

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

R.A., Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
TRAINING & DOCTRINE COMMAND,
Monterey, CA, Employer**

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**Docket No. 12-730
Issued: September 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:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 14, 2012 appellant, through her attorney, filed a timely appeal from a November 22, 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 is entitled to wage-loss compensation for the period November 4, 2007 through July 3, 2008.

FACTUAL HISTORY

This case was previously before the Board. By decision dated July 26, 2011, the Board affirmed a July 22, 2010 OWCP decision which found appellant did not meet her burden of

¹ 5 U.S.C. §§ 8101-8193.

proof to establish that she was disabled for the period November 4, 2007 through July 3, 2008 due to her accepted work-related injuries.² The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On September 7, 2011 appellant requested reconsideration. Her attorney indicated that medical evidence from Dr. Lisa Dwelle, a Board-certified family practitioner, not previously considered was being submitted.

OWCP received evidence previously of record³ along with a May 29, 2010 letter from Dr. Dwelle addressed to appellant's attorney. In a May 29, 2010 letter, Dr. Dwelle referred to her December 3, 2008 medical report, previously of record, which documented the worsening of appellant's psychological condition during the period November 5, 2007 through November 3, 2008. She stated that appellant's fall at work occurred during a time of conflict with the chairman of her department. Dr. Dwelle noted that appellant's experiences at her job and the fall became known through the work environment and the Arabic community and that appellant was a permanently disgraced female because of her belief that she was being sexually harassed. She noted that appellant's symptoms worsened and included depression, anxiety, pain and insomnia and she was not able to complete any work responsibilities due to the pain and psychiatric conditions, she could not care for her baby and was afraid to leave the house. Dr. Dwelle described appellant's recent condition, noting that appellant felt unsafe and, during office visits, wore dark glasses and cried silently. She noted several medications had been prescribed for anxiety and depression with modest improvement in symptoms and appellant and her husband were encouraged to seek care and therapy from an Arabic and/or culturally sensitive psychologist. Dr. Dwelle stated that appellant had deteriorated from a highly functional, professional teacher, to a nonfunctional withdrawn ashamed female because of the environment, colleagues and ultimately trauma at work. She opined that appellant's ongoing symptoms were the direct result of her work experience and made her unable to work.

By decision dated November 22, 2011, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

For each period of disability claimed, an employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁴ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are

² Docket No. 10-2229 (issued July 26, 2011). On October 29, 2007 appellant, then a 31-year-old instructor, filed a traumatic injury claim alleging that on October 25, 2007 she fell down stairs while at work. She was hospitalized and the employing establishment indicated her last day of employment was October 29, 2007. OWCP accepted the claim for left elbow and left shoulder contusions, lumbar and neck sprains and a concussion without loss of consciousness.

³ This included handwritten medical notes for the period September 29, 2007 to May 28, 2010 from the Pacific Family Medical Group and copies of Dr. Dwelle's progress reports from 2007 through 2008.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *David H. Goss*, 32 ECAB 24 (1980).

medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁵

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).⁹ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

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 their disability and entitlement to compensation.¹¹

ANALYSIS

OWCP accepted appellant's claim for contusion of left elbow, contusion of left shoulder region, neck and back sprains and concussion without loss of consciousness as a result of an October 26, 2007 work-related fall down the stairs. Appellant claimed disability for the period November 4, 2007 through July 3, 2008 due to the work-related injuries sustained on October 26, 2007. In Docket No. 10-2229, the Board affirmed the denial of her claim for wage-

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹¹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

loss compensation for the period November 4, 2007 through July 3, 2008. Appellant subsequently requested reconsideration. The Board finds that she submitted insufficient medical evidence to establish her claim.

In her May 29, 2010 letter, Dr. Dwelle opined that appellant's ongoing symptoms of anxiety and depression were the direct result of her work experience and rendered her unable to work. OWCP, however, did not accept an emotional condition related to the October 26, 2007 fall at work. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.¹² Dr. Dwelle did not provide any explanation with medical rationale on why appellant was not able to work during the period in question because of her work-related conditions. Thus, her report is of diminished probative value.

The other evidence of record was previously submitted and reviewed by both OWCP and the Board.

The Board finds that the medical evidence of record is not sufficient to meet appellant's burden of proof with respect to the claimed dates of disability. Accordingly, OWCP properly denied wage-loss compensation for those days.

Appellant argues on appeal that OWCP's decision was contrary to fact and law. As noted, the medical evidence did not sufficiently address the causal relationship of her alleged disability during the claimed period to her accepted work-related injuries. Therefore, appellant failed to meet her burden of proof.

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 established that she was disabled for the period November 4, 2007 through July 3, 2008 due to her accepted work-related injuries.

¹² See *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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