



The employing establishment controverted the claim. Appellant's treating physician, Dr. George D. Karalis, a psychiatrist, opined that appellant was totally disabled.

By letter dated March 11, 2008, OWCP referred appellant for a second opinion to Dr. Alberto Lopez, a Board-certified psychiatrist. In June 13 and July 3, 2008 reports, Dr. Lopez found that appellant was disabled when he was taken off of work in June 2007 and no longer disabled as of May 27, 2008. He opined that appellant could return to work in his usual job.

On July 17, 2008 OWCP accepted the claim for anxiety disorder and depression.<sup>2</sup> In a decision also dated July 17, 2008, it determined that appellant was entitled to wage-loss compensation benefits from April 18, 2007 through May 27, 2008.

In a January 10, 2009 report, Dr. Karalis noted appellant's history and opined that he was totally disabled from a psychiatric perspective since the incident with his supervisor on June 7, 2007. He advised that appellant would remain "totally unemployable until at least [June 30, 2009]."

In a July 21, 2009 decision, OWCP's hearing representative determined that there was a conflict in the medical evidence. Dr. Lopez, the second opinion physician, found that appellant was not totally disabled after May 27, 2008 while appellant's treating physician, Dr. Karalis determined that appellant was totally disabled.

On October 27, 2009 OWCP referred appellant together with a statement of accepted facts and the medical record, to Dr. Laura Davies, a Board-certified psychiatrist, for an impartial medical evaluation. In a December 11, 2009 report, Dr. Davies stated that appellant no longer had residuals of his work-related injury and that he could have returned to work in May 2008. In a January 23, 2010 supplemental report, she opined that he was not currently disabled due to an industrial cause. Appellant did not meet the cutoffs for either anxiety or depression. Because he was medicated, Dr. Davies diagnosed anxiety disorder not otherwise specified. She explained that appellant was able to maintain his relationship with his common-law wife and son who moved in and out of his house, to volunteer on a regular basis and to take care of activities of

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<sup>2</sup> Appellant has five other claims that were combined under claim File No. xxxxxx800. Under File No. xxxxxx800, he alleged that Gary Fong, his supervisor, harassed him. OWCP accepted that four incidents between May 18, 2006 and March 30, 2007 occurred in the performance of duty. It accepted an unspecified nonpsychotic mental disorder. Appellant received compensation from October 3 to 6, 2006 and November 14, 2006 to February 3, 2007. Under File No. xxxxxx890, on November 13, 2002 he claimed anxiety and depression from being yelled at and threatened by his supervisor in front of employees and customers. OWCP accepted this and other incidents in finding that appellant sustained an adjustment disorder with mixed and depressed mood. Appellant received compensation from October 21 to November 21, 2003 and October 12 to November 20, 2004 and February 8, 12, April 6, 13, 26 and 28, 2005. Under File No. xxxxxx799 he alleged that on June 12, 2007, Brenda Young, his supervisor, tried to grab a leave request from his hand on June 7, 2007. OWCP accepted that post-traumatic stress disorder (PTSD). Appellant received compensation from July 29, 2007 to May 27, 2008. Under File No. xxxxxx710, on July 25, 2000 he claimed an emotional condition due to his removal from employment, false allegations made by his coworkers, discrimination and unfair treatment. In a December 22, 2000 decision, OWCP denied the claim finding that appellant was not injured in the performance of duty. The Board affirmed this decision on April 3, 2010. Docket No. 01-1373 (issued April 3, 2010). Under File No. xxxxxx503 appellant claimed extreme abuse and cruelty from Gwen Grant, a coworker. He also alleged that Mr. Fong ignored the situation. OWCP denied appellant's claim in a December 13, 2005 decision.

daily living, as well as write sophisticated letters to multiple governmental leaders. Dr. Davies did not find that he was disabled in May 2008.

In a February 1, 2010 decision, OWCP denied compensation benefits after May 27, 2008. In a July 7, 2010 decision, it vacated the decision and remanded the case for a supplemental opinion from Dr. Davies.

In an August 31, 2010 report, Dr. Davies diagnosed anxiety disorder not otherwise specified and opined that appellant was not disabled in May 2008.

In a September 10, 2010 decision, OWCP denied appellant's claim for compensation for the period commencing May 28, 2008.

Appellant requested a hearing, which was held on December 15, 2010. In a March 9, 2011 decision, OWCP's hearing representative determined that Dr. Davies did not resolve the conflict and remanded the case for referral of appellant to a new impartial medical examiner.

On April 20, 2011 OWCP referred appellant to Dr. Miles L. Weber, a Board-certified psychiatrist and neurologist, for an impartial examination. In a May 31, 2011 report, Dr. Weber reviewed appellant's history of injury and treatment. Appellant reported a history of PTSD since early adolescence. Mental status examination showed appellant to be an emotionally labile man who frequently spoke in a loud voice and bounced from one issue to another. Appellant focused on injustices and poor treatment he received at work and the negative impact it had on him both mentally and physically with a presentation that was disorganized. Dr. Weber diagnosed post-traumatic stress disorder under Axis 1 and personality disorder under Axis 2. He explained that appellant's personal characteristics and personality produced difficulty in and of themselves. Dr. Weber explained that appellant's long-term mental characteristics, "over the last 10 to 15 years, demonstrated a chronic inability to learn by trial and error." Appellant rigidly maintained personal beliefs in the face of persuasive contradictory information. He applied personal and idiosyncratic interpretations to events around him to the extent that he caused difficulty to himself and to those around him rising to a level of clinical significance such that he convinced himself that he could not work. Dr. Weber explained that appellant interpreted neutral daily activities as being directed towards him with harmful intent. Appellant "conclusively told [Dr. Weber] that no one in any kind of supervisory or management position can be trusted." Dr. Weber explained that moving him to a different site away from his usual supervisors would not address this as appellant had concluded there was no safe place for him to work with his current employer. The maladaptive characteristics were such that any attempts to return him to work at any accommodation with the current employer would be rejected by appellant through behavioral and emotional responses. Dr. Weber opined that appellant was disabled after May 28, 2008; however, this stemmed from his underlying personality disorder, not from an anxiety disorder, depression or PTSD. He also explained that the accepted condition of PTSD had not resolved and that the temporary total disability continued until at least June 30, 2009. Dr. Weber explained that the psychiatric reasons were as he described, rather than simply from PTSD.

In a letter dated June 15, 2011, OWCP requested clarification from Dr. Weber regarding whether the disability after May 28, 2008 was work related. In a July 5, 2011 supplemental

report, Dr. Weber explained that there were “no specific work incidents listed in the statement of accepted facts that related to disability after May 28, 2008.” He advised that the disability after May 28, 2008 was due to a personality disorder and was not work related. Dr. Weber explained that he concluded that “there had been permanent aggravation of this condition, PTSD that preexisted employment with the [employing establishment].” He indicated that he was not entirely clear about OWCP’s question regarding permanent aggravations. From a medical point of view, an aggravation meant a permanent worsening of a condition. Dr. Weber opined that if there were subsequent injurious events, the level of permanent impairment or permanent disability could be increased, resulting in a permanent aggravation of a preexisting permanent aggravation. He reiterated that appellant was totally disabled up to about June 30, 2009. Subsequent to June 30, 2009, appellant was not totally temporally disabled, and was capable of some work. Dr. Weber reiterated that appellant “was firmly committed to the idea that he could not work with the [employing establishment].” He opined that this perception and conclusion stemmed from his personality disorder.

By decision dated July 8, 2011, OWCP denied appellant’s claim for compensation beginning May 28, 2008.

Appellant requested a hearing, which was held on October 26, 2011.

By letter dated July 15, 2011, OWCP requested clarification from Dr. Weber regarding whether appellant continued to have PTSD under claim File No. xxxxxx799. In an August 1, 2011 supplemental report, Dr. Weber stated that “Disability after May 28, 2008 was caused by a preexisting personality disorder that had no connection with work experience. After May 28, 2008, PTSD was not productive of disability.” Dr. Weber referred to his prior report and explained that any disability after May 28, 2008 was caused by appellant’s underlying personality disorder that had no connection with work. He opined that there was “no disability produced by post[-]traumatic stress disorder after May 28, 2008.” Dr. Weber indicated that PTSD was caused by circumstances not connected with employment, and existed at the time employment began. He also noted that there had been subsequent permanent aggravations by his employment experience with the postal service. Dr. Weber elaborated with regards to whether the condition of PTSD was still related to the accepted work factor. He indicated that the answer was “yes” and advised that the relationship was that of a condition preexisting employment that was permanently aggravated by employment and was not at present causing work disability.

In an October 13, 2011 report, Dr. Dina Perez-Neira, a licensed clinical psychologist, opined that appellant’s “stressful work environment and its sequelae have negatively impacted his emotional aspect.” She listed diagnoses of PTSD, severe and recurrent major depressive disorder without psychotic features and personality disorder not otherwise specified (NOS). Dr. Perez-Neira explained that the global assessment of functioning revealed appellant’s emotional distressing situation resulted in disability to function in activities of daily life, including work and contributing financially and otherwise to his. She advised that his continued exposure to traumatic threats and events at the employing establishment developed into a full scale exacerbation of post-traumatic stress disorder. Dr. Perez-Neira opined that appellant’s mental state qualified as an “extremely serious mental disability including the effects directly related to his traumatic experiences while employed at the [employing establishment.]”

On November 28, 2011 appellant stated that he had no medical treatment since his claim was denied. He also questioned the fairness of Dr. Lopez's report. In a letter dated December 15, 2011, counsel contend that OWCP erred in making an unfavorable decision, prior to receiving clarification from the impartial medical examiner. He enclosed new medical evidence.

In a December 12, 2011 report, Dr. Karalis noted that he had treated appellant since 2002 in hundreds of sessions. He opined that appellant continued to have PTSD and never recovered from his 2002 illness. Dr. Karalis noted a subsequent 2007 incident at work where appellant encountered Supervisor Young. He explained that appellant remained totally disabled. Dr. Karalis noted that the 2007 stress was aggravated by the 2002 stress.

In a January 12, 2012 decision, OWCP's hearing representative affirmed the July 8, 2011 decision.

### **LEGAL PRECEDENT**

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>3</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>4</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>5</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>7</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup>

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<sup>3</sup> *Paul E. Thams*, 56 ECAB 503 (2005); 20 C.F.R. § 10.5(f).

<sup>4</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Paul E. Thams*, *id.*

<sup>5</sup> *Id.*

<sup>6</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207, 210 (1993).

<sup>8</sup> *See Roger Dingess*, 47 ECAB 123, 126 (1995); *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

The Board has held that, when OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in his or her original report.<sup>9</sup> However, when the impartial specialist is unable to clarify or elaborate on his or her original report or if his or her supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed statement of accepted facts to another impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.<sup>10</sup>

### ANALYSIS

OWCP accepted appellant's claim for anxiety, depression and PTSD. A conflict arose between the treating physician, Dr. Karalis, who found that appellant continued to be totally disabled after May 27, 2008 and Dr. Lopez, the second opinion physician, who found that appellant was not totally disabled after May 27, 2008. OWCP selected Dr. Weber, a Board-certified psychiatrist and neurologist, to resolve the conflict.<sup>11</sup>

In a May 31, 2011 report, Dr. Weber noted appellant's history and noted findings. He diagnosed PTSD and personality disorder and noted that appellant had PTSD since adolescence. Dr. Weber explained that appellant's long-term mental characteristics "demonstrated a chronic inability to learn by trial and error" while he maintained his rigid personal beliefs in the face of persuasive contradictory information. He indicated that appellant applied personal and idiosyncratic interpretations to events around him causing difficulty to himself and to those around him rising. Dr. Weber explained that appellant interpreted neutral daily activities as being directed towards him with harmful intent. He explained that moving appellant to a different site away from his usual supervisors would not address this as appellant had concluded that there was no safe place for him to work. Dr. Weber indicated that these maladaptive characteristics were such that any attempts to return him to work at any accommodation with the employing establishment would not be successful. He opined that, while appellant was disabled after May 28, 2008, the disability stemmed from appellant's underlying personality disorder, not from anxiety disorder, depression or PTSD. Dr. Weber explained that the accepted condition of PTSD had not resolved and opined that the temporary total disability continued until at least June 30, 2009. He explained that the psychiatric reasons for disability were as he described, rather than simply from PTSD.

On June 15, 2011 OWCP requested clarification from Dr. Weber regarding disability after May 28, 2008.<sup>12</sup> In a July 5, 2011 supplemental report, Dr. Weber explained that there

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<sup>9</sup> *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (April 1993).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The previous impartial medical examiner, Dr. Davies, was unable to resolve the conflict and Dr. Weber was properly selected. See *id.*

<sup>12</sup> See *supra* note 9; *Roger W. Griffith*, 51 ECAB 491(2000).

were “no specific work incidents” that related to disability after May 28, 2008. He clarified that disability after May 28, 2008 was due to appellant’s personality disorder which was not work related. Dr. Weber indicated that appellant had a “permanent aggravation” of PTSD that preexisted his work with the employing establishment. He reiterated that appellant was totally disabled up to about June 30, 2009. After that, appellant was capable of some work. Dr. Weber noted that appellant “was firmly committed to the idea that he could not work” with the employing establishment and that this perception stemmed from his personality disorder. On July 15, 2011 OWCP requested clarification from him regarding whether appellant continued to have PTSD under claim File No. xxxxxx799. In his August 1, 2011 supplemental report, Dr. Weber explained that “disability after May 28, 2008 was caused by a preexisting personality disorder that had no connection with work experience” and that, “after May 28, 2008, PTSD was not disabling. He explained that disability after May 28, 2008 was caused by appellant’s personality disorder that had no connection with work. Dr. Weber indicated that PTSD was caused by circumstances not connected with employment, and was in existence at the time employment began. He also noted that there had been subsequent permanent aggravations by appellant’s work experience. Dr. Weber explained that PTSD was still related to the accepted work factor and noted that the relationship was that of a condition preexisting employment that was permanently aggravated by employment but was not presently causing work disability. The Board finds that his opinion is based on an accurate background and is sufficiently well rationalized such that it is entitled to special weight and establishes that appellant was no longer disabled beginning May 28, 2008 due to his employment-related conditions.<sup>13</sup>

OWCP received a December 12, 2011 report from Dr. Karalis, who noted that he had treated appellant since 2002. Dr. Karalis opined that appellant continued to have PTSD and never recovered from his 2002 illness. He explained that appellant remained totally disabled. Dr. Karalis noted that the 2007 stress was aggravated by the 2002 stress. As he had been on one side of the conflict in the medical opinion that the impartial specialist resolved, the treating physician’s reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.<sup>14</sup>

An October 13, 2011 report from Dr. Perez-Neira, was also insufficient to overcome the special weight accorded the impartial medical adviser or to create a new medical conflict. She opined that appellant’s “stressful work environment and its sequelae have negatively impacted his emotional aspect.” Dr. Perez-Neira diagnosed PTSD, major depressive disorder and a personality disorder. However, she did appear to be aware of appellant’s accepted conditions in his various claims. Furthermore, Dr. Perez-Neira did not specifically discuss the period of disability beginning May 28, 2008 or provide medical rationale explaining the reasons why employment conditions contributed to his disability.<sup>15</sup>

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<sup>13</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

<sup>14</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

<sup>15</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

On appeal, counsel argues that appellant remains disabled due to his work-related conditions. He also suggested that OWCP rendered its decision before determining whether appellant's condition continued. However, as noted above, the impartial medical examiner's opinion was accorded special weight and supports that appellant was no longer disabled as of May 28, 2008 as a result of his work-related conditions. Additionally, there is no dispute that the accepted PTSD continues but, as explained the weight of the medical evidence does not establish that disability beginning May 28, 2008 was caused or contributed by a work-related condition. The Board finds that appellant has not submitted rationalized medical evidence establishing that his disability beginning May 28, 2008 is causally related to his accepted employment condition.

Appellant may submit evidence or argument with a written request for reconsideration 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 failed to establish that he was disabled from May 28, 2008 and continuing as a result of his employment-related injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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