

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

A.O., Appellant)	
)	
and)	Docket No. 24-0769
)	Issued: December 2, 2024
DEPARTMENT OF LABOR, OFFICE OF THE)	
ASSISTANT SECRETARY FOR)	
ADMINISTRATION & MANAGEMENT,)	
San Francisco, CA, Employer)	
)	

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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2024 appellant filed a timely appeal from January 16 and June 4, 2024 merit decisions 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work during the period July 26 through August 22, 2015 causally related to his accepted October 30, 2014 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on a different issue.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 3, 2014 appellant, then a 48-year-old human resources specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2014 he experienced stress and anxiety due to a confrontation with his supervisor, S.C., which occurred in front of clients and coworkers while in the performance of duty. He alleged that S.C. approached his cubicle while he was meeting with clients in a hostile and aggressive manner with a loud tone of voice. Appellant claimed that S.C. was loud, rude, and unprofessional and that she embarrassed and belittled him in front of his customers and coworkers. He did not stop work.

Dr. Richard Levine, a Board-certified psychiatrist, completed an October 19, 2016 report and opined that appellant was totally disabled from work for a period of two months due to the October 2014 employment injury. He related that appellant had a preexisting diagnosis of panic disorder which was in a state of remission from October 2007 until the October 30, 2014 employment incident.

On November 18, 2018 Dr. Susan M. Fair, a licensed clinical psychologist, related that on December 2, 2014 appellant had returned to work and attended a mandatory meeting for a performance review which aggravated his symptoms of anxiety. In February 2015, appellant had informed her that due to her recommendation for further accommodations in the form of an adjusted schedule, the employing establishment considered that he had "permanent" medical restrictions and forced leave. Dr. Fair related that the threat of forced leave adversely impacted his anxiety and caused concerns about his ability to care for his family such that she released him from medical restrictions commencing February 9, 2015.

In a November 11, 2022 report, Dr. Fair related that she treated appellant from November 5, 2014 through October 26, 2016 due to panic disorder and unspecified anxiety disorder which she attributed to the October 30, 2014 employment injury.

On February 2, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Ijeoma Ijeaku, a Board-certified psychiatrist, for a second opinion examination to determine whether appellant had any medical conditions causally related to his employment.

In a March 2, 2023 report, Dr. Ijeaku noted his review of the SOAF and related appellant's history of injury, indicating that he had a history of mental problems before he began working as an administrator at the Department of Homeland Security in 2016. She diagnosed panic disorder and opined that the accepted employment incident precipitated the development of the panic disorder. Dr. Ijeaku found that appellant's accepted employment injury had not resolved, but that in the absence of ongoing stressors he was able to perform his current job duties with an adequate treatment/management regimen in place.

² Docket No. 19-1612 (issued April 8, 2021); Docket No. 16-1779 (issued November 22, 2017).

On March 15, 2023 OWCP accepted the claim for panic disorder.

Beginning on March 23, 2023 appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the period July 26 through August 22, 2015.

In a July 7, 2023 development letter, OWCP requested additional information from the employing establishment regarding appellant's return to work and pay rate. It afforded the employing establishment 15 days to respond.

In a July 11, 2023 response, the employing establishment related that appellant did not receive any limited-duty job offers, but remained in pay status for the period October 30, 2014 through August 22, 2015 and that he returned to work on December 2, 2014 for 1.5 to 5 hours a day while also using various types of leave.

In an August 15, 2023 development letter, OWCP requested that appellant provide a Time Analysis Form (Form CA-7a) outlining his specific dates and hours of disability from work during the period July 26 through August 22, 2015. In an August 15, 2023 memorandum of telephone call (Form CA-110), it noted that he believed that he had used 56 hours of leave without pay from July 26 through August 8, 2015 and 16 hours of leave without pay from August 9 through 22, 2015.

On August 28, 2023 appellant provided timesheet summary documentation indicating intermittent dates of total disability including July 30 through 31, 2015 and August 4 through 7, August 10 through 12, and August 21, 2015. He provided a Form CA-7a indicating eight hours of leave without pay on August 10 and 21, 2015.

In a November 20, 2023 development letter, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation for disability on July 30 through 31, August 3 through 7, August 10, and August 21, 2015. It advised him of the type of factual and medical evidence necessary to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant responded to OWCP's development letter on December 11, 2023 and provided e-mails addressing his leave usage.

By decision dated January 16, 2024, OWCP denied appellant's claim for compensation for intermittent disability from work during the period July 26 through August 22, 2015, finding that the medical evidence of record was insufficient to establish that the claimed disability was causally related to the accepted employment injury.

On January 31, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 4, 2024.

Appellant submitted an April 2, 2024 report, wherein Dr. Levine diagnosed anxiety and panic disorder aggravated by the October 2014 employment injury. Dr. Levine related that during the period July 26, 2015 through August 22, 2015 and specifically on July 30 through 31, August 3 through 7, and August 10 and 21, 2015 appellant used leave to continue to rehabilitate and try to manage his panic attacks. He reported that appellant was compliant with his prescribed medication scheduled and that panic disorders were not eliminated only managed.

By decision dated June 4, 2024, OWCP's hearing representative affirmed the January 16, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁵ 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.⁶

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. 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.⁷

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.⁸

ANALYSIS

The Board finds that this case is not in posture for decision.

On February 2, 2023 OWCP referred appellant, along with a SOAF, and a series of questions to Dr. Ijeaku for a second opinion examination to determine whether appellant had any medical conditions causally related to his employment. Dr. Ijeaku opined that appellant's accepted

³ *Supra* note 1.

⁴ *See L.R.*, Docket No. 21-0018 (issued February 17, 2023); *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); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 20 C.F.R. § 10.5(f); *see A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ *See A.N., id.*; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson, supra* note 4.

⁷ *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

⁸ *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

employment injury had not resolved, but that in the absence of ongoing stressors he was able to perform his current job duties with an adequate treatment/management regimen in place. OWCP, however, did not ask her to address the specific period of disability claimed.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.⁹ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁰

On remand OWCP shall issue an updated SOAF and then request a supplemental opinion from Dr. Ijeaku inquiring as to whether appellant was disabled from work during the period July 26 through August 22, 2015 causally related to the accepted October 30, 2014 employment injury.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ *M.C.*, Docket No. 24-0731 (issued September 6, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁰ *See M.C., id.*; *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B., id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹¹ *E.B., supra* note 9; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the January 16 and June 4, 2024 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 2, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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