

FACTUAL HISTORY

On April 20, 2007 appellant, a 57-year-old mail processor, filed an occupational disease claim alleging that his psychological condition was a result of discrimination in the course of his federal employment. An Equal Employment Opportunity Commission decision in 2003 found that the employer failed to make a good faith effort to provide appellant with a reasonable accommodation for his physical disability by not providing an adequate chair from June 1999 to November 2001. OWCP accepted this as a compensable factor of employment and referred appellant to Dr. Arthur Samuels, a Board-certified psychiatrist, for a diagnosis, an opinion on causal relationship and an opinion on the period or periods of disability resulting from such condition.³

On February 27, 2008 Dr. Samuels conducted a psychiatric evaluation and diagnosed generalized anxiety disorder, dysthymic disorder and paranoid personality. He found that this disorder was directly related to work: “[Appellant’s] inability to tolerate physical pain from the same prolonged period of time was apparently disregarded and he was ordered to stay home on many occasions or so through the period. When he was not given an ergonomic chair, which was recommended by his orthopedic surgeon, this made his work situation intolerable.” Dr. Samuels found that appellant was unable to work many times in the past six years and that “at the present time, he is completely isolated and unable to do any kind of employment.”

OWCP accepted appellant’s claim for generalized anxiety disorder and advised that he could file a claim for disability compensation for any lost time.

Appellant filed claims for wage loss for the period November 22, 2006 to June 12, 2008 and from October 21 to December 20, 2008. OWCP asked him to submit medical evidence with medical rationale to establish his disability for work during the periods claimed. Appellant indicated that he stopped work on November 22, 2006 because his employer did not provide a chair recommended by his physician and because the employing establishment could not accommodate his restrictions. OWCP explained that appellant needed more than just a statement asking to be excused for the dates of disability claimed; he needed to submit a comprehensive and reliable medical report directly related to the injuries accepted in his case.

In a decision dated February 25, 2010, OWCP denied compensation for the disability claimed. It found that appellant did not respond to its request for supporting medical evidence.

Appellant submitted a February 5, 2009 note from Dr. Deepak Awasthi, a Board-certified neurological surgeon, who last saw appellant on February 21, 2008 and reported that he continued to be disabled with low back pain and walking difficulties and weakness in his extremities. Dr. Awasthi explained that appellant was known to have a significant amount of degenerative disc disease in the lumbar spine. Appellant also referred OWCP to Dr. Samuels’ February 27, 2008 report.

³ Dr. Erich Conrad, an assistant professor of clinical psychiatry, found on March 2, 2007 that appellant was totally disabled for work as a result of “the stress presented by work due to feeling discriminated against,” “difficulties at work” and “stress from the employment environment.” On October 22, 2007 and April 18, 2008, he again reported that appellant was unable to work.

Appellant submitted additional documentation, including a notification of absence, notes about his chair, OWCP's authorization for the purchase of an office chair⁴ and a sales quote.

In a decision dated October 20, 2010, OWCP's hearing representative affirmed the denial of disability compensation. The hearing representative noted that the exposure to employment factors ceased in November 2001 and appellant went out on total disability in November 2006.

On appeal, appellant states that he was diagnosed with major depression. He noted that OWCP's hearing representative did not mention reviewing reports of a Dr. Conrad and further noted that the hearing representative did not mention that the employing establishment was in violation of his medical restrictions.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁶

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁷ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁸ OWCP is not a disinterested arbiter, however, but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on OWCP to see that its administrative processes are impartially and fairly conducted.⁹ While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁰ When OWCP undertakes to develop the medical aspects of a case, it must exercise extreme care in seeing that its administrative processes are impartially and fairly conducted.¹¹

⁴ OWCP gave this authorization under it File No. xxxxxx226, which is not before this Board.

⁵ 5 U.S.C. § 8102(a).

⁶ 20 C.F.R. § 10.5(f).

⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

¹⁰ *Mary A. Barnett (Frederick E. Barnett)*, 17 ECAB 187, 189 (1965).

¹¹ *William N. Saathoff*, 8 ECAB 769 (1956).

ANALYSIS

The issue is whether appellant's disability from November 22, 2006 to June 12, 2008 and from October 21 to December 20, 2008 was causally related to his accepted employment injury, a generalized anxiety disorder arising from the employing establishment's failure to provide him with an adequate chair from June 1999 to November 2001. OWCP referred appellant to Dr. Samuels, a Board-certified psychiatrist, to provide an opinion on the causal relation to the accepted work factor and period or periods of disability resulting from the diagnosed condition. Dr. Samuels stated that appellant was "completely isolated and unable to do any kind of employment."

Although he supported that appellant sustained an employment-related anxiety disorder Dr. Samuels did not explain well how the failure to accommodate physical disability from June 1999 to November 2001 caused total disability for work. He did not address when the current disability began (appellant claimed that it began on November 22, 2006). OWCP undertook development of the disability issue, but it did not receive a report that addressed the issue with probative medical rationale. When appellant later filed disability claims, claims that included the period of Dr. Samuels' report, OWCP advised appellant what evidence he needed to submit.

While appellant has the burden to establish entitlement to disability compensation, OWCP shares responsibility in the development of the evidence and as it undertook development of the disability issue by referring him to Dr. Samuels for an opinion on the period or periods of disability resulting from the employment-related condition, it has the responsibility to obtain a report that resolves the issues presented in the case.¹² The Board will therefore set aside OWCP's hearing representative's October 20, 2010 decision and remand the case for further development of the medical opinion evidence and an appropriate final decision on appellant's entitlement to disability compensation for the periods claimed.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted.

¹² *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: October 24, 2011
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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