

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Pittsburgh, PA, Employer)
_____)

**Docket No. 12-526
Issued: July 18, 2012**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 11, 2012 appellant, through her attorney, filed an appeal from a December 14, 2011 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.

ISSUE

The issue is whether appellant has established a recurrence of total disability commencing on June 21, 2010 causally related to accepted dysthymia and major depression.

On appeal, counsel asserts that OWCP's December 14, 2011 decision is "contrary to fact and law."

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

By decision dated January 16, 2004, OWCP accepted that on or before March 17, 1999 appellant, then a 46-year-old clerk, sustained major depression and dysthymia related to an accepted left knee injury on that date.² She remained under psychiatric care through 2009.

On August 11, 2010, while on light duty, appellant filed a recurrence of disability (Form CA-2a) claiming that the accepted 1999 emotional condition worsened as of June 21, 2010 such that she was totally disabled for work. She noted that she had remained under psychiatric treatment. In an accompanying statement, appellant attributed the claimed recurrence of disability to uncertainty about future job assignments under the National Reassessment Process (NRP), providing a physician's letter explaining her need for frequent bathroom breaks due to medication side effects, and alleged human resource errors in her annuity and retirement eligibility dates. In support of her claim, appellant submitted a May 7, 2009 note from Dr. Vitasta Bazaz, an attending Board-certified psychiatrist, stating that she should be excused "to use bathroom and water fountain as much as needed by her. [Appellant] is on psychotropic med[ication]s." She also submitted personnel forms regarding retirement and annuity computations and an employing establishment memorandum regarding the NRP.

In a September 23, 2010 letter, OWCP advised appellant of the type of evidence needed to establish her claim, including her attending physician's opinion supporting a spontaneous worsening of the accepted conditions on June 21, 2010.

Appellant submitted a June 23, 2010 chart note from Dr. Bazaz recommending hospitalization as appellant was suicidal. She was hospitalized from June 25 to July 8, 2010. Dr. Bazaz submitted chart notes through January 25, 2011.

In an August 16, 2010 report, Dr. Jeffrey Pearch, an attending osteopathic physician diagnosed recurrent major depressive disorder of moderate severity. He stated that he could not "comment on relation of current symptoms to past events." Dr. Pearch submitted progress notes through October 7, 2010.

In an August 12, 2010 report, Dr. David B. Hartman, an attending Board-certified orthopedic surgeon, noted treating appellant for a knee condition. He released her to limited-duty work.

On May 16, 2011 OWCP obtained a second opinion from Dr. John Delaney, a Board-certified psychiatrist, who diagnosed bipolar II disorder with rapid cycling. Dr. Delaney opined that unspecified work stress following 2005 knee surgery precipitated "a return of depression ... with bipolar features on June 21, 2010." He opined that appellant was totally and permanently disabled for work due to bipolar disorder and the accepted depression.

Appellant participated in outpatient group therapy sessions from July 12 to November 5, 2010.

² OWCP accepted a March 17, 1999 left knee injury under File No. xxxxxx516.

By decision dated June 16, 2011, OWCP denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. It found that she attributed the claimed recurrence of disability to new work factors, including fear of reassignment, embarrassment over providing a medical excuse for frequent bathroom breaks and frustration regarding the employing establishment's calculation of her annuity. OWCP found that appellant should have filed a new occupational disease claim based on these intervening factors.

In a July 1, 2011 letter, counsel requested a telephonic oral hearing, held on October 6, 2011. At the hearing, he asserted that there were no intervening factors because appellant remained under treatment for the accepted conditions as of June 21, 2010. On September 6, 2011 counsel submitted three psychiatric appointment slips dated from March 17 to June 16, 2011.

By decision dated and finalized December 14, 2011, an OWCP hearing representative affirmed OWCP's June 16, 2011 decision, finding that the medical evidence failed to establish a spontaneous worsening of the accepted conditions on June 21, 2010 such that she could no longer perform her light-duty job.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."³ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁵

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty.⁶

³ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁴ See 20 C.F.R. § 10.5(x); see also *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (March 2011). See also *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

ANALYSIS

OWCP accepted that appellant sustained major depression and dysthymia causally related to an accepted March 17, 1999 left knee injury. She claimed that she sustained a recurrence of total disability beginning on June 21, 2010. Appellant asserted both that the accepted conditions remained active and that anxiety regarding the NRP, a medical excuse and annuity computations precipitated the claimed recurrence of disability.

In support of her claim, appellant submitted reports from Dr. Bazaz, an attending Board-certified psychiatrist, who noted a worsening of appellant's depression on June 23, 2010 but did not specify a cause. Dr. Pearch, an attending osteopathic physician Board-certified in psychiatry, diagnosed recurrent major depressive disorder but could not comment on what precipitated the condition. Thus, neither physician supported a spontaneous worsening of the accepted emotional conditions as of June 21, 2010 causally related to the March 17, 1999 knee injury.

OWCP obtained a second opinion from Dr. Delaney, a Board-certified psychiatrist, who found that unspecified work events after 2005 knee surgery precipitated a worsening of the accepted depression as of June 21, 2010. Dr. Delaney's opinion supports that new factors worsened the accepted emotional conditions.

In a September 23, 2010 letter, OWCP advised appellant to submit a rationalized report from her attending physician supporting a spontaneous worsening of the accepted depression and dysthymia. However, appellant did not do so. Rather, she asserted that stress from new work factors worsened her condition. The exposure to work factors broke the chain of causation stemming from the accepted emotional conditions. The circumstances did not involve a spontaneous change in the accepted conditions.⁷ For this reason, OWCP's December 14, 2011 decision denying the claimed recurrence of disability was proper under the law and facts of the case.⁸

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.

On appeal, counsel asserts that OWCP's December 14, 2011 decision is "contrary to fact and law." As stated, OWCP properly found that appellant did not establish that she sustained a recurrence of disability commencing June 21, 2010 as she alleged intervening causes.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an employment-related recurrence of total disability commencing June 21, 2010 causally related to accepted dysthymia and depression.

⁷ *Bryant F. Blackmon*, 56 ECAB 752 (2005).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 14, 2011 is affirmed.

Issued: July 18, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board