

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

	)	
<b>E.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0389</b>
	)	<b>Issued: November 2, 2020</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>MILWAUKEE VA MEDICAL CENTER,</b>	)	
<b>Milwaukee, WI, Employer</b>	)	
	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 10, 2019 appellant, through counsel, filed a timely appeal from a June 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition causally related to the accepted September 20, 2018 employment incident.

## FACTUAL HISTORY

On October 1, 2018 appellant, then a 39-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2018 she sustained post-traumatic stress disorder (PTSD) when a coworker sexually harassed her while in the performance of duty. She stopped work on September 21, 2018 and returned to work on October 15, 2018. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured while in the performance of duty.

By development letter dated October 5, 2018, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence, including a physician's opinion supported by medical rationale regarding how the reported work incident caused or aggravated a diagnosed medical condition. OWCP also requested that appellant complete a questionnaire. Appellant was afforded 30 days to submit the necessary information.

OWCP subsequently received a September 21, 2018 statement, wherein appellant reported that she was sexually harassed the night before by a male housekeeper who sexually propositioned her. In a September 21, 2018 statement, B.G., an assistant nurse manger, confirmed that appellant had notified her of the sexual harassment which occurred the prior day during appellant's shift.

OWCP also received medical evidence in support of the claim. On September 21, 2018 appellant was seen in the emergency department by Dr. David Tennenbaum, Board-certified internist and hospice/palliative medicine specialist, and Dr. Hether R. Cook, a clinical psychologist. Dr. Tennenbaum indicated that appellant presented with increased anxiety associated with a stressful work environment. Dr. Cook noted the multiple instances of sexual harassment from the male housekeeper the night before and that appellant also reported that she was told that the male housekeeper was "not allowed on certain floors because he physically touched a woman." He diagnosed "other specified problems related to psychosocial circumstances."

In a September 28, 2018 note, Dr. Zeba Sami, a psychiatry specialist, indicated that appellant would be unable to return work for approximately two to three weeks.

In October 3 and 10, 2018 medical notes, Dr. William Seymour, Ph.D., a clinical psychologist, indicated that appellant's diagnosis of PTSD predated the alleged September 20, 2018 sexual harassment incident that occurred in the workplace. He advised that the incident had continued to trigger symptoms related to the PTSD diagnosis and he discussed proposed treatment.<sup>3</sup>

---

<sup>3</sup> Dr. Seymour further indicated that appellant could return to work on October 15, 2018 within the restrictions outlined by her orthopedic physician.

In a November 2, 2018 letter, the employing establishment controverted appellant's claim.

By decision dated November 8, 2018, OWCP denied the claim, finding that fact of injury had not been established. It indicted that appellant had not responded to its questionnaire or provided any corroborating evidence to substantiate that the September 20, 2018 incident occurred as alleged.

On February 1, 2019 appellant requested reconsideration and submitted her completed questionnaire. She provided specific details regarding the September 20, 2018 incident, as well as details relating to prior harassing conversations with the housekeeping employee since July 2018. Appellant indicated that she had been hospitalized previously for an emotional condition and that her medication was increased after the September 20, 2018 employment incident.

By decision dated June 21, 2019, OWCP modified the prior decision, finding that appellant had established fact of injury. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted September 20, 2018 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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 timely filed within the applicable time limitation period of FECA,<sup>5</sup> that an injury was sustained in the performance of duty, as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.<sup>7</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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

---

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted September 20, 2018 employment incident.

Appellant was seen on September 21, 2018 at the employing establishment's emergency department by Drs. Tennenbaum and Cook. Dr. Tennenbaum noted the September 20, 2018 employment incident and indicated that appellant presented with increased anxiety associated with a stressful work environment. While he noted appellant's complaint of increased anxiety, Dr. Tennenbaum did not provide a rationalized medical explanation of how the September 20, 2018 incident physiologically caused appellant's condition.<sup>13</sup> Dr. Cook also noted the history of the September 20, 2018 employment incident and provided an impression of "other specified problems related to psychosocial circumstances." However, she did not provide an opinion relative to relationship.<sup>14</sup> This report is therefore insufficient to establish appellant's claim.

In October 3 and 10, 2018 medical notes, Dr. Seymour indicated that the alleged sexual harassment incident of September 20, 2018 continued to trigger appellant's symptoms related to the PTSD diagnosis. However, his opinion is of limited probative value as it is conclusory in nature.<sup>15</sup> As previously noted, a medical opinion must explain how the implicated employment

---

<sup>9</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020).

<sup>10</sup> *K.C.*, Docket No. 18-0529 (issued January 21, 2020).

<sup>11</sup> *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>13</sup> See *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

<sup>14</sup> *L.B.* Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *C.D.*, Docket No. 17-0292 (issued June 19, 2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

incident physiologically caused, contributed to, or aggravated the specific diagnosed conditions.<sup>16</sup> His report is therefore insufficient to meet appellant's burden of proof.

Dr. Sami provided a work excuse note. However, it did not provide an opinion on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>17</sup> This report, therefore, is insufficient to establish appellant's claim.

As none of the medical evidence submitted provided medical rationale sufficient to establish causal relationship between the September 20, 2018 employment incident and appellant's diagnosed emotional condition, the Board finds that she has not met her burden of proof.<sup>18</sup>

On appeal counsel argues that OWCP's decision was contrary to law and fact. As explained above, however, the medical evidence of record does not contain a rationalized medical evidence establishing causal relationship. Accordingly, appellant has not met her burden of proof.

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 causally related to the accepted September 20, 2018 employment incident.

---

<sup>16</sup> *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

<sup>17</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>18</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *R.G.*, Docket No. 18-0792 (issued March 11, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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