

them, three with automobile tires and another with a can of kerosene. He realized that the muggers were going to be killed, which he explained was not an uncommon thing to do to thieves in that area. As appellant was driven away in a vehicle, he looked back “and was able to see the thick black smoke from the tires, and the unfortunate souls stuck inside them, bellowing up now over the tops of the buildings.”

After leaving the Peace Corps appellant remained in Kenya. He started a business with a Kenyan citizen and while working in this business was attacked by a man with a knife. In connection with the business, appellant was sued and charges were filed against him. He left the country in 2006.

On March 26, 2009 OWCP accepted appellant’s June 30, 2008 claim for post-traumatic stress disorder, aggravation of preexisting bipolar disorder and depression. Appellant received wage-loss compensation beginning December 22, 2007.

On August 6, 2009 appellant claimed wage-loss compensation from April 21, 2006 to December 21, 2007. In a July 27, 2009 note, Dr. Benjamin A. Root, Jr., a Board-certified psychiatrist, stated that appellant was under his care during this period: “During most of that period I considered you disabled from gainful employment because of your psychiatric condition except for a brief interval in which you worked as an interpreter at Dollywood.”

OWCP advised appellant on October 19, 2009 that Dr. Root’s report indicated that he was disabled except when he was working. In a letter to the physician, it informed Dr. Root that his statement on causal relation was too vague to support compensation for the entire period. OWCP asked him for copies of any treatment records during the period in which he found that appellant was totally disabled.

Dr. Root submitted his treatment notes on November 20, 2009 for the period in question.

In a December 18, 2009 decision, OWCP denied appellant’s claim for wage-loss compensation for the period April 21, 2006 to December 21, 2007. It determined that Dr. Root’s treatment records consisted mainly of orders for prescription refills and annotations that appellant appeared to be taking his medications appropriately. The records did not address whether appellant was totally disabled for work.

In a March 18, 2010 note, Dr. Root explained that much of appellant’s symptomatology appeared to stem from difficulties that arose in connection with his employment in Kenya about the beginning of 2006. Appellant had been a partner in a safari company, and apparently some sort of visa problems resulted in his being deported back to the United States. Dr. Root noted that it appeared appellant had “many problems with post-traumatic like symptoms through the years.” Appellant continued to have difficulty with symptoms of anxiety and despondency.

Appellant requested a hearing.

By decision dated June 17, 2010, OWCP’s hearing representative affirmed the denial of appellant’s claim for wage-loss compensation. He found that Dr. Root’s treatment records did not explain appellant’s total disability during most of the period claimed. Further, Dr. Root’s

supplemental report emphasized appellant's difficulties with his business partner in 2006, which were unrelated to his Peace Corps service.²

Following the hearing representative's decision, OWCP obtained a second-opinion evaluation on appellant's current status. On November 22, 2010 Dr. R. Scott Benson, a Board-certified psychiatrist, concluded that appellant's current psychiatric condition was not related to his service in the Peace Corps. He found the diagnosis of post-traumatic stress disorder suspect; but if it existed, it was related to appellant's experience while working in his private business in Kenya. Dr. Benson clarified that appellant's accepted psychiatric condition had resolved.

Dr. Terry E. Passman, the attending Board-certified psychiatrist since July 3, 2008, disagreed. He found that appellant's work-related injury was still medically present and disabling, though it was unknown whether the work-related aggravation was temporary or permanent.

To resolve the conflict between Dr. Benson and Dr. Passman on whether appellant's current psychiatric condition continued to be employment related, OWCP referred appellant to Dr. William C. Wilkerson, a Board-certified psychiatrist and independent medical examiner, who concluded that appellant's current psychiatric condition was related to experiences he had in the Peace Corps, in particular, the traumatic assault episode on July 21, 2003. Responding to a question posed by OWCP, Dr. Wilkerson added that appellant was currently totally disabled as a result of his psychiatric condition.

Appellant requested reconsideration of OWCP's hearing representative's June 17, 2010 decision on the period of claimed disability from April 21, 2006 to December 21, 2007. He explained that Dr. Root was his primary care provider from April 21, 2006 to January 18, 2007 and again from May 30 to August 5, 2007. Appellant asked OWCP to reconsider the letters and medical records submitted by Dr. Root as evidence that he was unable to work during those two time periods.

Appellant added that Region 8 Mental Health Center provided his primary care from January 19 to May 29, 2007. He submitted a report from Dr. Paul S. McGinnis, a psychiatrist, to address that period. Appellant stated that he was under the care of Baldwin County Medical Health Center from August 6, 2007 to June 25, 2008. He submitted a report from Dr. Gregory Cummings, a psychiatrist, to support his claim for wage loss from August 6 to December 21, 2007.

Dr. Root provided a supplement report dated November 15, 2010. He stated that much of appellant's difficulties harkened back to traumatic experiences when he was in the Peace Corps between 2001 and 2003. "[Appellant] was stationed in Kenya and was subjected to dangerous situations. [He] was witness to several violent episodes that occurred to people in the patient's vicinity. Part of patient's symptomatology relates to the fact that he felt undeservedly responsible for some of the mayhem." Dr. Root explained that the difficulties appellant later

² OWCP's hearing representative found that there was justification in the medical records for the payment of wage-loss compensation beginning in May 2008, when appellant was hospitalized, and noted that OWCP commenced compensation effective December 22, 2007 based simply on the dates entered on his claim form.

experienced in the safari business in Kenya related back to the painful experiences that he previously had in the Peace Corps. He noted that appellant ended up having a rather bad flashback early in 2008 which resulted in his hospitalization. Dr. Root repeated: “It appears that most of the patient’s symptomatology continues to harken back to the horrendous experiences that he had in the Peace Corps between 2001 and 2003.” Dr. Root noted that appellant worked as a Swahili interpreter at Dollywood but after this seasonal employment ended, he was unable to sustain the level of functioning need to move on to nonseasonal work.

On September 10, 2010 Dr. McGinnis described appellant’s symptoms, diagnosis and treatment from January 19 to May 29, 2007. He stated: “While working with [appellant], he presented the inability to work given the severity of his symptoms at the time.”

Dr. Cummings advised on February 10, 2010 that appellant was treated at the Baldwin County Mental Health Center from August 6, 2007 to June 25, 2008 for post-traumatic stress disorder and sedative dependence. He noted 19 visits concluding with a hospital admission due to continued difficulties. “At the time of our care, [appellant’s] functional level was poor and he appeared unable to work, as well as a poor candidate for vocational rehab[ilitation] services referral.”

In a July 7, 2011 decision, OWCP reviewed the merits of appellant’s case and denied modification of its prior decisions.

Appellant again requested reconsideration. He submitted an August 16, 2011 supplemental report from Dr. Cummings to clarify that appellant’s condition was poor enough that he required hospitalization and more extensive treatment for post-traumatic stress disorder related to his time in Kenya with the Peace Corps. “At no time during our care was [appellant] employable, and documentation from his other treatment providers in Mississippi and Louisiana supported this clinical judgment.”

On July 30, 2012 OWCP reviewed the merits of appellant’s case and denied modification of its prior decision. It found Dr. Cummings’ supplemental report to be a restatement of what he earlier reported.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.³ A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

³ 5 U.S.C. § 8102(a).

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

It is not sufficient for the claimant to establish merely that he has disability for work. He must establish that his disability is causally related to the accepted employment injury. FECA provides compensation only for as long as there exists a proven disability attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between the claimed disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the disabling condition is related to the accepted injury.⁶

ANALYSIS

OWCP accepted that appellant sustained a post-traumatic stress disorder, an aggravation of preexisting bipolar disorder and depression as a result of a work incident on July 21, 2003. Three muggers attempted to rob appellant, but a mob pulled the attackers off and took them to an alley. He saw several men running toward them, three with automobile tires and another with a can of kerosene. Appellant believed that the muggers were going to be killed. As he was driven away in a vehicle, he looked back and was able to see thick black smoke billowing over the tops of the buildings.⁷

The issue raised by appellant's claim for wage-loss compensation is whether this particular incident caused total disability for work from April 21, 2006 to December 21, 2007.

Dr. Root, the psychiatrist who treated appellant during the period claimed, considered appellant psychiatrically disabled from gainful employment during most of that period except for a brief interval in which appellant worked as an interpreter at Dollywood. The Board has reviewed his treatment notes during this period.

Additionally, in his first supplemental report, Dr. Root explained that much of appellant's symptomatology appeared to stem from difficulties that arose in connection with his employment in Kenya about the beginning of 2006, shortly before Dr. Root began treating him. More specifically, appellant had been a partner in a safari company and apparently some sort of visa problems resulted in his being deported back to the United States. This evidence does not support his claim for wage-loss compensation. The difficulties appellant faced in connection with his safari business in Kenya did not arise in the course of his federal employment as a volunteer with the Peace Corps. If symptomatology from difficulties that arose about the beginning of 2006 caused disability for work beginning April 21, 2006, the disability is not compensable.

After OWCP's hearing representative addressed Dr. Root's first supplemental report, Dr. Root submitted a second report. He asserted that much of appellant's difficulties harkened back to traumatic experiences when he was in the Peace Corps between 2001 and 2003, but he did not mention the accepted employment incident on July 21, 2003. Instead, Dr. Root implicated "dangerous situations" and "several violent episodes," none of which he identified

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁷ It does not appear that appellant saw the assailants burned alive.

with any specificity. He stated that appellant's difficulties in the safari business related back to the painful experiences he previously had in the Peace Corps, but he did not explain. As for later disability for work, Dr. Root noted that appellant had a rather bad flashback early in 2008, which resulted in hospitalization. This report did not address appellant's claim that the July 21, 2003 injury caused total disability for work from April 21, 2006 to December 21, 2007.

Dr. McGinnis, the psychiatrist who treated appellant from January 19 to May 29, 2007, advised that appellant presented the inability to work given the severity of his symptoms at the time. As the Board noted earlier, it is not sufficient for the claimant to establish merely that he has disability for work. Dr. McGinnis must establish that appellant's disability is causally related to the accepted employment injury. He did not attribute the severity of appellant's symptoms to what happened on July 21, 2003 or explain how the injury caused disability for work beginning April 21, 2006.

Dr. Cummings, the psychiatrist who treated appellant from August 6, 2007 to June 25, 2008, noted that appellant's functional level was poor during this period, and he appeared to be unable to work. In a supplemental report, he added that appellant required hospitalization and more extensive treatment for post-traumatic stress disorder "related to his time in Kenya with the Peace Corps." Like Dr. Root and Dr. McGinnis, Dr. Cummings did not address the July 21, 2003 employment injury or explain how it totally disabled appellant during the period in question.

OWCP's hearing representative observed that there was justification in the medical records for the payment of wage-loss compensation beginning in May 2008, when appellant was hospitalized following a bad flashback. The question raised by appellant's claim is whether there is any justification for the payment of wage-loss compensation from April 21, 2006 to December 21, 2007. The medical opinion evidence submitted in support of his claim does not provide justification. The physicians have not discussed what happened on July 21, 2003. They have not rationally explained how that employment injury caused total disability for the period claimed. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁸ Medical conclusions unsupported by rationale are also of little probative value.⁹

Nor have appellant's physicians supported their opinions with contemporaneous clinical findings. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹⁰ The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹¹

⁸ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ See *Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

¹¹ *John L. Clark*, 32 ECAB 1618 (1981).

As the medical opinion evidence does not establish that the accepted employment injury caused total disability for work from April 21, 2006 to December 21, 2007, the Board finds that appellant has not met his burden of proof. Accordingly, the Board will affirm OWCP's July 30, 2012 decision denying his wage-loss claim for that particular period.

The Board notes that following OWCP's hearing representative's June 17, 2010 decision, a conflict in medical opinion arose on whether appellant's current psychiatric condition continued to be related to the Peace Corps incident in 2003. This was a separate issue from the one presented by appellant's claim for wage-loss compensation from April 21, 2006 to December 21, 2007. The conflict arose between Dr. Benson, who in 2010 found that the accepted psychiatric condition had resolved and Dr. Passman, who found that it was still medically present and disabling. Dr. Wilkerson, the impartial medical specialist, determined in 2011 that appellant still suffered from the accepted psychiatric condition, which was currently disabling.

OWCP discharged its responsibility in the initial development of the claim by requesting specific information from the attending physician,¹² Dr. Root, on appellant's claim for wage-loss compensation from April 21, 2006 to December 21, 2007. It reviewed the evidence submitted, adjudicated the claim and notified appellant of the deficiencies. Appellant pursued his appeal rights and submitted additional evidence. OWCP's hearing representative affirmed, again explaining the deficiencies. Appellant submitted additional evidence and requested reconsideration. OWCP reviewed the merits of his case and found that the new evidence did not cure the deficiencies in his claim and did not discharge his burden of proof to establish entitlement to compensation for the particular period of claimed disability. The Board can find no error, warranting further development, in OWCP's management of this case or in its development of the evidence as it relates to the issue on appeal. Appellant bears the burden of proof. The decisions below have noted the deficiencies of this particular claim and of the evidence necessary to establish entitlement to compensation. The burden of going forward with the evidence, should appellant choose to do so, is his. In this regard, he 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 met his burden to establish that the accepted employment injury caused total disability for work from April 21, 2006 to December 21, 2007.

¹² *Id.*, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.8.c (June 2011).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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