

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

Date of Injury:  
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 11/29/2018. Based upon that hearing, it has been determined that the decision of the district office should be reversed as outlined in the attached decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER, ESQ  
FELSER LAW FIRM P.C.  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

*If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.*

Washington DC, February 01, 2019

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of  
Claimant: Employed by  
An oral hearing was held on 11/29/2018.

Case No.

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The issue is whether the claimant sustained an injury as defined by the Federal Employees' Compensation Act.

The \_\_\_\_\_ employed the claimant, \_\_\_\_\_ as a nurse in  
On January 22, 2018, the claimant, or a person acting on his behalf, timely filed a Form CA-2, Notice of Occupational Disease, claiming employment-related post-traumatic stress disorder (PTSD), major depression, and anxiety. The claimant noted he worked on an acute psychiatric until and "a sentinel event happened." The claimant did not describe the identified event. The claimant indicated he first became aware of the condition and that it was caused or aggravated by his employment on September 8, 2017.

No additional evidence was received with the claim.

By letter dated January 31, 2018, the district office advised the claimant of the deficiencies in the evidence received and afforded him 30 days to provide additional documentation sufficient to establish the claim. The district office also sent a letter to the employing establishment asking whether it agreed with the claimant's statements although no statements had been submitted.

A February 26, 2018, letter from the employing establishment noted that on September 8, 2017, the claimant was carrying out his duties on an inpatient psychiatric unit when a patient became agitated and the claimant responded with the rest of the mental health nursing team to assist with the therapeutic containment of the patient. The physical condition of the patient deteriorated which activated a Code 5 medical emergency team to respond. The patient became unresponsive and died. After the incident the claimant stated he was highly stressed and anxious and verbalized feelings of helplessness. The claimant was temporarily reassigned to work in an outpatient clinic. After several months the claimant was assigned to another vacancy to review records of veterans.

Other documentation submitted by the claimant was not legible. By letter dated March 14, 2018, the district office again requested additional evidence.

The district office again received illegible documents.

A February 15, 2018, report by \_\_\_\_\_ M.D., a psychiatrist, and Ph.D., a clinical psychologist, provided a summary of their treatment of the claimant. The claimant was first seen on September 14, 2017, and gave a history that while the claimant was on duty as a \_\_\_\_\_ on September 8, 2017, he was involved in an incident in which a patient expired while being subdued. The incident traumatized the claimant and it was difficult for him to return to his unit. He sought help from his primary care physician Dr. \_\_\_\_\_ who referred him for counseling and further evaluation. The report noted examination findings and described the claimant's symptoms and explained the basis of the diagnosis of PTSD. The report noted the claimant's course of treatment. The claimant had been removed from direct care and placed in a more administrative setting although he appeared to be increasingly overwhelmed in the new position. The stress of the new position seemed to have exacerbated the claimant's symptoms. The physicians opined that the claimant's condition was caused by the work incident.

By decision dated June 22, 2018, the Office denied the claim for the reason that the factual evidence was insufficient to establish that the claimant sustained an injury as defined by the Act. The decision noted that the claimant had not provided a detailed description of the incident.

The claimant disagreed with the district office decision and by letter postmarked July 18, 2018, his attorney, Paul Felser, requested an oral hearing.

The district office subsequently received a December 6, 2017, statement by the claimant. He described a work incident on September 8, 2017, when he assisted with restraining a veteran with extremely violent behavior. The veteran became unresponsive and the claimant assisted with CPT. The claimant was later informed the unit was a crime scene. He began to have nightmares, flashbacks, anxiety, depression, and other symptoms. The claimant sought medical treatment on September 13, 2017, and was referred for psychiatric services.

The Office received reports by \_\_\_\_\_ M.D., a family practitioner, which related an accurate history of the identified work incident.

A December 8, 2017, report by Dr. \_\_\_\_\_ noted the claimant was first seen on September 14, 2017, and gave a history that while the claimant was on duty as a \_\_\_\_\_ on September 8, 2017, he was involved in an incident in which a patient expired while being subdued. The incident traumatized the claimant and it was difficult for him to return to his unit. He sought help from his primary care physician Dr. \_\_\_\_\_ who referred him for counseling and further evaluation. The report noted examination findings and described the claimant's symptoms and explained the basis of the diagnosis of PTSD. The report noted the claimant's course of treatment. Dr. \_\_\_\_\_ opined that the claimant's condition was caused by the work incident.

The telephonic hearing was held on November 29, 2018. Mr. Felser appeared on behalf of the claimant. The hearing transcript is of record.

I noted the office received factual statements subsequent to the decision rejecting the claim. Mr. Felser agreed that the claim related to a specific event on September 9, 2017. He noted the employing establishment had submitted a memo describing the identified event with a veteran that escalated and the veteran ultimately passed away. It became a crime scene and the death was investigated. I noted the claimant's responses to the Office development letter were not clear regarding whether he had a prior history of PTSD.

The claimant submitted a December 26, 2018, letter that noted he was treated for depression in March, 2014, due to his wife's death from breast cancer. He provided the prior treatment records which diagnosed anxiety.

The employing establishment did not provide comments.

I have reviewed the evidence of record and I find that the claimant has established that he sustained an injury in the performance of duty as claimed. Further, the evidence is sufficient to accept the claim for right lateral malleolus fracture.

Generally, the element of "fact of injury" consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>1</sup>

A person who claims benefits under the FECA has the burden of establishing the essential elements of his claim, including the fact that he sustained an injury while in the performance of duty. Although compensation awards must be based on reliable, probative and substantial evidence, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational and sound; it is not necessary that the evidence be so conclusive as to establish causal connection beyond all possible doubt. Where the relative circumstances strongly suggest a causal relationship and where the medical evidence also supports a causal relationship, appellant has met his burden of proof.<sup>2</sup>

Mr. Felser indicated that the claim related to a discrete employment incident on September 8, 2017, and not to factors of the claimant's employment over a period of time exceeding one work day or shift. The claim is therefore one for traumatic injury. The claimant's statements received subsequent to the district office decision rejecting the claim describe what occurred on that date and the employer's statement supports that account. The evidence is sufficient to establish the factual and medical components of the element of fact of injury. The incident clearly occurred in performance of duty. The medical evidence, including the opinion of Drs. a psychiatrist and clinical psychologist, respectively, are sufficient to establish that the claimant sustained PTSD causally related to the September 8, 2017, work incident. Continuation of pay should be authorized for time lost due to documented medical treatment or disability.

<sup>1</sup> 45 ECAB \_\_\_ (Docket No. issued January 24, 1994).

<sup>2</sup> 42 ECAB \_\_\_ (Docket No. issued February 22, 1991).

Accordingly, the decision of the district office dated June 22, 2018, is reversed, the case is accepted for PTSD, and the case record is returned to the district office for actions consistent with this decision.

ISSUED:

WASHINGTON, D.C.

Electronically signed

Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs