

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

E.B., Appellant

and

**PEACE CORPS, VOLUNTEER SERVICES,
Washington, DC, Employer**

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**Docket No. 16-1147
Issued: November 4, 2016**

Appearances:

*Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 11, 2016 appellant, through counsel, filed a timely appeal from an April 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established disability as of August 24, 2012 causally related to the accepted employment injury.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel argues that the medical evidence supports appellant's disability claim.

FACTUAL HISTORY

On November 12, 2012 appellant, then a 26-year-old former Peace Corps volunteer, filed an occupational disease claim (Form CA-2), alleging that he dealt with several stressors over the course of his two years with the employing establishment. OWCP accepted the claim for major depression, recurrent.

On February 19, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work commencing August 24, 2012.

In a January 16, 2016 report, Ronald W. Wynne, Ph.D., a clinical psychologist, reviewed appellant's work history since his return from the Peace Corps and opined that appellant's present difficulties stemmed from his experiences as a Peace Corps volunteer. He indicated that the diagnosis of major depressive disorder, recurrent was due, at least in part, to his work duties with the Peace Corps. Dr. Wynne explained that the combination of attention deficit hyperactivity disorder, giardiasis, and an abruptly discontinued romantic relationship played a role in the most recent onset of appellant's disorder. He opined that appellant's depressive disorder had exacerbated his difficulties with employment since 2012.

Dr. Wynne reviewed appellant's employment history since his Peace Corps service and related that appellant's condition clearly seemed to have lowered his ability to regulate his emotions and, as a result, appellant had taken several impulsive actions. Many of appellant's difficulties in dealing with his workplace supervisors when he worked stemmed, in part, from the depressive disorder, as well as from exacerbation of preexisting conditions (possibly injury to the limbic system when a brain tumor was removed at age nine), and from his attention deficit disorder. Dr. Wynne opined that appellant's psychological conditions limited his ability to maintain steady employment, as reflected by his work history, where he has started and then left numerous jobs (voluntarily or otherwise) in quick succession.

In a March 22, 2016 development letter, OWCP advised appellant that additional evidence was needed to establish disability from work during the entire period claimed. It further found that the medical evidence did not substantiate that the disability was caused by the work injury as additional evidence was needed, including detailed total earnings for all jobs held during the periods of disability and well-rationalized medical evidence to support total disability during the period claimed. Appellant was afforded 30 days to respond.

On March 23, 2016 OWCP received a March 17, 2015 attorney fee request, Form W2 wage and tax statements dated April 13, 2015, and an April 13, 2016 letter from counsel.³

By decision dated April 28, 2016, OWCP denied appellant's claim for wage-loss compensation as of August 24, 2012. It found that the medical evidence submitted did not contain a well-rationalized medical narrative supporting disability during the period claimed causally related to the accepted condition of major depression.

³ On March 30, 2016 OWCP advised counsel that his fee application was approved.

LEGAL PRECEDENT

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁵

Whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence.⁶ 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.⁷

ANALYSIS -- ISSUE 1

In 2013, OWCP accepted that appellant sustained the condition of major depression, recurrent as a result of his service with the Peace Corps. In 2016, appellant filed a claim for wage-loss compensation for disability from work commencing August 24, 2012. He alleged that he was unable to maintain steady employment as a result of his accepted work-related condition. OWCP denied appellant's claim for wage-loss compensation because it found the March 7, 2016 medical narrative from Dr. Wynne was not sufficiently rationalized to establish any disability due to the accepted condition. Appellant's counsel contends on appeal that appellant has established disability, based on Dr. Wynne's March 7, 2016 report, that his is due in part to his accepted work-related injury.

The Board finds that appellant has not met his burden of proof to establish any specific date of disability caused by his accepted condition. Dr. Wynne indicated that appellant's depressive disorder had exacerbated his difficulties with subsequent employment. He explained that the depressive disorder and his physical condition lowered appellant's ability to regulate his emotions. Dr. Wynne further explained that many of the difficulties appellant had with workplace supervisors when he did work stemmed in part from the accepted condition, as well as from an exacerbation of preexisting conditions. In so far as Dr. Wynne's opinion is that appellant may have difficulty holding down future employment, it is well established that the possibility of future injury or disability is not a basis for payment of compensation.⁸

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.⁹ Appellant has the burden to demonstrate his disability from work based on

⁴ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁵ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁶ *See Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *L.J.*, Docket No. 15-0188 (issued March 25, 2016).

⁹ *William A. Archer*, *supra* note 7.

rationalized medical opinion evidence. There is no such evidence in this case. Dr. Wynne's report related, in only general terms, that appellant's depression contributed to difficulties when appellant worked. He did not provide an opinion with supporting medical rationale explaining why appellant's depression would have disabled him from performing work on any specific date during the period claimed.¹⁰

As appellant failed to provide a rationalized medical opinion supporting his disability from work during the period in question, OWCP properly denied his claim for wage-loss compensation.¹¹

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 that he was disabled as of August 24, 2012 causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 28, 2016 is affirmed.

Issued: November 4, 2016
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

¹⁰ See *C.L.*, Docket No. 14-1069 (issued February 22, 2016).

¹¹ *Supra* note 9.