



## **FACTUAL HISTORY**

OWCP accepted that on or before November 1, 2006 appellant, then a 36-year-old contracting officer,<sup>2</sup> sustained an aggravation of depressive disorder due to threats and harassment by supervisors and coworkers during his leadership of a contract review team.

On February 17, 2011 appellant filed a claim for 223 hours of wage loss on intermittent dates between January 1 and February 29, 2008.

In a letter dated April 15, 2011, OWCP advised appellant of the evidence needed to establish his claim for wage loss. It requested a report from his attending physician explaining how the accepted emotional condition disabled him for work for the claimed periods.

In response, appellant submitted chart notes from Dr. Allan S. Melmed, an attending Board-certified psychiatrist, dated January 4 to March 14, 2008. Dr. Melmed discussed appellant's emotional condition and prescribed medications.

By decision dated June 10, 2011, OWCP denied appellant's claim finding that causal relationship was not established. It found that Dr. Melmed did not specify any period of disability.

In a September 16, 2011 letter, appellant requested reconsideration. He submitted June 17, 22 and July 21, 2011 letters asserting that the medical evidence of record was sufficient to establish his claim. Appellant contended that he had submitted treatment notes for each of the dates claimed. He provided a chronology of his mental health appointments and a February 28, 2008 abdominal imaging scan report.

By decision dated December 20, 2011, OWCP modified the June 10, 2011 decision to accept 78 hours of intermittent wage loss from January 17 to March 14, 2008, based on Dr. Melmed's treatment notes dated January 4, 11 and 21, February 1, 8, 11, 18 and 29, March 7, 10 and 14, 2008. It found that Dr. Melmed's opinion as appellant's attending physician was sufficient to establish disability for the dates claimed. OWCP denied appellant's claim for wage loss for the following dates on the grounds that he did not submit medical evidence establishing disability: January 30, 5 hours; January 31, 8 hours; February 20, 8 hours; February 22, 4 hours; February 25, 8 hours; February 26, 8 hours; February 27, 8 hours, February 28, 8 hours; March 3, 8 hours; March 4, 4 hours; March 5, 8 hours; March 6, 8 hours; March 7, 4 hours; March 10, 8 hours; March 12, 4 hours; March 13, 8 hours; March 14, 4 hours; March 17, 8 hours; March 18, 8 hours and March 19, 2008, 8 hours.

In an April 14, 2012 letter, appellant requested reconsideration. He submitted an August 17, 2011 letter from Ms. Shands, who noted that she had treated appellant since August 3, 2007 for depression and anxiety disorders. Ms. Shands stated that, from January 11 to March 19, 2008, appellant's "symptoms became more acute causing him to go on sick leave the second week of February."

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<sup>2</sup> At the onset of the condition in 2006, appellant was employed by the U.S. Agency for International Development.

By decision dated July 17, 2012, OWCP modified the December 20, 2011 decision to accept four hours of wage loss on February 28 2008, based on the abdominal imaging scan report. It denied wage-loss compensation for the remaining dates on the grounds that the new evidence submitted was insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee 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.<sup>3</sup> Under FECA, the term “disability” is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>4</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>5</sup> 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 probative and reliable medical opinion evidence.<sup>6</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in Section 8101(2) of FECA.<sup>7</sup> 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 her disability and entitlement to compensation.<sup>8</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained an aggravation of depressive disorder due to work factors. Appellant claimed that the accepted emotional condition caused disability for work on intermittent dates from January 30 to March 19, 2008. He has the burden of establishing by the weight of the substantial, reliable and probative evidence that he was totally disabled for work for the claimed period due to the accepted emotional condition.<sup>9</sup> Appellant submitted chart notes from Dr. Melmed, an attending Board-certified psychiatrist, establishing disability for work for 78 intermittent hours of intermittent wage loss from January 17 to March 14, 2008. It also paid four hours for diagnostic testing. OWCP denied compensation for eight hours of wage loss on January 31, February 20, 25, 26 and 27, March 3, 5, 6, 10, 13, 17, 18 and 19, four hours on February 22 and 28, March 4, 7, 12 and 14, and five hours on January 30, 2008 on the grounds that there was no medical evidence establishing disability for those dates.

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>5</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> 5 U.S.C. § 8101(2); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>8</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

In support of his claim, appellant submitted an August 17, 2011 letter from Ms. Shands, a licensed professional counselor and licensed marriage and family therapist, who stated generally that appellant was disabled for work from mid-February to March 19, 2008. The Board finds that this report is not competent medical evidence as Ms. Shands is not a physician as defined under FECA. Section 8101(2) of FECA provides that the term “physician” includes clinical psychologists within the scope of their practice as defined by State law.<sup>10</sup> A licensed professional counselor or family therapist is not a physician under FECA.<sup>11</sup> Therefore, Ms. Shands’ opinion regarding a period of disability is of no probative medical value and is insufficient to establish disability for work on the dates claimed.<sup>12</sup>

The Board notes that OWCP advised appellant by April 15, 2011 letter of the evidence needed to establish his claim. It requested that his physician’s opinion that the accepted emotional condition disabled him for work for the dates claimed. Appellant was reimbursed for the hours of disability supported by Dr. Melmed. OWCP’s July 17, 2012 decision denying appellant’s claim for intermittent disability from January 30 to March 19, 2008 is proper under the law and facts of the case as Ms. Shands is not a physician.

On appeal, appellant contends that the August 17, 2011 letter from Ms. Shands is sufficient to establish that he was totally disabled on the dates claimed. As explained, Ms. Shands’ opinion is of no probative medical value as she is not a physician under FECA.

Appellant may submit new evidence or argument to OWCP 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 has not established that he was totally disabled for work due to an accepted emotional condition for five hours on January 30, eight hours on January 31 and February 20, four hours on February 22, 8 hours on February 25, 26, 27 and 28, eight hours on March 3, four hours on March 4, eight hours on March 5 and 6, four hours on March 7, eight hours on March 10, four hours on March 12, eight hours on March 13, four hours on March 14, and eight hours on March 17, 18 and 19, 2008.

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<sup>10</sup> 5 U.S.C. § 8101(2). See *Jacqueline E. Brown*, 54 ECAB 583 (2003).

<sup>11</sup> *L.W.*, Docket No. 09-2307 (issued September 1, 2010); *K.L.*, Docket No. 11-1381 (issued April 16, 2012). See *Joe L. Wilkerson*, 47 ECAB 604 (1996). See also *Nancy A. Johnson-Charpentier*, Docket No. 04-1599 (issued July 25, 2005).

<sup>12</sup> 5 U.S.C. § 8101(2); *Phillip L. Barnes*, 55 ECAB 426 (2004). The Board notes that OWCP in its discretion may reimburse a claimant for treatment or services provided by a lay psychotherapist if authorized or recommended by a physician for the effects of an accepted condition. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.5 (April 1992). The issue of medical reimbursement is separate and apart from the issue of a layperson’s lack of medical competency in providing an opinion on disability or causal relationship.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 17, 2012 is affirmed.

Issued: March 18, 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