

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

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**M.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, CIVILIAN  
PERSONNEL BRANCH, Warren, MI, Employer**

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**Docket No. 13-1716  
Issued: May 21, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 11, 2013 appellant filed a timely appeal of a February 28, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she was totally disabled due to her accepted condition of post-traumatic stress disorder (PTSD) for the period October 17, 2010 through September 22, 2012.

**FACTUAL HISTORY**

On June 4, 2012 appellant, then a 29-year-old inventory management specialist, filed an occupational disease claim alleging that on July 4, 2010 she became aware of her conditions of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

depression, bipolar disorder and PTSD as a result of her sixth-month tour of duty in Afghanistan from December 9, 2009 through June 10, 2010.

In a letter dated June 28, 2012, OWCP requested additional factual and medical evidence in support of appellant's claim. Appellant completed a narrative statement noting that, in December 2009, she traveled overseas to Afghanistan as a civilian employee. She returned in June 2010 with depression, anxiety, nightmares and extreme migraine headaches. Appellant sought treatment from Amanda Figon, a licensed social worker, and Catherine Gavan, a physician's assistant.

Dr. Srinivas Kodali, a Board-certified psychiatrist, completed a note on December 6, 2011 and stated that appellant was in a partial hospitalization program and unable to work since her admission on November 28, 2011. On January 3, 2012 he stated that she could return to work on January 4, 2012 part time for 20 hours a week, 4 hours a day for 4 weeks. On January 24, 2012 Dr. Kodali indicated that appellant was on medical leave from January 13 through February 6, 2012.

Appellant submitted a series of work release notes from a physician's assistant diagnosing major mood disorder. She also submitted a note dated December 16, 2011 from a licensed social worker indicating that she was totally disabled from November 28 through December 16, 2011 due to a partial hospitalization program.

Appellant submitted a series of physician's assistant notes beginning June 1 through November 22, 2011 diagnosing increasing depression and that she did not work from June 27 through August 25, 2011. She was not working on September 20, 2011 and from October 24 through November 2, 2011 as well as November 15 through 22, 2011.

On August 15, 2012 OWCP again requested supportive medical and factual evidence from appellant and advised her that physician's assistants and licensed social workers were not considered to be physicians under FECA. It requested evidence from a psychologist or psychiatrist supporting appellant's claim.

In a report dated September 4, 2012, Dr. Leonard Bayer, an osteopath, stated that appellant complained of worsening depression on December 2, 2010. Appellant's symptoms improved on August 30, 2012 and he stated that she could return to full-time work.

OWCP referred appellant and a statement of accepted facts for a second opinion evaluation on September 17, 2012 with Dr. Dan Guyer, a Board-certified psychiatrist. In a report dated October 9, 2012, Dr. Guyer noted that appellant stopped work in July 2010 and tried to return on an intermittent basis. He relayed her statements that there were ground attacks at the base where she was stationed in Afghanistan and she became fearful as she had no weapons and was completely exposed and vulnerable to harm. Dr. Guyer diagnosed PTSD based on the statement of accepted facts which included exposure to rocket attacks almost every night during the six-month period she was in Afghanistan. He stated, "I do believe that [appellant's] current diagnosis of [PTSD] is related to her experience and exposure in Afghanistan and those events in Afghanistan contributed to her emotional condition, which interfered and impaired her ability to work." Dr. Guyer stated that the period of time that appellant was unable to work was "clearly

related” to symptoms of PTSD. He confirmed, “I would describe the period of time that [appellant] did not work as being directly related to her experiences in Afghanistan.”

In a decision dated November 28, 2012, OWCP accepted appellant’s claim for PTSD.

Appellant filed claims for compensation on December 19, 2012 requesting compensation for leave without pay from November 16, 2010 through January 28, 2011, January 30 through May 31, 2011, June 23 through August 27, 2011, September 26 through December 31, 2011 and from January 3 through 13, 2012 and January 17 through September 22, 2012. On the accompanying time analysis forms, she listed her reason for leave use as depression.

The employing establishment controverted appellant’s claims for compensation on the grounds that she listed her reason for leave as depression rather than PTSD. The employing establishment also disputed the number of hours claimed.

In a letter dated January 8, 2013, OWCP requested additional medical evidence in support of appellant’s claims for compensation including a medical narrative, which provided a detailed rationalized medical opinion to support her inability to work during all claimed time periods due to her accepted PTSD. It allowed 30 days for a response.

By decision dated February 28, 2013, OWCP denied appellant’s claim for compensation for wage loss from October 17, 2010 through September 22, 2012. It noted that the majority of the medical evidence submitted by her was signed by a physician’s assistant and was not counter-signed by a physician.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>4</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *G.T.*, 59 ECAB 447 (2007); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>5</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>6</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>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>9</sup> Neither, the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision. OWCP accepted appellant's claim for PTSD. Appellant filed a series of claims for compensation requesting wage-loss compensation from October 17, 2010 through September 22, 2012. Prior to the acceptance of her occupational disease claim, OWCP referred her for a second opinion with Dr. Guyer. In his October 9, 2012 report, Dr. Guyer noted that appellant stopped work in July 2010 and returned in September 2012. He generally opined that her PTSD impaired her ability to work and that the period of time that she was unable to work was "clearly related" to symptoms of PTSD. Dr. Guyer stated that the period of time that she did not work was being directly related to her experiences in Afghanistan. The Board notes that he was not specifically asked to address any period of disability.

Proceedings before OWCP are not adversarial in nature and OWCP is not a disinterested arbiter; in a case where OWCP "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."<sup>11</sup> In this case, it obtained an opinion from Dr. Guyer that appellant's PTSD was a result of her experiences in Afghanistan. On remand, OWCP should provide him with the specific dates of disability claimed by appellant and

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

request he further address whether she was disabled as a result of her accepted PTSD. After this and such other development as OWCP deems necessary, OWCP should issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision and requires additional *de novo* decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** February 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: May 21, 2014  
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