

FACTUAL HISTORY

On October 30, 2003 appellant, then a 42-year-old mail carrier who was working modified duty, had filed an occupational disease claim alleging that employment duties caused right arm and elbow pain and depression. She stopped work on October 23, 2003. OWCP accepted right cubital tunnel syndrome and depression, single episode, moderate, due to pain. Appellant received wage loss and medical compensation and returned to modified duty on January 3, 2004.² She continued modified duty until October 12, 2006 when she underwent a right ulnar transposition. Appellant returned to modified duty on November 14, 2006. On July 8, 2011 she was granted a schedule award for a four percent impairment of the right upper extremity.

On July 1, 2013 appellant filed a Form CA-7, claim for compensation, for the period June 29 to July 29, 2013. In a July 2, 2013 report, Helena Edith Weil, Ph.D., an attending psychologist, reported a history that appellant visited an emergency department with symptoms of anxiety, post-traumatic stress disorder (PTSD), depression, and stroke-like symptoms after two weeks of harassment, stress, and intimidation at work. She diagnosed PTSD; chronic depression, major; generalized anxiety disorder; and chronic panic reactions, and advised that appellant would be totally disabled indefinitely.

By letter dated July 12, 2013, OWCP informed appellant of the type of evidence needed to support her claim. Appellant was specifically informed that if she were claiming an emotional condition resulting from harassment, threats, and improper treatment, she must provide specific details of the incidents which she believed aggravated her accepted condition, and Dr. Weil should furnish a report explaining how the claimed work factors caused and/or aggravated the accepted emotional condition. She was afforded 30 days to respond.

In a July 2, 2013 report, Dr. Michael B. Krinsky, a Board-certified orthopedic surgeon, reported seeing appellant that day for recurrent paresthesias into the ulnar distribution of her right elbow. He recommended continued physical therapy. In a July 29, 2013 report, Dr. Weil stated that appellant left work on June 28, 2013 after reporting a severe anxiety attack while performing her work duties and went to an emergency room where she was treated for an elevated heart rate, elevated blood pressure, acute anxiety/panic reactions, and rule-out stroke. She advised that an estimated return to work was September 1, 2013. Appellant also attended physical therapy sessions on July 1, 2, 3 and 29, 2013.

By decision dated August 13, 2013, OWCP denied appellant's claim for disability compensation for the period June 29 to July 29, 2013. Appellant timely requested a hearing. In an undated statement she described difficulties with two managers, B.W. and U.H., beginning June 18, 2013, maintaining that they pressured her about scheduling medical appointments and about physician's orders regarding absences from work, and gave her contradictory work assignments. Appellant stated that on June 28, 2013 she was again pressured about medical

² Appellant has a separate claim, adjudicated by OWCP under file number xxxxxx327, accepted for left lateral epicondylitis, left wrist deQuervain's tendinitis, and right shoulder strain. Under that claim she had a left ulnar nerve transposition. That claim is not presently before the Board. The instant claim was adjudicated under file number xxxxxx168.

appointments, and became ill while delivering mail, returned to the employing establishment, filled out a leave slip, and left.

An emergency department record dated June 28, 2013 indicated that appellant was treated for panic attacks by Dr. Matthew William Rehrer, Board-certified in emergency medicine. An electrocardiogram was normal, and appellant was advised to follow up with a psychiatrist.

In an August 23, 2013 report, Dr. Weil noted that appellant had an accepted right ulnar nerve lesion and a depressive psychosis under this claim. She stated that appellant had been prescribed psychiatric medication but had been able to work limited duty until a new management team took over the employing establishment. Dr. Weil stated that, after the management change occurred, she saw an immediate and drastic decompensation of appellant's psychological injury, which led to extreme anxiety, depression, nervousness, and fear, along with physical symptoms including increased heart rate, sweating, nightmares, and flashbacks, all of which were due to an exacerbation of her preexisting condition. She reported test findings and diagnosed severe depression, anxiety, PTSD, and panic reactions. Dr. Weil stated that appellant had been hospitalized for a similar work-related event in 2003³ and advised that appellant could not work and was being treated with continued therapy and medication. Appellant also submitted disability slips from Dr. Weil dated May 2 to December 9, 2013.

In reports dated July 2, 2013 to January 7, 2014, Dr. Krinsky advised that appellant continued to do well with regard to her right elbow condition.

In correspondence dated July 1, 2013 addressed to the postmaster, 35 carriers alleged that B.W., U.H., and another manager, K.S., created a hostile and unhealthy work environment, stating that they were confrontational and demeaning and exposed workers to hazards, all of which caused high levels of stress.

At the hearing, held on February 27, 2014, appellant's representative maintained that appellant's current emotional condition was a consequential injury to the previously accepted depression. Appellant described her job duties and maintained that when new management came in they expected her to work outside her restrictions and that she was not given enough time to perform her job duties. She testified that on June 28, 2013 she had a confrontation with one of the supervisors, tried to deliver mail, had a panic attack, and went to the emergency room.

Evidence submitted after the hearing included a June 20, 2013 report in which Dr. Weil indicated that appellant had mental health appointments twice a week and that she could not return to work after the sessions and should go directly home. In a November 20, 2013 report, Dr. Weil reiterated her findings and conclusions. She also reported that in May 2008 appellant's work restrictions were ignored, and she was treated by Diana Morgan Dean, Ph.D., when appellant was subjected to harassment and abuse in the workplace.⁴ Dr. Weil concluded that

³ Records from a 2003 hospitalization are not found in the case record before the Board. The 2003 records found in the record pertain to outpatient psychological treatment.

⁴ In reports dated May 29 to November 20, 2008, Dr. Dean described appellant's condition. She diagnosed adjustment disorder with mixed anxiety and depressed mood due to stress at work.

there were no nonindustrial stressors which contributed to appellant's current severe psychiatric crisis which was a flare-up of her previous injury. On a form report dated November 21, 2013, Dr. Weil reiterated her diagnoses, described mental health evaluation findings, and advised that appellant was slowly making progress. On April 29, 2014 she reported that appellant continued to be anxious, depressed, and fearful as a result of the preexisting depressive psychosis. Dr. Weil recommended continued therapy.⁵

On June 27, 2013 Dr. Krinsky advised that appellant was not to return to work after physical therapy sessions due to right shoulder and left elbow pain. On February 18, 2014 he reported that she continued to do well with regard to her right shoulder.

Settlement agreements reached in March 2014 between the employing establishment and the National Association of Letter Carriers indicated that Ms. Scott would not manage at the employing establishment for two years, Barbara Wright would not supervise there for two years, and Ms. Humphries would not supervise there for six months.

In a May 14, 2014 decision, an OWCP hearing representative denied appellant's claim for disability compensation for the period June 29 to July 29, 2013. The hearing representative found that appellant had not established that her accepted condition had caused her disability. Rather, the hearing representative found that she was claiming new events at work beginning in June 2013, which caused or contributed to a worsening of her preexisting depression as well as causing new psychiatric conditions. She advised that appellant could file a new occupational disease claim regarding these new claimed factors of employment.

LEGAL PRECEDENT

Under FECA, the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is thus not synonymous with physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.⁷ The test of "disability" under FECA is whether an employment-related impairment prevents the employee from engaging

⁵ On May 8, 2014 appellant filed an occupational disease claim alleging that work factors caused PTSD, anxiety, major depressive disorder, panic disorder, and sinus tachycardia. She stated that she first became aware of her illness on October 23, 2003 and its relationship to employment on June 26, 2013. The May 8, 2014 occupational disease claim was adjudicated by OWCP under file number xxxxxx801 and was under development at the time of the May 14, 2014 decision, on appeal to the Board. Under claim number xxxxxx168, appellant filed additional claims for compensation including a recurrence claim in which she stated that she sustained a recurrence of disability on June 28, 2013. By decision dated November 4, 2013, OWCP denied that claim. Appellant timely requested a hearing from that decision. On January 3, 2014 she filed a claim for intermittent compensation beginning May 7, 2013. In a February 27, 2014 decision, OWCP denied that claim. Appellant timely requested a hearing from the February 27, 2014 decision, that was held on April 23, 2014. These claims remained under development by OWCP at the time of the May 14, 2014 decision, on appeal before the Board, at this time.

⁶ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

in the kind of work he or she was doing when injured.⁸ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁹

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.¹¹ 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.¹² Causal relationship is a medical issue. 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.¹³

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish total disability for the period June 29 to July 29, 2013 due to her accepted conditions of right cubital tunnel syndrome and depression, single episode, moderate, due to pain. Appellant has claimed that her current emotional condition, which caused disability, was a consequence of the previously accepted conditions. She submitted a number of reports from Dr. Weil, an attending psychologist, to support this contention.

Rather than establishing that appellant's current emotional condition was due to physical pain caused by her right cubital tunnel syndrome, she has alleged new employment factors, mistreatment by new management at the employing establishment, as a cause for her current disability. Dr. Weil failed to establish that appellant's current diagnoses of severe depression, anxiety, PTSD, and panic reactions were related to the previously accepted conditions. She

⁸ *Corlisa Sims*, 46 ECAB 963 (1995).

⁹ *Tammy L. Medley*, 55 ECAB 182 (2003).

¹⁰ *See Charles W. Downey*, 54 ECAB 421 (2003).

¹¹ *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹² *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

indicated that appellant had done well until a new management team arrived at the employing establishment, which caused a deterioration in appellant's emotional condition. Dr. Weil's opinion is of insufficient probative value to establish that appellant's disability was related to the 2003 accepted work-related conditions.¹⁴

The Board finds that the evidence fails to establish disability for the claimed period due to the accepted conditions. While Dr. Krinsky advised on June 27, 2013 that appellant was not to return to work after physical therapy sessions due to right shoulder and left elbow pain, the accepted condition in this case is a right elbow condition.

CONCLUSION

The Board finds that appellant did not establish that she was entitled to total disability compensation for the period June 29 to July 29, 2013 due to either the accepted conditions or to a claimed consequential emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ *Supra* note 10.