

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on appeal. The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference.³ The facts relevant to this appeal are set forth below.

OWCP accepted that on or before November 1, 2006 appellant, then a 36-year-old contracting officer, 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, and 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 as he did not submit sufficient 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 Nancy Shands, a licensed professional counselor and therapist, who

³ Docket No. 13-0454 (issued March 18, 2014).

noted that she had treated appellant since August 3, 2007 for depression and anxiety disorders. Ms. Shands reported 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."

By decision dated July 17, 2012, OWCP modified the December 20, 2011 decision to accept four hours of wage loss on February 28 2008 when appellant obtained an imaging study. It denied wage-loss compensation for the remaining dates as the new evidence submitted was insufficient to establish causal relationship. Appellant then appealed to the Board, and presented oral argument on March 5, 2014.

By decision and order issued March 18, 2014,⁴ the Board affirmed OWCP's July 17, 2012 decision, finding that appellant had not established all other claimed periods of intermittent disability. The Board found that appellant did not submit sufficient medical evidence to establish total disability for the claimed periods. The Board noted that as Ms. Shands was not considered a physician under FECA and therefore her opinion was of no probative medical value.

In an October 17, 2014 letter, appellant requested reconsideration. He asserted that new medical evidence was sufficient to establish disability from work during the claimed periods. Appellant provided an October 9, 2014 report from Dr. Steven M. Zimmet, a Board-certified internist and pulmonologist in the same medical practice as Dr. Wilson Coudon, who treated appellant from January 11 to March 19, 2008. Dr. Coudon had since retired. Appellant was also treated by a physician assistant. Dr. Zimmet noted that according to medical records, appellant's condition "became acutely worse at the beginning of 2008, resulting in numerous health care contacts and additional missed work." Appellant was treated in the medical practice "seven times during January to March 2008 to review his psychiatric care, monitor his thyroid and blood work, as well as to address a variety of somatic complaints and medication-induced side [effects]." He was "treated with many medications including antidepressants, antipsychotics and mood stabilizers." Dr. Zimmet opined that he agreed with Dr. Melmed and Ms. Shands that appellant "developed anxiety and major depressive disorder as a result of work-related stress and was sufficiently ill during the period January 11 to March 19, 2008 such that he was completely disabled."

By decision dated April 30, 2015, OWCP denied modification, finding that Dr. Zimmet's report was insufficiently rationalized to meet appellant's burden of proof. It found that Dr. Zimmet did not explain which objective findings disabled appellant for work from January 30 to March 19, 2008. OWCP further found that the contemporaneous reports for the period at issue did not indicate that appellant was disabled for work.

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.⁵ Under FECA, the term

⁴ *Id.*

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

“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.⁶ 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.⁷ 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.⁸ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ 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.¹⁰

ANALYSIS

OWCP accepted that appellant sustained an aggravation of depressive disorder on or before November 1, 2006. He claimed intermittent wage loss for the period January 30 to March 19, 2008. Appellant 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.¹¹

In support of his claim, appellant submitted an October 9, 2014 report from Dr. Zimmet, a Board-certified internist and pulmonologist. While Dr. Zimmet reviewed medical records, there is no indication that he treated appellant. Also, he did not explain which findings observed by appellant’s treating physicians indicated that he was disabled for work for the claimed periods. In the absence of such rationale, Dr. Zimmet’s report is insufficient to meet appellant’s burden of proof in establishing causal relationship.¹² The Board notes that while Dr. Zimmet expressed agreement with Dr. Melmed that appellant was disabled from work from January 1 to February 29, 2008, Dr. Melmed did not opine that the accepted emotional condition incapacitated appellant during that period.

As appellant did not submit sufficient medical evidence demonstrating that the accepted emotional condition disabled him from work on intermittent dates from January 30 to March 19, 2008, OWCP’s April 30, 2015 decision denying wage-loss compensation for the claimed period of disability is proper under the facts and law of the case.

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

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Manuel Garcia*, 37 ECAB 767 (1986).

¹⁰ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹² *Deborah L. Beatty*, 54 ECAB 340 (2003).

On appeal, appellant asserts that OWCP's April 30, 2015 decision was unreasonable, as the medical evidence of record established that the accepted emotional condition disabled him from work during the claimed periods. He contends that Dr. Zimmet's October 9, 2014 report presents direct proof of a work-related disability. As set forth above, Dr. Zimmet's report contains insufficient medical rationale to meet appellant's burden of proof.

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 met his burden of proof to establish that he was disabled for work on intermittent dates from January 30 to March 19, 2008 due to an accepted emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2015 is affirmed.

Issued: May 25, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board