



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 25, 2010 appellant, then a 56-year-old administrative support assistant, filed a traumatic injury claim (Form CA-1) for an unspecified "psychological" injury he allegedly sustained on August 6, 2010.<sup>3</sup> He alleged that, at 2:35 p.m. on August 6, 2010, he was walking from work to a satellite parking facility when he was robbed at gunpoint. The employing establishment controverted the claim asserting that appellant was reportedly off-premises and not performing his official duties when the incident occurred. Although the satellite parking facility was ultimately deemed part of the employing establishment premises, it was unclear why appellant was walking to the parking facility at 2:35 p.m. when his regularly scheduled tour of duty did not end until 4:30 p.m.

By decision dated October 18, 2010, OWCP denied appellant's claim, finding that he had not established an injury in the performance of duty as alleged. It found that, by leaving his place of employment to go to the satellite parking facility, appellant had effectively removed himself from coverage under FECA. Appellant requested reconsideration on October 15, 2011 and asserted that he was on sick leave at the time of the August 10, 2010 incident. By decision dated January 3, 2012, OWCP denied modification of its prior decision. Appellant appealed to the Board. By decision dated January 11, 2013, the Board affirmed OWCP's January 3, 2012 decision.<sup>4</sup>

Appellant subsequently requested reconsideration before OWCP. He submitted evidence confirming that the employing establishment had approved his request for two hours of sick leave beginning 2:30 p.m., August 6, 2010. By decision dated March 18, 2013, OWCP found that appellant was in the performance of duty at the time of the August 6, 2010 employment incident. It also accepted his traumatic injury claim for aggravation of major depressive disorder and aggravation of anxiety disorder. On December 3, 2013 OWCP expanded appellant's claim to include post-traumatic stress disorder (PTSD) as an accepted condition.<sup>5</sup>

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<sup>2</sup> Docket No. 12-1069 (issued January 11, 2013).

<sup>3</sup> Appellant stopped work on August 10, 2010 and returned to his usual employment on August 13, 2010.

<sup>4</sup> Appellant attempted to submit evidence of his leave status when the appeal was pending before the Board. However, the Board explained that it was precluded from considering appellant's new evidence for the first time on appeal. *Id.*

<sup>5</sup> OWCP expanded the accepted conditions based on the November 26, 2013 report of Dr. James Pallas, a Board-certified psychiatrist and OWCP referral physician. Dr. Pallas explained that appellant's condition was better defined as PTSD rather than an aggravation of major depression and anxiety disorder. OWCP prepared an October 24, 2013 statement of accepted facts (SOAF) in connection with Dr. Pallas' second opinion evaluation. Dr. Pallas found that appellant's PTSD was a direct result of the work-related armed robbery described in the SOAF.

OWCP paid appellant wage-loss compensation for intermittent time lost from work due to medical appointments and disability from employment.<sup>6</sup>

Appellant, on April 25, 2017, filed a recurrence claim (Form CA-2a), alleging that, on an unspecified date, he sustained a recurrence of the need for medical treatment causally related to his August 10, 2010 work injury.<sup>7</sup> He advised that he experienced anxiety and depression due to having to drive every day past the area where the robbery occurred.

In an April 25, 2017 statement, appellant described the robbery on August 6, 2010 and its effect on his activities of daily living, including his ability to sleep. He related that he experienced stress due to financial hardship resulting from his injury.

Appellant submitted clinic notes from 2015 and 2016 authored by Dr. Jennifer B. Levin, a clinical psychologist. On January 12, 2016 Dr. Levin noted that appellant experienced symptoms of anxiety when he was in the place where the robbery occurred. On March 22, 2016 she indicated that appellant could see the place where the robbery occurred while engaged in cardiac rehabilitation.

In a letter dated April 25, 2017, Dr. Levin advised that she was treating appellant for PTSD and recurrent major depressive disorder. He attended psychotherapy sessions beginning in August 2010 after being “held up at gunpoint at his place of work.”

OWCP, in an April 27, 2017 development letter, informed appellant of the definition of a recurrence of disability and requested that he submit a report from his physician addressing how his disability worsened such that he was disabled from employment.

By decision dated May 31, 2017, OWCP denied appellant’s recurrence claim, finding that he had not established that he was disabled or further disabled due to a material change or worsening of his accepted work-related conditions. It explained that there was no medical evidence on file that clearly established depression as causally related to the August 6, 2010 work injury in contrast to nonwork-related factors.

In a report dated May 31, 2017, received by OWCP on June 16, 2017, Dr. David Hahn, a Board-certified psychiatrist, diagnosed major depressive disorder, an unspecified anxiety disorder, and PTSD. He attributed appellant’s PTSD to being robbed at gunpoint at a parking lot of the employing establishment and noted that the incident also worsened his depression. Dr. Hahn related, “Limitations due to the above-noted conditions include an inability to handle the stress of working with veterans or others. He has requested an accommodation to work in an environment

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<sup>6</sup> By decision dated January 29, 2015, OWCP denied appellant’s request for wage-loss compensation from December 10 to 19, 2014 as the medical evidence failed to establish disability during this period. By decision dated April 17, 2015, it denied his claim for wage-loss compensation on February 23, 2015. By decision dated June 20, 2016, OWCP denied appellant’s claim for wage-loss compensation from April 25 to June 10, 2016. It noted that he had an accepted back condition that required him to work reduced hours.

<sup>7</sup> Appellant did not stop work at the time he filed his April 25, 2017 notice of recurrence.

without interaction with veterans either in person or on the phone. When his symptoms are worsened, [appellant] is unable to maintain a consistent work schedule.”

Appellant, on May 31, 2017, attributed his current symptoms to driving past the area where he was robbed at gunpoint.

On July 17, 2017 appellant requested reconsideration. He submitted treatment notes dated 2010 through 2016. In a report dated June 2, 2016, Dr. Hahn diagnosed recurrent major depressive disorder, PTSD, and insomnia. He indicated that appellant was off work on medical leave and recommended that he remain off work pending reevaluation. On July 6, 2016 Dr. Hahn related that appellant had requested work accommodations. On September 28, 2016 he indicated that appellant had symptoms of PTSD passing by the parking lot where the robbery occurred and noted that he had been working only part time since September 12, 2016 because of a back condition.

By decision dated September 21, 2017, OWCP denied modification of its May 31, 2017 decision. Citing a provision in the FECA Procedure Manual, it found that “any claim for a recurrence of disability due to an emotional stress condition must be filed as a new claim.” Therefore, OWCP determined that any recurrence of disability from work in the current case remained denied. It further advised appellant that he could file a new claim, and if accepted he could then file a claim for compensation under that case. Additionally, OWCP found that the medical evidence received in the current claim, particularly Dr. Hahn’s May 31, 2017 report, was sufficient to reopen the case for medical treatment of the accepted conditions only. Consequently, it denied modification of its May 31, 2017 decision with “respect to any recurrence of disability,” and reopened the current claim “for medical treatment *of the accepted conditions only*.”

### **LEGAL PRECEDENT**

Recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.<sup>8</sup> Continuous treatment for the original condition or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment.<sup>9</sup>

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>10</sup> Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his

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<sup>8</sup> 20 C.F.R. § 10.5(y).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at § 10.5(x).

or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>11</sup>

A recurrence should be reported on Form CA-2a if that recurrence causes the employee to lose time from work and incur a wage loss, or if the employee experiences a renewed need for treatment after previously being released from care.<sup>12</sup> However, a notice of recurrence should not be filed when a new injury, new occupational disease, or new event contributing to an already existing occupational disease has occurred.<sup>13</sup> In these instances, the employee should file Form CA-1 or CA-2.<sup>14</sup>

The FECA procedure manual provides additional guidance as to when a notice of recurrence (Form CA-2a) should be filed. OWCP's procedures provide in relevant part that a recurrence of disability does not include a work stoppage caused by "[a] condition which results from a new injury, even if it involves the same area of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease."<sup>15</sup> If a new work-related injury or exposure occurs, Form CA-1 or CA-2 should be completed accordingly.<sup>16</sup> The FECA procedure manual further provides:

"[I]n some occupational disease cases where the diagnosis remains the same but disability increases due to additional exposure to the same work factors, the claimant may submit Form CA-2a rather than filing a new claim. For instance, a claimant with carpal tunnel syndrome who has returned to work but whose repetitive work activities result in the need for surgery, is not required to file a new claim.

"Note, however, that in emotional stress and hearing loss cases, a new claim should always be filed."<sup>17</sup>

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.<sup>18</sup> Thus, a subsequent

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at § 10.104(a).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3c(5) (June 2013).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>19</sup>

The Board has recognized PTSD as a compensable consequential injury under circumstances where a certain triggering event has been medically demonstrated to have caused a reawakening or exacerbation of PTSD symptoms.<sup>20</sup>

### ANALYSIS

OWCP accepted that on August 6, 2010 appellant was robbed at gunpoint while leaving work. The incident occurred when appellant was walking to an employing establishment satellite parking facility. OWCP initially accepted his traumatic injury claim for aggravation of major depressive disorder (recurrent episode -- moderate) and aggravation of anxiety disorder. On December 3, 2013 it expanded appellant's claim to include PTSD as an accepted condition.

On April 25, 2017 appellant filed a notice of recurrence (Form CA-2a) for medical treatment only, which he attributed to his previous August 6, 2010 employment injury. He stated that he was feeling depressed and anxious because of having to drive every day past the area where the robbery occurred. Appellant submitted additional medical evidence in support of his recurrence claim, which included Dr. Hahn's May 31, 2017 report. Dr. Hahn noted that appellant continued to have active symptoms of PTSD, major depressive disorder, and anxiety disorder. He further indicated that appellant's PTSD symptoms were a direct result of the robbery at gunpoint that occurred at the employing establishment parking lot. Dr. Hahn explained that appellant's ongoing symptoms of PTSD included intrusive memories, nightmares and flashbacks of the robbery, hypervigilance when walking from his car to work, or driving near the lot where the robbery occurred, and avoidance of those areas to the extent possible.

Based on Dr. Hahn's May 31, 2017 report, OWCP reopened the current claim for medical treatment only. In essence, it accepted appellant's April 25, 2017 claim for recurrence of a medical condition. However, OWCP advised appellant that he needed to file a new claim if he wished to claim a recurrence of disability. Citing FECA procedure manual, Chapter 2.1500.3c(5), it explained that "any claim for a recurrence of disability due to an emotional stress condition must be filed as a new claim."

OWCP's regulations and the FECA procedure manual both identify situations where a new claim should be filed, be it a traumatic injury (Form CA-1) or new occupational disease (Form CA-2), instead of a claim for recurrence of disability (Form CA-2a). Chapter 2.1500.3c(5) of the FECA procedure manual indicates that "in some occupational disease cases ... the claimant may submit Form CA-2a rather than filing a new claim." However, in "emotional stress ... cases, a new claim should always be filed."<sup>21</sup> As noted, OWCP relied on Chapter 2.1500.3c(5) as the basis

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<sup>19</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>20</sup> *See P.H.*, Docket No. 15-0482 (issued August 4, 2015).

<sup>21</sup> *See supra* note 15.

for requiring appellant to file a new claim instead of adjudicating any entitlement to wage-loss/disability compensation under the current claim.

The Board finds that OWCP's application of Chapter 2.1500.3c(5) under these current circumstances is misplaced. First, appellant sustained a traumatic injury on August 6, 2010. He was robbed at gunpoint and OWCP accepted his traumatic injury claim for various psychiatric/emotional conditions, including PTSD. This was not originally an occupational disease claim. Moreover, on his April 25, 2017 Form CA-2a, appellant did not describe any additional occupational exposure as the cause of his current condition. He stated that he regularly drove past the area where the robbery occurred, which resulted in feelings of depression and anxiety. Dr. Hahn characterized it as "intrusive memories" and "flashbacks." Unless appellant's duties as an administrative support assistant require some element of driving past the employing establishment's satellite parking facility, it is not readily apparent how the information he provided in connection with his recurrence claim constitutes either a new occupational disease or traumatic injury claim.<sup>22</sup> Therefore, requiring appellant to file a separate claim under the circumstances is unnecessary. This Board finds that this is not the type of emotional stress case where a new claim should always be filed.<sup>23</sup>

Essentially, both appellant and Dr. Hahn described appellant's close proximity to the site where the August 6, 2010 assault occurred as a trigger of his accepted condition of PTSD. The Board has recognized PTSD as a compensable consequential injury under circumstances where a certain triggering event has been medically demonstrated to have caused a reawakening or exacerbation of PTSD symptoms.<sup>24</sup> OWCP, however, did not adjudicate whether appellant sustained a consequential injury due to his accepted August 6, 2010 traumatic injury. The Board, therefore, finds that the case must be remanded for OWCP to evaluate the medical evidence to determine if appellant sustained a consequential injury resulting from his August 6, 2010 work injury. After such further development as deemed necessary, it should issue a *de novo* decision.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>22</sup> As noted, the record includes an October 24, 2013 statement of accepted facts (SOAF), which, among other things, describes appellant's duties as an administrative support assistant.

<sup>23</sup> *Id.*

<sup>24</sup> See *P.H.*, Docket No. 11-1670 (issued August 16, 2012); see also *Charlet Garrett Smith*, 47 ECAB 562 (1996) (where medical evidence established that a claimant attended a required training session where reference was made to an employment incident that had caused his PTSD condition and brought back memories of the incident, and the Board found this was a consequential injury that was the direct and natural result of the accepted PTSD condition).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 2, 2018  
Washington, DC

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

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

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