



## ISSUE

The issue is whether appellant has met her burden of proof to establish physical injuries and mental conditions in the performance of duty on September 22, 2015, as alleged.

## FACTUAL HISTORY

On February 8, 2016 appellant, then a 46-year-old multi-family housing specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2015 she was drugged, followed to her room, and sexually assaulted while attending an employment-related conference at a hotel. She reported that the assault resulted in bruising, bleeding, and post-traumatic stress disorder (PTSD). The employing establish acknowledged that appellant was in the performance of duty at the time of the incident and that the injury had not resulted from willful misconduct, intoxication, or an intent to self-harm. It also acknowledged that its knowledge of the facts of the incident agreed with statements of appellant and/or witnesses. The employing establishment submitted documentation of appellant's request for a leave of absence and leave transfer application.

In a development letter dated February 9, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the requested information. In a separate letter of the same date, it asked the employing establishment to respond to appellant's claim and provide information regarding her travel status.

On February 19, 2016 B.H., an administrative program director at the employing establishment, confirmed that appellant was authorized to travel and participate in the employment-related conference at a hotel on the claimed date of injury. She indicated that the identity of the perpetrator was unknown and that it was unknown if there were any witnesses, and that, although appellant reported the incident to her, appellant had not wanted to report it further. B.H. indicated that appellant had used leave, advanced leave, and donated leave subsequent to September 28, 2015. She also included information about the hotel and other employing establishment conference attendees.

In an attached September 25, 2015 e-mail, which had been sent directly to B.H., appellant described the September 22, 2015 incident. She wrote that after an evening event on that date she went to the hotel bar with several coworkers who were attending the conference. While there, a coworker began talking to a group of people attending another conference at the hotel. Appellant indicated that she switched to drinking water and began to feel unwell. She informed another coworker that she was going to her room to sleep. As appellant entered the elevator and pressed the number for her floor, a man who was from the group attending the other conference joined her in the elevator. She asked him what floor he was on and he said that he was on the same floor as her. As appellant was walking to her room after exiting the elevator, she noticed that he was following her. When she opened the door to her hotel room, the assailant pushed her into her room and sexually assaulted her. Appellant indicated that she had not filed a police report, but had seen a physician on September 24, 2015 who ordered tests to screen for sexually transmitted diseases (STDs) and recommended that she contact a rape crisis center. She explained her emotional reaction to the assault, noting that she was "a mess" and could not focus at that time. B.H. noted

that she provided support and comfort and that the employing establishment was working with appellant to support her need to be away from work.

By decision dated March 15, 2016, OWCP denied appellant's traumatic injury claim, finding that fact of injury had not been established.<sup>3</sup>

On April 5, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of the request for an oral hearing, appellant submitted an October 5, 2015 report by Kristine Kaufman, a certified nurse practitioner, who reported that appellant was evaluated for follow up of a prior visit. Ms. Kaufman noted a history of a rape, which occurred for over two hours, after an assailant forced entrance into her hotel room while she was on a work trip. The rape included rectal penetration. Ms. Kaufman indicated that appellant believed that she had been given something in her drink to render her unable to fight back noting that she had difficulty moving her extremities, some vague loss of memory, and overwhelming anxiety and insomnia. She observed that appellant had bruises to her upper forearms and inner thighs and noted that she had tested positive for gonorrhea. On examination Ms. Kaufman noted a small rectal tear remained present. She diagnosed rectal tear, rape trauma, and gonorrhea and noted that appellant had an appointment with a counselor.<sup>4</sup>

Ms. Kaufman continued to see appellant in follow ups. On October 27, 2015 she noted that appellant was experiencing insomnia secondary to rape. On November 18, 2015 Ms. Kaufman additionally diagnosed anxiety disorder due to a known physical condition and PTSD. On January 7, 2016 she diagnosed anxiety disorder and advised that appellant could return to work for five hours daily. In a report dated February 29, 2016, Ms. Kaufman noted seeing appellant for an ongoing colorectal bleeding condition. She noted that appellant was seeing Dr. El Zubeidi, a gastroenterologist, for this problem. Ms. Kaufmann documented a history of sexual assault as a teenager. In a March 7, 2016 report, she diagnosed PTSD and indicated that appellant was still seeing a counselor.

Appellant filed a police report on May 17, 2016. A law enforcement officer submitted a narrative account of the September 22, 2015 sexual assault. The report included a statement dated April 26, 2016 from a coworker who drove appellant home from the conference, and a statement in which appellant described the incident in detail. The police report documented bruising on appellant's arms, legs, and chest and rectal bleeding following the sexual assault.

At the hearing, held telephonically on November 14, 2016, appellant testified that she had been seeing a psychiatrist and counselor for over a year and was being treated for PTSD. The hearing representative described the type of medical evidence needed and asked appellant to submit a report from her September 24, 2015 appointment. The hearing representative held the case record open for 30 days for the submission of additional evidence.

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<sup>3</sup> The record, as presented to the Board on appeal, contains only the first page of the March 15, 2016 decision.

<sup>4</sup> The record contains medical documentation that predates the September 22, 2015 assault.

Appellant thereafter submitted reports from Tiffany R. Pottkotter, a psychiatric mental health nurse practitioner. On April 25, 2016 Ms. Pottkotter indicated that appellant had been referred by her therapist. She noted the history of sexual assault and reported that appellant had surgery on April 22, 2016 to correct the rectal damage caused by the assault. Ms. Pottkotter indicated that appellant had returned to work on January 11, 2016, but that she could not do her job because it required her to go to people's doors, and she did not know who was behind the doors. She diagnosed PTSD and moderate recurrent major depressive disorder.

In a report dated May 20, 2016, Ms. Pottkotter noted that appellant's surgery had gone well and she was feeling better physically. She reported that appellant had gone to Cleveland to file a police report. In a report dated June 16, 2016, Ms. Pottkotter noted that appellant had been feeling much better and had returned to work on June 13, 2016. It was also noted that appellant was working to train an emotional support dog. However, in an August 12, 2016 report, Ms. Pottkotter indicated that appellant was still struggling with insomnia. In a note dated November 18, 2016, she advised that appellant continued to exhibit hypervigilance, depression, and anxiety. Ms. Pottkotter noted that appellant continued to receive counseling due to the sexual assault.

By decision dated January 30, 2017, the hearing representative affirmed the March 15, 2016 decision, finding that appellant had not established a diagnosis in connection with the accepted employment incident.

In correspondence to counsel dated July 27, 2017, a representative of Dr. Ryan Travis, a Board-certified psychiatrist, indicated that he was uncomfortable providing a report establishing causation in appellant's case, as he was not a forensic psychiatrist or psychologist. It was noted that he could only report what appellant told him about her condition.

On October 25, 2017 appellant, through counsel, requested reconsideration of OWCP's January 30, 2017 decision and submitted additional medical evidence.

In a report dated May 24, 2017, Dr. Travis noted that appellant had been referred by Ms. Pottkotter. He reported a history that she was sexually assaulted at a work conference and subsequently developed PTSD, which she felt impacted her ability to work. Dr. Travis indicated that appellant continued to have very high levels of anxiety and depression. He noted that appellant had returned to work part time with some accommodations, but that she was not functioning well and complained of difficulty with focus and concentration, depression, and lack of energy and motivation. Appellant reported that she would prefer to stay in her home at all times because that was where she felt safe. She noted that she was very nervous and fearful when away from her home, including at work. Appellant explained that she felt anxious and overwhelmed when interacting with people, particularly with males because this triggered reminders of the sexual assault. She reported that she slept poorly and had nightmares, which impaired her functioning at work because she always felt exhausted. On psychiatric examination, Dr. Travis noted that her mood, anxiety, energy, and attention were poor, while her sleep and memory were fair. He advised that appellant should continue with her current medication management and therapy and would discuss the possibility of a referral to a forensic psychiatrist or psychologist if a more formal evaluation was needed.

In a letter dated August 31, 2017, Dr. Brad Bundy, an osteopath specializing in psychiatry, indicated that he had seen appellant on an in-patient basis from February 27 through March 2, 2017. He provided a primary diagnosis at that time of major depression with underlying symptoms of PTSD. Dr. Bundy indicated that appellant was stabilized and referred to outpatient treatment. He noted that she returned on August 31, 2017 for a second opinion evaluation. Dr. Bundy reported that at that time she told him that her depressive and anxious symptoms continued to respond well to treatment, but that she still experienced some PTSD symptoms that were secondary to the traumatic rape. He indicated that appellant had also discussed the PTSD symptoms while hospitalized. Dr. Bundy noted that appellant continued to have nightmares and flashbacks, hyperarousal, and avoidance of situations associated with the trauma. He recommended that she continue to follow up with outpatient treatment.

By decision dated May 16, 2018, OWCP denied modification of the January 30, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> 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.<sup>7</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>8</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally

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

<sup>6</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

only in the form of medical evidence, to establish that the employment incident caused a personal injury.

Pursuant to OWCP's procedures, no development of a claim is necessary when there is a visible injury, even when time has been lost from work due to disability, following a serious injury (motor vehicle accidents, stabbings, shootings, *etc.*).<sup>9</sup> The procedures provide that no development is necessary when the employing establishment does not dispute the facts of the case and there are no questionable circumstances surrounding the case. No medical report is required to establish a minor condition such as a laceration.<sup>10</sup> Sound judgment should be employed in these cases to provide appropriate and immediate medical care for the injured worker since expeditious treatment for these injuries is critical.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish a physical injury causally related to the September 22, 2015 employment incident. The Board further finds that appellant has established diagnosed mental conditions in connection to the accepted September 22, 2015 employment incident.

The employing establishment does not dispute that appellant was sexually assaulted on September 22, 2015 in a hotel room in Cleveland, Ohio while in travel status for a work conference. The Board has held that an employee on travel status or a special mission for his or her employer is under the protection of FECA 24 hours a day with respect to any injury that results from activities incidental to such duties.<sup>12</sup> Thus, injuries arising out of the necessity of staying in hotels or eating in restaurants away from home are presumed compensable.<sup>13</sup> The Board finds that due to her travel status the sexual assault occurred in the performance of duty, as alleged.

In the course of the sexual assault appellant sustained visible injuries. Visible injuries resulting from an assault of a federal employee have previously been accepted as compensable pursuant to OWCP's regulations and they do not require claim development or medical record support.<sup>14</sup> Appellant sustained a rectal tear and bruises on her arms, legs, and chest -- all of which were visible to her health care providers and were and documented to exist in medical reports contemporaneous to September 22, 2015. As the employing establishment agreed with the factual

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<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); see also *I.H.*, Docket No. 19-1678 (issued April 21, 2020); *K.P.*, Docket No. 18-0350 (issued February 11, 2020); *B.H.*, Docket No. 11-0812 (issued January 12, 2012).

<sup>10</sup> *Id.*

<sup>11</sup> See *E.H.*, Docket No. 19-1282 (issued December 23, 2019); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>12</sup> *T.C.*, Docket No. 16-1070 (issued January 24, 2017); *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O Connor*, 4 ECAB 21 (1950).

<sup>13</sup> *S.W.*, Docket No. 19-1447 (issued April 24, 2020); *A.W.*, 59 ECAB 593 (2008).

<sup>14</sup> See *I.H. supra* note 9.

allegations on appellant's Form CA-1 and did not dispute that the sexual assault occurred in the performance of duty, the Board finds that appellant's claim is accepted for her visible injuries. Pursuant to OWCP regulations appellant must be provided prompt medical treatment for her visible injuries and her claim developed for additional physical injuries, if alleged.

Appellant has also alleged that she sustained mental conditions in the performance of duty. OWCP determined that she had not submitted medical evidence sufficient to establish a diagnosed mental condition in relation to the sexual assault.

In a series of medical reports, Dr. Bundy indicated that he had seen appellant from February 27 through March 2, 2017. He provided a primary diagnosis of major depression with underlying symptoms of PTSD in his August 31, 2017 report. Dr. Bundy noted in his report that appellant still experienced PTSD symptoms that were secondary to a traumatic rape that occurred two years prior when she was at a conference for work. In a report dated May 24, 2017, Dr. Travis reported a history that appellant was sexually assaulted at a work conference. He provided a diagnosis of PTSD. Dr. Travis described appellant's symptoms and advised that on psychiatric examination her mood, anxiety, energy, and attention were poor, while her sleep and memory were fair.

The Board finds that appellant has submitted medical evidence, consisting of reports from Drs. Bundy and Travis, which provides diagnoses of mental conditions of major depression and PTSD. Therefore, the Board finds that appellant has established at least two diagnosed mental conditions in connection to the accepted September 22, 2015 employment incident. As appellant has established diagnosed mental conditions in connection to the September 22, 2016 employment incident, the issue of whether any of the diagnosed conditions were causally related to the accepted incident must be developed and considered by OWCP.

Upon return of the case file OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation, if any, with regard to the accepted physical injuries.<sup>15</sup> It shall also further develop the medical evidence as to other alleged physical conditions, if any. Further, OWCP shall also consider the medical evidence of record with regard to whether appellant's diagnosed mental conditions are causally related to the accepted employment injury. Following such further development as deemed necessary it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a physical injury causally related to the September 22, 2015 employment incident. The Board further finds that

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<sup>15</sup> The case record should be perfected on remand to include a complete copy of the March 15, 2016 OWCP decision.

appellant has established diagnosed mental conditions in connection to the accepted September 22, 2015 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2018 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: July 22, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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