

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing August 30, 2023, causally related to the accepted April 18, 2016 employment injury.

FACTUAL HISTORY

On November 8, 2016 appellant, then a 57-year-old voluntary services specialist, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety and stress due to factors of her federal employment. She explained that she was verbally attacked by a co-worker, her supervisor at the time did not provide any support, and her work environment became increasingly hostile. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on April 18, 2016. She did not initially stop work.

On April 12, 2017 OWCP accepted the claim for post-traumatic stress disorder (PTSD) with depression. It paid appellant wage-loss compensation on the supplemental rolls effective May 2, 2017, and on the periodic rolls effective May 28, 2017.

On August 25, 2021 OWCP determined that a conflict existed in the medical opinion evidence regarding appellant's disability status. It referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. David Kroll, a Board-certified psychiatrist, for an impartial medical examination.

In an October 11, 2021 report, Dr. Kroll, serving as the impartial medical examiner (IME), opined that appellant's PTSD had improved, however, her adjustment disorder had not yet resolved. He further related that while appellant's PTSD symptoms had resolved, a reexposure to the same work environment that originally caused them was likely to retrigger her symptoms and could lead to further disability: "Returning to that same work environment should not be considered a realistic goal." Dr. Kroll concluded that appellant required a work environment that was safe and free from harassment.

On June 5, 2023 appellant returned to work in a part-time capacity and continued working until she stopped work on August 28, 2023.

In an August 30, 2023 report, Dr. Carlos A. Del Rio, a Board-certified internist and a treating physician, diagnosed PTSD, unspecified. He noted that appellant attempted a trial back to work at the employing establishment which induced her anxiety and PTSD. In a certification of health care provider for employee's serious health condition under the Family and Medical Leave Act (Form WH-380), Dr. Del Rio indicated that appellant's condition was chronic and that she was temporarily totally disabled.

On September 12, 2023 appellant filed a notice of recurrence (Form CA-2a) alleging that on August 30, 2023, she sustained a recurrence of disability causally related to her April 18, 2016 employment injury. She alleged that her condition from the original injury never resolved, she tried to work in a different position, but almost immediately upon returning to the work, her mental health began to decline, and her anxiety and PTSD worsened.

In a September 13, 2023 letter, the employing establishment controverted the claim.

By development letter dated September 19, 2023, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of evidence necessary to establish her claim. OWCP related that appellant's physician must explain how her disability was due to her original injury/illness, and demonstrate with clinical findings that the accepted condition materially worsened/changed, without intervening cause, to the point that she was disabled/further disabled, and that her physician should rule in or out other causes of her current condition. It provided a questionnaire for appellant's completion and afforded her 30 days to submit the necessary evidence.

On October 19, 2023 OWCP found a conflict in medical opinion between Dr. Del Rio and Dr. Kroll, regarding whether appellant could continue to perform the light-duty work assignment which began on June 5, 2023. It explained that Dr. Del Rio opined that appellant was totally disabled from all work, while Dr. Kroll had provided light-duty work limitations.

By decision dated February 16, 2024, OWCP denied appellant's claim for a recurrence of disability commencing August 30, 2023, due to her accepted employment injury. It explained that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change/worsening of her accepted work-related conditions. OWCP noted that appellant returned to work in a part-time capacity on June 5, 2023, and continued working until she stopped work on August 28, 2023.

On May 13, 2024 OWCP referred appellant to Dr. Herbert Georges, a Board-certified psychiatrist, for an impartial medical examination. In an October 11, 2024 report, Dr. Georges noted appellant's history of injury and treatment. He explained that appellant suffered from PTSD and opined that her present disability was a direct result of the accepted work-related conditions, that she continued to have emotional vulnerabilities stemming from the original injury that were triggered by her return to work at the employing establishment. Dr. Georges further related that the level of interaction/contact with patients/veterans the position required was too anxiety provoking for her to handle. He advised that appellant could work in a safe environment that did not represent a constant reminder of her traumatic experience, for example, she could work remotely in the comfort and safety of her home. Dr. Georges further advised that a hybrid schedule comprised of telework and office hours at a facility other than the employing establishment would also adequately accommodate her mental health needs, and if the option of exclusive or partial remote work was unavailable, appellant could return to an office job in a limited capacity.

In a letter dated October 14, 2024, counsel for appellant argued that Dr. Georges' report supported appellant's claim for a recurrence, and that her PTSD was triggered by her return to the employing establishment.

On October 16, 2024 counsel for appellant requested reconsideration.

By decision dated October 23, 2024, OWCP denied appellant's claim for a recurrence of disability commencing August 30, 2023, due to her accepted employment injury. It explained that appellant failed to provide any medical evidence that a spontaneous worsening of the accepted conditions had occurred.

LEGAL PRECEDENT

OWCP's procedures require that, in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as a recurrence claimed long after apparent recovery and return to work.³ Thus, in cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.⁴

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.⁵

ANALYSIS

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

Appellant returned to work in a part-time capacity on June 5, 2023, and stopped work on August 28, 2023. On September 12, 2023 she filed a notice of recurrence of disability.

As noted, OWCP's procedures require that in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Thus, in cases where a recurrence is claimed within 90 days or less from the return to work, the focus is on disability rather than causal relationship.⁶

On September 19, 2023 OWCP issued appellant a recurrence claim development letter. However, the September 19, 2023 development letter instructed her to provide factual and medical evidence in accordance with the standard for a recurrence of disability more than 90 days after return to duty. As appellant claimed a recurrence of disability within 90 days of her first return to duty, OWCP should have developed and adjudicated the claim under the proper recurrence standard, emphasizing disability rather than causal relationship.⁷

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013); *R.C.*, Docket No. 24-0863 (issued November 14, 2024); *see R.B.*, Docket No. 24-0110 (issued April 10, 2024); *see also R.E.*, Docket No. 20-0421 (issued May 17, 2021); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

⁴ *Id.* at Chapter 2.1500.5a; *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

⁵ *M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

⁶ *Supra* notes 3 and 4.

⁷ *Id.*; *see S.B.*, Docket No. 22-0082 (issued April 14, 2023); *see also Order Remanding Case, D.K.*, Docket No. 18-0604 (issued October 21, 2019).

The Board thus finds that this case must be remanded for further development applying the appropriate standard.⁸ Following any such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 6, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁸ *Id.*

⁹ *See generally* *B.N.*, Docket No. 17-0787 (issued July 6, 2018); *C.D.*, Docket No. 17-1074 (issued August 28, 2017).