

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

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**D.B., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
LOMA LINDA HEALTHCARE SYSTEM,  
Loma Linda, CA, Employer**

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**Docket No. 19-1543  
Issued: March 6, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 12, 2019 appellant filed a timely appeal from a June 10, 2019 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a chest condition causally related to the accepted September 30, 2016 employment incident; and

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether she has met her burden of proof to establish an emotional condition causally related to the accepted September 30, 2016 compensable employment factor.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</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 October 19, 2016 appellant, then a 56-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that, on September 30, 2016, she sustained emotional stress and a contusion of the sternum while in the performance of duty. She asserted that a table hit her after a coworker slammed her hands on it, moving it towards her chest. The employing establishment indicated on the form that appellant was not in the performance of duty as the incident occurred when she was in the breakroom.

In a September 30, 2016 statement, appellant related that she was sitting at a table in the breakroom with P.N., a coworker, when K.D., another coworker, came in and asked what they were doing. She replied in a joking manner that they were "minding their own business." K.D. yelled at her and pushed the table into her chest. Appellant asserted that the table struck her with sufficient force that she hit a locker, injuring her chest, and causing tension at L4-5 and psychological trauma.<sup>4</sup>

In a November 21, 2016 work status report, Dr. Jonathan Lam Yuen Watt, a Board-certified psychiatrist, diagnosed a stress reaction and occupational problems or work circumstances. He found that appellant could not work from November 21 to December 1, 2016 due to a cognitive impairment.

On December 5, 2016 Dr. Asheena Keith, a psychiatrist, obtained a history of appellant being assaulted at work and noted that the employing establishment might suspend both involved parties.<sup>5</sup> She noted that appellant felt unsafe at work. Dr. Keith diagnosed adjustment disorder with depressive and anxious features as a result of work stress.

By decision dated January 18, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the September 30, 2016

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<sup>3</sup> Docket No. 18-0537 (issued September 12, 2018).

<sup>4</sup> In an October 13, 2016 fact-finding memorandum, V.V., a manager, discussed appellant's assertion that K.D. had pushed a table into her, injuring her chest, and causing tension at L4-5. V.V. noted that she maintained that her chest pain aggravated a prior back injury, but that x-rays obtained that date were normal. K.D. advised that she had unintentionally moved the table about an inch and a half and that the table did not touch appellant, who continued talking. V.V. indicated that P.N., a coworker, had witnessed the table moving, that it startled appellant, but that she did not see the table strike her. She noted that K.D.'s statement was consistent with that of the witness.

<sup>5</sup> In a December 5, 2016 work status report, Dr. Keith advised that appellant was unable to work from December 2 through 7, 2016.

employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a January 24, 2017 progress report, Dr. Trixy Syu, an osteopath, noted appellant's history of sternal pain after being hit by a table. She advised that appellant's symptoms of stress might be consistent with her account of injury, but that her sternal and xiphoid pain was not. Dr. Syu opined that appellant probably had costochondritis unrelated to her employment. She related, "The circumstantial evidence that [she] presents lacks the temporal congruency necessary to justify a valid cause and effect relationship. Furthermore, [appellant's] historical recollection of events does not isolate a proximate cause of injury to support an appropriate pathophysiologic mechanism of disease."

In a January 25, 2017 attending physician's report (Form CA-20), Dr. Syu diagnosed costochondritis and opined that appellant was unable to work. She recommended evaluation by a psychiatrist for appellant's complaints of stress at work.

Appellant, on January 28, 2017, requested an oral hearing before an OWCP hearing representative.

On May 24, 2017 Dr. Keith evaluated appellant for insomnia and an adjustment disorder with mixed anxiety and depressed mood.

On July 6, 2017 Dr. Mikaela Bianca Lewis, an osteopath Board-certified in internal medicine, related appellant's complaints of stress at work.<sup>6</sup> She noted that appellant felt "unable to return to [the] work location and environment that [appellant] reports [that] she was assaulted by a coworker last year." Dr. Lewis advised that appellant related that the coworker's friends were "rude and judgmental to [appellant's] face" and that appellant feared another attack. She diagnosed possible post-traumatic stress disorder (PTSD) and recommended that appellant avoid her work location pending evaluation by a psychiatrist.

Following a July 18, 2017 telephonic hearing, by decision dated October 24, 2017, OWCP's hearing representative affirmed the January 18, 2017 decision. She found that appellant had not factually established that the incident occurred as alleged due to inconsistencies in the witness statements.

Appellant appealed to the Board. By decision dated September 12, 2018, the Board affirmed in part, as modified, and set aside in part the October 24, 2017 decision. The Board found that appellant had factually established that K.D.'s hand hit the table moving it about an inch and a half and striking her on the chest. The Board remanded the case for OWCP to evaluate the medical evidence to determine whether appellant had established an injury to her chest causally related to the September 30, 2016 employment incident. The Board further found that OWCP had failed to properly adjudicate appellant's claim that she sustained an emotional condition in the

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<sup>6</sup> In a work status report of even date, Dr. Lewis found that appellant could perform modified duties from July 6 through August 16, 2017.

performance of duty due to the September 30, 2016 employment incident in accordance with its procedures.

In a development letter dated October 29, 2018, OWCP requested that appellant provide additional medical evidence, including a report from a physician addressing the cause of a diagnosed emotional condition. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence. In a separate letter of the same date, it requested that the employing establishment provide comments from a knowledgeable supervisor and any witnesses regarding her allegations.

Thereafter, OWCP received a July 10, 2017 report from a social worker, who discussed appellant's complaints of anxiety and depression. It further received a notification of personnel action (SF-50) indicating that the employing establishment had removed her from employment effective May 2, 2017.

In a November 13, 2018 response to OWCP's development letter, appellant contended that the employing establishment erred in terminating her employment and denying her request for a transfer. She further maintained that the employing establishment harassed and discriminated against her by requiring her to work in an unsafe environment. Appellant described multiple incidents that she believed constituted harassment by K.D. including punching her on the shoulder, staring at her in patient rooms, bullying her, and encouraging coworkers to harass her. She submitted e-mails regarding the employing establishment's investigation of the September 30, 2016 incident.

Appellant also submitted a May 24, 2017 progress report from Dr. Keith. Dr. Keith indicated that she was treating appellant for work stress. She indicated that the coworker who assaulted appellant was no longer at her work location, but that she believed that she had angered other coworkers. Dr. Keith diagnosed insomnia, occupational problems or work circumstances, and an adjustment disorder with mixed anxiety and depressed mood. She opined that appellant had an "adjustment disorder due to work stress that has improved since [appellant's] colleague left, but now she worries about the retaliation from her remaining peers."

By decision dated February 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the alleged September 30, 2016 employment incident had not occurred while she was in the performance of duty. It determined that, at the time of the incident, she was in the breakroom before starting her work shift and therefore not in the performance of duty.

On March 13, 2019 appellant requested reconsideration. She related that when she arrived at work on September 30, 2016 the charge nurse did not have the assignments ready, so she went to the breakroom.

Appellant submitted a July 5, 2018 decision from the Merit Systems Protection Board (MSPB). An administrative law judge (ALJ) reviewed her allegations that the employing establishment had engaged in retaliation in removing her from employment. She found that it was reasonable to conclude that K.D.'s action in putting her hands on the table and sliding it toward appellant constituted an assault and thus constituted a protected disclosure. The ALJ determined,

however, that appellant had not demonstrated that the employing establishment had removed her on August 2, 2017 for being absent without leave in retaliation for whistleblowing activity.

By decision dated June 10, 2019, OWCP modified its February 8, 2019 decision. It found that appellant was in the performance of duty on September 30, 2016 when a coworker moved the table an inch and a half toward her chest striking her chest as the incident occurred during normal work hours and arose from an argument with a coworker while awaiting work assignments. OWCP determined, however, that the medical evidence was insufficient to establish that she had sustained the diagnosed conditions of an adjustment disorder with mixed anxiety and depression or costochondritis causally related to the September 30, 2016 employment incident.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>7</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>8</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>9</sup>

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 he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>10</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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>12</sup>

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<sup>7</sup> *Supra* note 1.

<sup>8</sup> *See K.V.*, Docket No. 18-0947 (issued March 4, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>9</sup> *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>10</sup> *See T.H.*, Docket No. 19-0599 (issued January 28, 2020); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

<sup>12</sup> *See P.A.*, Docket No. 18-0559 (issued January 29, 2020).

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a chest condition causally related to the accepted September 30, 2016 employment incident.

On January 24, 2017 Dr. Syu discussed appellant's history of sternal pain after being struck by a table. She diagnosed possible costochondritis unrelated to employment, providing as a rationale that the history of injury provided failed to support an "appropriate pathophysiologic mechanism of disease." As Dr. Syu's opinion negates that appellant's diagnosed condition of costochondritis was causally related to the accepted employment incident, it is insufficient to meet her burden of proof.

In a Form CA-20 dated January 25, 2017, Dr. Syu diagnosed costochondritis and found that appellant was disabled from employment. She did not, however, address causation. Medical evidence which does not offer an opinion regarding the cause of an employee's conditions is of no probative value on the issue of causal relationship.<sup>13</sup>

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship between the employment and the diagnosed condition.<sup>14</sup> She has not submitted reasoned medical evidence explaining how and why she sustained an injury to her chest causally related to the accepted employment incident. Thus, the Board finds that appellant has not met her burden of proof.<sup>15</sup>

## **LEGAL PRECEDENT -- ISSUE 2**

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>16</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>17</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was

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<sup>13</sup> *T.K.*, Docket No. 19-0055 (issued May 2, 2019).

<sup>14</sup> *R.P.*, Docket No. 19-0743 (issued September 20, 2019).

<sup>15</sup> *J.B.*, Docket No. 19-1101 (issued November 20, 2019).

<sup>16</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).

<sup>17</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted September 30, 2016 compensable employment factor.

Appellant has established as a compensable employment factor that K.D. moved a table an inch and a half toward her on September 30, 2016 striking her on the chest. Physical contact by a coworker or supervisor may give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.<sup>19</sup> The issue, consequently, is whether the medical evidence supports that appellant sustained a diagnosed emotional condition as a result of the accepted compensable employment factor.

In a report dated December 5, 2016, Dr. Keith noted that appellant related that she had been assaulted at work and now felt unsafe. She diagnosed an adjustment disorder with features of depression and anxiety as a result of stress at work. Although Dr. Keith discussed appellant's history of an assault at work and diagnosed an adjustment disorder, such generalized statements do not establish causal relationship.<sup>20</sup> She did not provide a reasoned opinion explaining how the September 30, 2016 employment incident caused or aggravated a diagnosed condition, and thus her reports are of little probative value.<sup>21</sup>

In a report dated July 6, 2017, Dr. Lewis noted that appellant related that she felt unsafe working in the location of a prior assault by a coworker. She diagnosed possible PTSD and recommended an evaluation by a psychiatrist. Dr. Lewis, however, merely repeated the history of injury as reported by appellant without providing her own opinion of whether the condition was employment related. The mere recitation of a patient's history does not suffice for the purpose of establishing causal relationship between a diagnosed condition and the employment incident.<sup>22</sup>

On May 24, 2017 Dr. Keith noted that the coworker who assaulted appellant was no longer at appellant's work location, but believed that other coworkers were angry. She diagnosed insomnia, occupational problems or work circumstances, and an adjustment disorder with mixed anxiety and depressed mood. Dr. Keith, however, did not explain, with medical rationale, how appellant's diagnosed conditions were causally related to the September 30, 2016 compensable employment factor, and thus her opinion is of diminished probative value.<sup>23</sup>

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<sup>18</sup> *R.R.*, Docket No. 19-0743 (issued September 20, 2019).

<sup>19</sup> *Y.B.*, Docket No. 16-0194 (issued July 24, 2018).

<sup>20</sup> *M.G.*, Docket No. 19-1199 (issued December 19, 2019); *C.M.*, Docket No. 18-1166 (issued July 9, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> *See D.L.*, Docket No. 19-1053 (issued January 8, 2020).

<sup>23</sup> *B.W.*, Docket No. 19-0718 (issued October 18, 2019).

On November 21, 2016 Dr. Watt diagnosed a stress reaction and occupational problems. He found that appellant was unable to work until December 1, 2016. As Dr. Watt failed to provide a history of injury, a firm diagnosis, or offer an opinion on causal relationship, his report is insufficient to meet her burden of proof.<sup>24</sup>

On July 10, 2017 a social worker reviewed appellant's complaints of depression and anxiety. Social workers, however, are not considered "physicians" as defined under FECA and thus their reports do not constitute competent medical opinion evidence.<sup>25</sup> This report is therefore insufficient to establish the claim.

As appellant has not submitted reasoned medical evidence explaining how her diagnosed emotional condition was casually related to the accepted September 30, 2016 compensable employment factor, the Board finds that she has not met her burden of proof.<sup>26</sup>

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 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 a chest condition causally related to the accepted September 30, 2016 employment incident. The Board further finds that she has not met her burden of proof to establish an emotional condition causally related to the accepted September 30, 2016 compensable employment factor.

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<sup>24</sup> *B.P.*, Docket No. 19-1054 (issued November 14, 2019); *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

<sup>25</sup> *See C.A.*, Docket No. 18-0824 (issued November 15, 2018).

<sup>26</sup> *J.W.*, Docket No. 19-0237 (issued July 1, 2019).



**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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