United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
	)	**Docket No. 22-1030**
and	)	**Issued: December 14, 2022**
DEPARTMENT OF VETERANS AFFAIRS, LEXINGTON VA MEDICAL CENTER, TROY BOWLING CAMPUS, Lexington, KY, Employer	)	

Appearances:
Emory Osborn, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 27, 2022 appellant, through counsel, filed a timely appeal from a January 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work, commencing February 5, 2021, causally related to her accepted April 17, 2019 employment injury.

FACTUAL HISTORY

On April 19, 2019 appellant, then a 49-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2019 she experienced anxiety with panic attacks as a result of being sexually assaulted by a patient while in the performance of duty. She stopped work on April 18, 2019 and returned to part-time regular-duty work on July 11, 2019. On June 7, 2019 OWCP accepted the claim for adjustment disorder with anxiety and depression. On September 30, 2019 it accepted that appellant sustained a recurrence of disability as of August 28, 2019 causally related to her accepted April 17, 2019 employment injury. OWCP paid appellant wage-loss compensation on the supplemental rolls from June 2, 2019 to January 4, 2020 and on the periodic rolls from January 5 through May 23, 2020. Appellant also received intermittent wage-loss compensation on the supplemental rolls from May 24 through September 12, 2020.

On May 26, 2020 appellant returned to full-time limited-duty work. On November 3, 2020 she returned to a permanent full-time position.

On February 5, 2021 appellant stopped work again. On February 25, 2021 she filed a claim for compensation (Form CA-7) for disability from work for the period February 5 through 25, 2021.

In a February 11, 2021 letter, Dr. Brian Greenlee, a Board-certified psychiatrist, advised that appellant was admitted to the hospital on February 5, 2021 and was discharged on February 11, 2021. He advised that she could return to work on February 18, 2021.

In a February 23, 2021 work capacity evaluation (Form OWCP-5a), Dr. David Shraberg, an attending Board-certified psychiatrist and neurologist, advised that appellant was totally disabled from work. He explained that she had an exacerbation of symptoms, was recently hospitalized, and was adjusting to medication changes. Dr. Shraberg further explained that appellant was unable to focus or concentrate due to a high level of anxiety.

In a note of even date, Dr. Shraberg requested that appellant be excused from work from February 19 to 23, 2021.

OWCP, by development letter dated February 26, 2021, advised appellant that the evidence submitted was insufficient to establish disability beginning February 5, 2021 and requested that she submit additional factual and medical evidence to establish that she was unable to work during the period claimed due to her April 17, 2019 employment injury. It afforded her 30 days to submit the necessary evidence.

In a March 9, 2021 letter, Dr. Shraberg placed appellant off work through April 6, 2021. He explained that continued changes to her medication were being made due to her symptoms.

In response to OWCP's development letter, appellant, through then-counsel, submitted additional medical evidence, including a March 24, 2021 medical report from Imelda N. Bratton, Ph.D., a licensed professional clinical counselor. Dr. Bratton noted appellant's history of injury on April 17, 2019. She diagnosed the accepted condition of adjustment disorder with anxiety and depression. Dr. Bratton also diagnosed post-traumatic stress disorder (PTSD). She opined that appellant's diagnosed psychological conditions rendered her disabled from work from April 17, 2019 through the present although she had returned to work in various capacities since that time. Dr. Bratton added that appellant should have not returned to work when she did due to the severity of the injury.

OWCP, by decision dated April 9, 2021, denied appellant's claim for compensation for disability from work for the period, commencing February 5, 2021, finding that the medical evidence of record was insufficient to establish disability during the claimed period due to her April 17, 2019 employment injury.[3]

On October 12, 2021 appellant, through then-counsel, requested reconsideration and submitted additional medical evidence.

In an August 4, 2021 addendum to her March 24, 2021 report, Dr. Bratton reiterated her opinion that appellant's total disability, commencing April 17, 2019, was due to her employment-related adjustment disorder with anxiety and depression, and PTSD. She opined that appellant should not have returned to work due to her totally disabling psychological conditions and symptoms.

An August 16, 2021 letter from a nurse practitioner noted that appellant continued to experience severe PTSD symptoms, including social anxiety and hypervigilance. She also suffered from severe depression and anxiety. Appellant was fearful of crowds and male veterans. She continued to be unable to return to work. It was advised that appellant's disorders commenced following her April 17, 2019 employment injury.

OWCP, by decision dated January 6, 2022, denied modification of the April 9, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] Under FECA, the term

[3] A notification of personnel action Standard Form 50 dated September 27, 2021 indicated that appellant was removed from the employing establishment, effective that date, because she was absent without leave and failed to follow leave procedures.

[4] *Supra* note 2.

[5] *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[6] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[7]

Whether a particular injury causes an employee to become disabled from work and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[8] 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 specific employment factors identified by the claimant.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing February 5, 2021, causally related to her accepted April 17, 2019 employment injury.

In support of her claim for compensation, appellant submitted medical evidence from her attending physician, Dr. Shraberg. In a Form OWCP-5a and note dated February 23, 2021, Dr. Shraberg advised that appellant was totally disabled from work from February 19 through 23, 2021. In a March 9, 2021 letter, he placed her off work through April 6, 2021. Dr. Shraberg attributed appellant's disability to an exacerbation of symptoms, and her recent hospitalization, adjustment to medication changes, and inability to focus or concentrate due to a high level of anxiety. Although Dr. Shraberg opined that appellant was disabled during the claimed period, he failed to explain how the April 17, 2019 employment injury was responsible for her disability and why she was unable to perform the duties of her position during the period claimed. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical

[6] 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[7] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

[8] *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[9] *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

[10] *See C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

condition/period of disability has an employment-related cause.[11] Thus, the evidence from Dr. Shraberg is insufficient to establish appellant's disability claim.

Likewise, Dr. Greenlee's February 11, 2021 letter is also insufficient to establish that appellant's disability, commencing February 5, 2021, was causally related to her accepted April 17, 2019 employment injury. Dr. Greenlee placed appellant off work until February 18, 2021 following her hospitalization from February 5 to 11, 2021, but he did not provide an opinion regarding whether she was totally disabled from work during the claimed period due to the accepted employment injury.[12] Thus, the Board finds that his letter is of no probative value and is insufficient to establish her disability claim.

Appellant also submitted reports dated March 24 and August 4, 2021 from Dr. Bratton, a licensed professional clinical counselor. Certain healthcare providers such as mental health counselors are not considered physicians as defined under FECA.[13] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.[14]

The record also contains an August 16, 2021 letter from a nurse practitioner. However, medical reports signed by a nurse practitioner, which are not countersigned by a physician, are of no probative medical value to establish a period of disability.[15] Accordingly, this evidence is also insufficient to establish appellant's disability claim.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period due to the accepted employment injury.[16] Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to her accepted conditions, the Board finds that she has not met her burden of proof to establish her claim.

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[11] *See R.H.*, Docket No. 22-0140 (issued August 12, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[12] *Id*.

[13] Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (finding that lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[14] *See T.W.*, Docket No. 21-0279 (issued October 12, 2021) and *L.H.*, Docket No. 18-1217 (issued May 3, 2019) (licensed professional clinical counselors are not considered physicians under FECA).

[15] *Supra* note 13; *see also W.Z.*, Docket No. 20-0191 (issued July 31, 2020) (medical reports signed solely by nurse practitioners or physical therapists are of no probative value as such healthcare providers are not considered "physician[s]" as defined under FECA and are, therefore, not competent to provide medical opinions).

[16] *Supra* note 7.

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 disability from work commencing February 5, 2021, causally related to her accepted April 17, 2019, employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board