident, and his inability to work following this incident.

In a July 29, 2016 letter, Ms. Braun restated her diagnosis of acute stress disorder.

By decision dated August 18, 2016, OWCP denied appellant's claim as the medical evidence of record did not contain a medical diagnosis from a qualified physician in connection with the accepted May 23, 2016 employment incident. It noted that a licensed clinical social worker was not a physician as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence² including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.³

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.⁴ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused by the accepted May 23, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had an emotional condition causally related to the accepted employment incident.

In support of his claim, appellant submitted reports dated June 15 and 17 and July 29, 2016 from Ms. Braun, a licensed clinical social worker. However, it is well established that a

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

licensed clinical social worker is not considered a physician as defined under FECA and therefore her reports are of no probative medical value.⁹

On appeal, appellant contends that his psychiatric condition and resultant total disability from work were caused by the May 23, 2016 work incident. For the reasons stated above, the Board finds that the medical evidence is insufficient to establish appellant's claim.

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 failed to meet his burden of proof to establish an emotional condition causally related to the May 23, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ *R.W.*, Docket No. 14-1890 (issued February 11, 2015); *see also* 5 U.S.C. § 8101(2), which provides that 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.