

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

N.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS BENEFITS ADMINISTRATION,
Orlando, FL, Employer**

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**Docket No. 14-114
Issued: April 28, 2014**

Appearances:
Stephanie G. Bernstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 18, 2013 appellant, through counsel, filed a timely appeal from a July 16, 2013 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 met her burden of proof to establish entitlement to compensation for wage loss for the periods September 10 through 14 and September 24 through 28, 2012.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 31, 2012 appellant, then a 36-year-old claims examiner, filed a traumatic injury claim alleging that on July 25, 2012 she sustained injury when she became stuck in an elevator that malfunctioned for approximately 90 minutes. She stopped work on July 25, 2012 and returned to work on July 31, 2012. Appellant stopped work again on August 17, 2012. On September 28, 2012 OWCP accepted the claim for an acute reaction to stress.² Appellant returned to work on October 2, 2012 and worked until October 30, 2012. She returned to work again on November 6, 2012 and stopped work on February 26, 2013.³

On September 14, 2012 appellant filed a claim for wage-loss benefits for the period September 10 through 14, 2012. The employing establishment indicated on the claim form that appellant received continuation of pay from July 26 through September 9, 2012.

In a September 7, 2012 e-mail message to Bonnie J. Wax, human resource manager, appellant noted that during her appointment that day with her therapist, Reginald Deaton, she was advised that Tamanique Clarke, a human resource representative, had reported that she had been seen using the elevator at work. Appellant asserted that this was impossible since she had not used the elevators at work since the July 15, 2012 elevator incident. She indicated that Ms. Clarke lied to OWCP and that this situation has caused her more anxiety and undue stress. Appellant stated that her anxiety was at an all-time high and to find out that false allegations had been made against her traumatized her further. She requested that she be given a different human resource representative whom she could contact as her trust in Ms. Clarke had been broken.

Appellant submitted a questionnaire dated August 31, 2012 and that August 31 and September 18, 2012 reports from Mr. Deaton, a licensed mental health counselor.

On October 1, 2012 appellant filed a claim for wage-loss benefits from September 24 through 28, 2012.

In an October 10, 2012 letter, OWCP noted that the medical reports submitted with her claims were not signed by a physician as defined under FECA and were insufficient to establish her disability for the claimed periods. It advised her to submit additional medical evidence establishing her disability for work due to the residuals of her accepted injury. Appellant was accorded 30 days to submit the requested information.

² OWCP also accepted a separate claim involving knee injury under claim number xxxxxx327.

³ The record reflects that appellant filed a claim for wage loss for the period October 30 to November 2, 2012, which OWCP denied in a decision dated February 4, 2013. She also filed a claim for wage loss for the period February 26, 2013 and continuing, which OWCP adjudicated in decisions dated June 28, 2013 and January 28, 2014. These claims are not relevant to the period of wage loss claimed in the present claim and will not be discussed. By decision dated June 28, 2013 and amended on July 2, 2013, OWCP also denied appellant's claim for a recurrence of disability from February 26, 2013 due to a material change/worsening of her accepted work-related conditions. This claim is not before the Board.

OWCP received an October 10, 2012 work capacity evaluation form from Mr. Deaton and an October 26, 2012 letter from Dr. Prachi Gandhi, an osteopath, who noted that appellant was evaluated at an urgent care center on August 19, 2012 by Andres Martinez-Deleon, Jr., a nurse practitioner, and diagnosed with anxiety disorder and claustrophobia after an incident which occurred at her place of employment. Dr. Gandhi reviewed appellant's medical records and concurred with Mr. Martinez-Deleon that appellant would benefit from psychological treatment and medication. He recommended that "giving the patient time off from work for the month of September would give the patient time to become accustomed to the new medication."

By decision dated November 19, 2012, OWCP denied appellant's claim for compensation from September 10 to 14 and September 24 to 28, 2012.

In a May 29, 2013 letter, appellant, through her representative, requested reconsideration. She submitted medical documentation from Patricia P. Barber, a physician's assistant, and Dr. Aysha Meloukheia, a psychiatrist.

In an April 27, 2013 report, Ms. Barber, noted a history of injury and prior medical history. Prior to the work incident, appellant advised her that there was a fatal shooting at her worksite and, while she was not present at the time of the shooting, she recalled seeing blood stains in the stairwell. Ms. Barber noted that, because of appellant's inability to step into an elevator following the July 25, 2012 incident, appellant climbed the stairs and aggravated a preexisting knee condition. Appellant reported that, since the July 25, 2012 incident, she experienced resistance to accommodate her psychological and physical needs and experienced a hostile work environment. Ms. Barber noted that appellant wished to return to full-time employment, but felt frustrated by the employing establishment not accommodating her needs. She treated appellant on February 25, March 13 and April 4, 2013 and stated that appellant was disabled since September 1, 2012. Ms. Barber stated that the onset and severity of appellant's symptoms were directly related to her traumatic experiences at work along with some predisposing factors in her life, her difficulty returning to work, and the perceived resistance of accommodating her work.

In a May 8, 2013 report, Dr. Meloukheia advised that she treated appellant for a work-related stress condition as a result of the July 25, 2012 work incident. She diagnosed post-traumatic stress disorder and major depression disorder, recurrent, moderate. Dr. Meloukheia opined that appellant's diagnosed conditions were caused by the July 25, 2012 incident of being trapped in an elevator. She stated that after a comprehensive evaluation of appellant, she was in agreement with Ms. Barber's assessment and detailed findings.

Appellant submitted a March 3, 2013 list of discharge medications; a March 3, 2013 note from Dr. Nusrath H. Baig, a Board-certified psychiatrist, who advised that appellant was hospitalized from February 25 to March 4, 2013 and recommended that she be off work for six weeks. On February 26, 2013 Dr. Meloukheia addressed appellant's admission for stabilization. On March 29, 2013 she stated that appellant was unable to work due to her illness. On April 16, 2013 Dr. Meloukheia advised that appellant had been unable to work since January 2013 and had a tentative return to work date of October 16, 2013. In an April 23, 2013 work capacity evaluation, she noted that appellant was unable to perform her usual job due to her disabling anxiety and depression and estimated her return to work on October 16, 2013.

By decision dated July 16, 2013, OWCP denied modification of its November 19, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence.⁴ Such medical evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.⁵

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁶ 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 his or her disability and entitlement to compensation.⁷

ANALYSIS

Appellant filed a claim for wage-loss compensation alleging that she was disabled for work from September 10 to 14 and September 23 to 28, 2012. The Board finds that she has not submitted sufficient medical evidence to establish that her claimed period of disability was due to her accepted condition of acute reaction to stress.

In an October 26, 2012 letter, Dr. Gandhi reported that appellant was evaluated on August 19, 2012 by Mr. Martinez-Deleon, a nurse practitioner, and diagnosed with anxiety disorder and claustrophobia after an incident which occurred at her place of employment. Dr. Gandhi stated that he had reviewed appellant's medical records and concurred with Mr. Martinez-Deleon that appellant would benefit from psychological treatment and medication. He did not provide any findings from evaluation. Dr. Gandhi's statement that "giving the patient time off from work for the month of September [to] give the patient time to become accustomed to the new medication" is prophylactic in nature. Dr. Gandhi did not sufficiently address how appellant's disability for the claimed periods was due to the accepted condition. His report is insufficient to establish disability causally related to the accepted condition.

⁴ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

⁵ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁶ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Amelia S. Jefferson*, *supra* note 4.

In a May 8, 2013 report, Dr. Meloukheia stated that a detailed psychiatric evaluation had revealed post-traumatic stress disorder and major depression disorder, recurrent, moderate. She advised that appellant's diagnosed conditions were caused by the July 25, 2012 work incident of being trapped in the elevator. Dr. Meloukheia, however, did not set forth any findings pertaining to appellant's psychiatric evaluation or specifically address the periods of disability claimed. She further stated her agreement with Ms. Barber's assessment of appellant's condition. Dr. Meloukheia's citations to Ms. Barber's findings without providing additional medical rationale is insufficient to establish appellant's claim of disability in September 2012. She does not address how appellant became disabled due to the accepted condition. Dr. Meloukheia's report is insufficient to establish her claim.

Dr. Meloukheia also generally endorsed the April 27, 2013 report from Patricia P. Barber, a licensed mental health counselor, who included a history of the July 25, 2012 work history and diagnosed appellant with several psychological conditions. Ms. Barber stated that appellant was disabled after September 1, 2012. She stated that the onset and severity of appellant's symptoms were related to her traumatic experiences at work together with predisposing factors in appellant's life, her difficulty returning to work and the perceived failure of the employing establishment to accommodate her needs. The Board notes that Ms. Barber is not a physician as defined under FECA. The May 8, 2013 report of Dr. Meloukheia consists of one page without sufficient explanation as to how appellant became disabled from September 10 to 14 or September 24 to 28, 2012 due to residuals of her accepted acute stress reaction to the July 25, 2012 incident. The Board notes that following the incident appellant returned to work on several occasions prior to stopping on February 26, 2013. Neither Dr. Meloukheia nor Ms. Barber adequately address the period of disability claimed.

The reports from Mr. Deaton also a licensed mental health counselor, are not those of a physician as defined in section 8102(2) of FECA. The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.⁸ Mr. Deaton is not a physician under FECA and his reports are not considered medical evidence to establish appellant's wage-loss claim.

The other medical records received refer to periods of time other than the period of disability claimed from September 10 to 14 and September 24 to 28, 2012. These records are not relevant to the issue of appellant's disability.

There is no probative medical evidence of record which addresses how appellant became disabled from work on the dates claimed or which explains how her disability is attributable to the July 25, 2012 injury. Appellant failed to submit sufficient rationalized medical opinion evidence to establish that she was unable to work from September 10 to 14 or September 24, to 28, 2012 due to her accepted condition. She had failed to establish that she was disabled and is not entitled to wage-loss compensation for claimed periods.

On appeal appellant's representative argues that the medical evidence supports that appellant was totally disabled as a result of the work injury during the relevant periods. She

⁸ 5 U.S.C. § 8102(2); see *Roy L. Humphrey*, 57 ECAB 238 (2005).

notes that OWCP accepted that appellant suffered both a stress injury and a knee injury and the two injuries are inherently intertwined. For the reasons stated, the medical evidence is insufficient to support appellant's disability for the periods claimed from September 10 to 14 and September 24 to 28, 2012.

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 her disability from September 10 to 14 and September 24 to 28, 2012.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2014
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