

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

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N.R., Appellant)	
)	
and)	
)	Docket No. 13-673
)	Issued: June 24, 2013
U.S. POSTAL SERVICE, BAY VALLEY)	
PERFORMANCE CLUSTER, Oakland, CA,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 30, 2013 appellant filed a timely appeal from the November 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. §§ 8101-8193.

² In her initial appeal papers, appellant requested an oral argument before the Board but noted that she could not travel to Washington, DC and wished to have a video hearing. In a February 8, 2013 letter, the Clerk of the Board advised appellant that oral arguments were held in person in Washington, DC and asked her to indicate within 30 days whether she still wished to appear for an oral argument. Appellant responded in a February 24, 2013 letter in which she discussed her claim, but she provided no indication that she wished to have an oral argument before the Board. Therefore, the Board in its discretion has denied her request for oral argument and will decide the case based on the evidence in the record.

ISSUE

The issue is whether OWCP properly determined appellant's work-related disability for various periods between January 2010 and February 2011.

FACTUAL HISTORY

In March 2011, OWCP accepted that appellant, then a 50-year-old letter carrier, sustained adjustment disorder with mixed anxiety and depression as a result of the employer moving her to Bayside, CA, in April 2009, under the National Reassessment Process. Appellant stopped work for intermittent periods.

Appellant submitted claims for compensation (Form CA-7) for intermittent leave taken during the period between January 18, 2010 and February 2, 2011. By letter dated July 29, 2011, OWCP advised her to submit medical evidence supporting her claim for disability during the periods claimed. It provided appellant 30 days to submit the requested evidence.

In October 6, 2011 and April 26, 2012 decisions, OWCP denied appellant's claim for periods of disability on the grounds that she did not submit sufficient medical evidence in support of her claim.

In a decision dated June 26, 2012, OWCP determined that the medical evidence supported payment for the dates of January 18 through 28, 2010, but that the first 3 days were not payable because when compensation does not exceed 14 days, not including medical appointments, the first 3 days of compensation are waiting days and are not payable.

In an August 2, 2012 letter, appellant requested reconsideration of her claim. She indicated that she lacked approval for leave buyback for the period January 7 to February 17, 2010.

Appellant submitted a July 24, 2012 report in which Dr. Kathryn Lee Mar, an attending Board-certified family practitioner, stated that she had been diagnosed with anxiety and that she was placed on disability by Dr. Mercedes Conklin, an attending Board-certified internist, from February 12 to March 1, 2010. Dr. Mar indicated that appellant was placed off work by Dr. Fauzia Basit, an attending Board-certified family practitioner, from March 23 to April 13, 2010. She stated:

“[Appellant] was instructed not to work more than five hours a day from April 3 through 25, 2010. However, [she] returned to my office four days later, unable to work due to temporary total disability, and was instructed not to work until April 25, 2010. [Appellant] returned to my office on April 24, 2010. Despite the death of her long-time boyfriend on April 6, 2010, and her physical and mental signs of grief, [she] was determined to go back to work. I returned [appellant] to full duties with no restrictions, and advised her to follow up with me if it was determined that she was unable to comply.”

In a November 6, 2012 decision, OWCP determined whether appellant had established entitlement to disability compensation for several additional periods and it modified its June 26,

2012 decision to reflect its findings in this regard. It noted that, based on the newly submitted medical evidence, additional dates in April 2010 were payable (April 14 to 16 and April 21 to 22, 2010) and that the wait days would now also be paid to appellant because disability now exceeded 14 days. OWCP determined that the medical evidence submitted by appellant did not support paying disability for any dates claimed in December 2010.

In its November 6, 2012 decision, OWCP further found that, regarding the date of March 23, 2010 and the dates claimed for February 2011, the employing establishment had not certified any leave without pay. Thus, these dates were not payable at the present time. OWCP also noted that appellant had referenced the lack of approval for leave buyback for the period January 7 to February 17, 2010. It indicated that it had not received a leave buyback claim for this period, but had only received a claim for compensation. OWCP noted that leave buybacks were processed at the discretion of the employing establishment. If appellant wished to claim a leave buyback, she should fill out a Form CA-7 and a Form CA-7a showing exactly how much intermittent leave she wanted to claim as part of the leave buyback. OWCP indicated that, on section 2 of the Form CA-7, she would check the box “leave buyback” and then submit the form to her agency with supporting medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable employment factors. 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.⁴

ANALYSIS

The Board finds that OWCP properly determined appellant’s work-related disability for various periods between January 2010 and February 2011. In support of her claim, appellant submitted a July 24, 2012 report of Dr. Mar, an attending Board-certified family practitioner. In its November 6, 2012 decision, OWCP properly determined that additional dates in April 2010 were payable (April 14 to 16 and April 21 to 22, 2010) and that the wait days would now also be paid to appellant because disability now exceeded 14 days. It correctly determined that the

³ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁴ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

medical evidence submitted by appellant did not support paying disability for any dates claimed in December 2010. OWCP properly found that, regarding the date of March 23, 2010 and the dates claimed for February 2011, the employing establishment had not certified any leave without pay. Thus, these dates were not payable at the present time. With respect to the period of January 7 to February 17, 2010, appellant had not filed for leave buyback and, therefore, she was not presently entitled to buy back such leave.

On appeal, appellant asserted that she was entitled to compensation for the period December 4, 2009 to January 6, 2010, but the decision presently within the Board's jurisdiction does not concern this period of claimed disability.

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 OWCP properly determined appellant's work-related disability for various periods between January 2010 and February 2011.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board