

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

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**H.B., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
BLACK HILLS HEALTH CARE SYSTEM,  
Fort Meade, SD, Employer**

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**Docket No. 20-0587  
Issued: June 28, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 22, 2020 appellant filed a timely appeal from a December 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish intermittent disability from work for the period May 23 through November 9, 2019 causally related to her accepted employment conditions.

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

## **FACTUAL HISTORY**

On April 3, 2019 appellant, then a 40-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to factors of her federal employment, including an August 13, 2016 incident when she attended to a patient who bled from his mouth and passed away during her work shift. She indicated that she first became aware of her claimed condition and its relation to her federal employment on August 13, 2016. OWCP accepted appellant's claim for post-traumatic stress disorder (PTSD), generalized anxiety disorder, and major depressive disorder, single episode.

Appellant submitted claims for compensation (Form CA-7), dated between September 26, October 29 and November 11, 2019, claiming intermittent periods of disability from work due to her accepted employment conditions on the following dates: May 22 to 23, June 27 to 28, July 7 to 20, September 15 to 28, and October 13 to November 9, 2019.

In support of her disability claim, appellant submitted a May 28, 2019 note from Dr. Charles J. Lord, an attending Board-certified psychiatrist, who advised that appellant had been struggling with severe health issues and had missed work May 20 through 24, 2019. In a July 2, 2019 note, Dr. Lord advised that appellant had severe anxiety on June 27 and 28, and July 2, 2019, and that she was unable to work on those dates due to her symptoms. In a July 18, 2019 note, he noted that, from July 16 through 18, 2019, appellant had severe anxiety/panic symptoms and PTSD/mood swings. Dr. Lord recommended that she be excused from work for these dates.

In a July 19, 2019 form report, Dr. Lord indicated that he had treated appellant since October 29, 2018. He advised that she suffered from severe anxiety, panic attacks, PTSD symptoms, depression, mood swings, poor concentration/focus, and insomnia. Dr. Lord checked a box marked "Yes" to indicate that appellant was "unable to perform any of his/her job functions due to the condition." He referenced appellant's PTSD/mood symptoms and checked a box marked "Yes" to indicate that appellant's condition would "cause episodic flare-ups periodically preventing the employee from performing his/her job functions." Dr. Lord indicated that appellant had a complex presentation with severe, nonchronic PTSD and mood disorder. He noted that family stressors also played an active role in appellant's regression.

On July 23, 2019 OWCP referred appellant and the medical record to Dr. David Fohrman, a Board-certified psychiatrist, for a second opinion examination to determine the extent and degree of any employment-related disability.

In an August 16, 2019 report, Dr. Fohrman, serving as an OWCP referral physician, indicated that appellant met the criteria for PTSD, generalized anxiety disorder and major depressive disorder, single episode. He advised that appellant was currently working on a full-time basis, but opined that over time without more intensive treatment she would eventually be unable to work due to the development of agoraphobia. Dr. Fohrman advised that appellant had a fear of blood, which was getting worse with time.

In a September 23, 2019 report, Dr. Lord indicated that appellant was under his care for severe PTSD secondary to an incident that occurred in her workplace. He noted that people with PTSD often experience debilitating panic attacks and advised that appellant experienced a panic

attack on September 20, 2019, which resulted in her having to leave work. Dr. Lord indicated that on the morning of September 23, 2019 appellant had a panic attack before going to work and, as a result, could not attend work. He asserted that it “would appear to be in [appellant’s] best interest to be reassigned to a different work situation.”

In an October 2, 2019 report, Dr. Lord indicated that he was following up his September 23, 2019 report with respect to appellant’s work assignment. He reported that appellant was being treated for severe PTSD secondary to a patient bleeding out on her. Dr. Lord advised that on September 20, 2019 another patient bled on her, and noted that, although that person did not die, appellant still experienced a panic attack that was severe enough that she could not hear or see what was going on around her due to exacerbated anxiety. He noted that this attack was so severe that appellant had to leave work, and she was not able to return to work on that day or the following Monday, September 23, 2019. Dr. Lord indicated that it was his opinion that appellant should not be involved in direct patient care until she was able to be involved in care without panic attacks and dissociation.

On October 21, 2019 appellant began working in a modified position for the employing establishment that did not involve direct contact with patients. She retained her salary in this position.

In an October 28, 2019 note, Dr. Lord advised that he saw appellant for her PTSD on October 25, 2019.

In November 6 and 13, 2019 development letters, OWCP requested that appellant submit additional evidence in support of her claim, including a physician’s opinion supported by a thorough explanation as to how the claimed dates of disability were causally related to her accepted employment conditions. It afforded appellant 30 days from each of the letters to respond.

In a December 5, 2019 report, Dr. Lord indicated that he evaluated appellant on October 29 and December 10, 2018. Appellant had reported a traumatic event occurring six months prior, which was becoming increasingly symptomatic. Dr. Lord noted that appellant reported that she was having nightmares about “the event where a patient bled out on her.” He advised that appellant would wake up in the middle of the night in a terrified state with her heart pounding in a panic. Appellant reported that she would dream about the patient dying in front of her and about all the symptoms that the patient was having. Dr. Lord noted that appellant reported that she could not sleep at night and felt overwhelmed, and also reported that the panic attacks were triggered by seeing blood during her waking hours as well. He noted that he gave appellant a PTSD checklist, and based on that, found that she was positive for PTSD. Dr. Lord noted that appellant related disturbing memories, thoughts, and images of the stressful event, as well as disturbing dreams of the stressful event, and suddenly felt as though she was reexperiencing the event “with sudden panic sometimes triggered by seeing blood other times just coming out of the blue.” He advised that appellant reported that something she saw on television might “trigger her.” Appellant also reported that, at other times, panic attacks had been triggered when she had been driving on the highway and saw blood from a deer that had been hit. At these times, she experienced pounding of the heart, sweating, and difficulty breathing. Dr. Lord noted that appellant reported that being reminded of the stressful experience in the past led to fear episodes varying in intensity from moderately-to-severe, which could derail her from being able to work due to the level of avoidance

and fear undermining her ability to concentrate, focus, and remember. Appellant also reported having dissociative experiences, including an episode that occurred at work when she was trying to help move someone and got blood on her gloves. She indicated that this incident triggered her for at least half an hour to an hour and that she had to go home that day. Dr. Lord noted that appellant reported that, due to this incident, she could not hear the other nurses talking to her and was crying and sobbing in a panic and did not remember how she got from the bed where she was moving the individual to the nurse's lounge. He advised that appellant had been removed from active nursing duty and placed in an administrative position, but still had intrusive memories, thoughts, and feelings about the experience. Dr. Lord indicated that, when appellant was "having a severely intense event," she would be given an excuse from work. He noted, "The reported dates were consistent with her severe chronic PTSD and are variable in intensity." Dr. Lord further discussed appellant's psychiatric history and her present treatment regimen, which included medication.

In a December 11, 2019 note, Dr. Lord indicated that appellant should be excused from work for the period December 10 through 11, 2019 due to illness, PTSD symptoms. In a December 13, 2019 note, he noted that she should be excused from work for the period December 12 through 13, 2019 due to illness.

By decision dated December 23, 2019, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work for intermittent dates of disability during the period May 23 through November 9, 2019, causally related to her accepted employment conditions.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>5</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>6</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they

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<sup>2</sup> It appears that OWCP has not adjudicated appellant's claim for disability on May 22, 2019. Therefore that claimed date of disability is not presently before the Board. 20 C.F.R. §§ 501.2(c) and 501.3.

<sup>3</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>6</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury 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 claimed disability and the accepted employment injury.<sup>8</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period May 23 through November 9, 2019, causally related to her accepted employment conditions.

In support of her claim, appellant submitted medical notes indicating that she had disability for dates that coincided with some of the claimed dates of disability that she believed were related to her accepted employment conditions, *i.e.*, PTSD, generalized anxiety disorder, and major depressive disorder, single episode. In a July 2, 2019 note, Dr. Lord indicated that appellant had severe anxiety on June 27 and 28, and July 2, 2019, and that she was unable to work on those dates due to her symptoms. In a July 18, 2019 note, he advised that, from July 16 through 18, 2019, appellant had severe anxiety/panic symptoms and PTSD/mood swings, and he recommended that she be excused from work for these dates. In a December 11, 2019 note, Dr. Lord indicated that appellant should be excused from work for the period December 10 through 11, 2019 due to illness, PTSD symptoms.

Although these reports generally mention appellant's PTSD and anxiety symptoms, they do not contain a well-rationalized opinion that appellant sustained disability due to her accepted employment conditions. Dr. Lord did not explain how specific findings on examination and diagnostic testing supported his opinions on disability. Rather, his opinions on disability appear to be primarily based on appellant's own self-reported symptoms instead of objective medical findings. In addition, Dr. Lord's references to PTSD and anxiety symptoms are vague in nature and is unclear whether he is relating these symptoms to the actual accepted conditions in the present case, which stemmed from events that primarily occurred in 2016, including the incident when appellant witnessed a patient dying on August 13, 2016. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale

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<sup>7</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>8</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>9</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

explaining how a given medical condition/level of disability has an employment-related cause.<sup>10</sup> Therefore, these reports of Dr. Lord are insufficient to establish appellant's claim.

In other notes, Dr. Lord did not provide an opinion on disability or indicate that disability was caused by some unspecified health issue. In a May 28, 2019 note, he advised that appellant had been struggling with severe health issues and had missed work from May 20 through 24, 2019. In an October 28, 2019 note, Dr. Lord advised that he saw appellant for her PTSD on October 25, 2019. In a December 13, 2019 note, he noted that appellant should be excused from work for the period December 12 through 13, 2019 due to illness. These reports are of no probative value regarding appellant's disability claim because they do not contain an opinion that appellant had disability during the claimed period due to her accepted employment conditions. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.<sup>11</sup> Therefore, these reports are insufficient to establish appellant's claim.

In a July 19, 2019 form report, Dr. Lord advised that appellant suffered from severe anxiety, panic attacks, PTSD symptoms, depression, mood swings, poor concentration/focus, and insomnia. He checked a box marked "Yes" to indicate that appellant was "unable to perform any of his/her job functions due to the condition." Dr. Lord referenced appellant's PTSD/mood symptoms and checked a box marked "Yes" to indicate that her condition would "cause episodic flare-ups periodically preventing the employee for performing his/her job functions." However, this report is of no probative value regarding appellant's disability claim because it does not contain an opinion that appellant had disability on the specific claimed dates due to her accepted employment conditions.<sup>12</sup> Therefore, this report is insufficient to establish appellant's claim.

Appellant also submitted narrative reports in which Dr. Lord indicated that she experienced panic attacks that prevented her from working. In a September 23, 2019 report, Dr. Lord indicated that appellant was under his care for severe PTSD secondary to an incident, which occurred in her workplace. He noted that appellant experienced a panic attack on September 20, 2019, which resulted in her having to leave work. Dr. Lord indicated that, on the morning of September 23, 2019, appellant had a panic attack before going to work and, as a result, could not attend work. In an October 2, 2019 report, he reported that appellant was being treated for severe PTSD secondary to a patient bleeding out on her. Dr. Lord advised that on September 20, 2019 another patient bled on her, and noted that, although that person did not die, appellant still experienced a panic attack that was severe enough that she had to leave work, and she was not able to return to work on that day or the following Monday, September 23, 2019. However, these reports are of no probative value on appellant's disability claim because they do not specifically relate a period of disability to the accepted employment conditions, which stemmed from events that primarily occurred in

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<sup>10</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>11</sup> *T.H.*, Docket No. 18-0704 (issued September 6, 2018). See also *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>12</sup> See *id.*

2016, including the incident when appellant witnessed a patient dying on August 13, 2016.<sup>13</sup> Therefore, these reports are insufficient to establish appellant's claim.

In a December 5, 2019 report, Dr. Lord indicated that he evaluated appellant on October 29 and December 10, 2018. Appellant had reported a traumatic event occurring six months prior, which was becoming increasingly symptomatic. Dr. Lord indicated that he gave appellant a PTSD checklist and, based on that, he found that she was positive for PTSD. He noted that various events, including watching television or seeing a bloody deer on the highway, would trigger her thoughts of the "stressful event." Appellant also reported having dissociative experiences, including an episode that occurred at work when she was trying to help move someone and got blood on her gloves. She indicated that this incident triggered her for at least half an hour to an hour and that she had to go home that day. Dr. Lord advised that, when appellant was "having a severely intense event," she would be given an excuse from work. He noted, "The reported dates were consistent with her severe chronic PTSD and are variable in intensity." However, this report is of no probative value regarding appellant's disability claim because Dr. Lord did not identify any particular dates of disability. Moreover, Dr. Lord did not specifically relate a period of disability to the accepted employment conditions, which stemmed from events that primarily occurred in 2016.<sup>14</sup> Therefore, this report is insufficient to establish appellant's claim.

In an August 16, 2019 report, Dr. Fohrman, an OWCP referral physician, indicated that appellant met the criteria for PTSD, generalized anxiety disorder, and major depressive disorder, single episode. He advised that appellant was currently working on a full-time basis, but opined that over time without more intensive treatment she would eventually be unable to work due to the development of agoraphobia. However, this report is of no probative value regarding appellant's disability claim because Dr. Fohrman did not provide an opinion on any particular period of actual disability.<sup>15</sup>

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed periods of disability and the accepted employment conditions, the Board finds that she 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 intermittent disability from work for the period May 23 through November 9, 2019, causally related to her accepted employment conditions.

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

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

<sup>15</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2021  
Washington, DC

Alec J. Koromilas, 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