

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

A.D., Appellant	)	
	)	
and	)	Docket No. 17-1984
	)	Issued: March 19, 2018
U.S. POSTAL SERVICE, POST OFFICE,	)	
Waxahachie, TX, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 25, 2017 appellant filed a timely appeal from an April 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that he was disabled from October 31, 2015 to January 10, 2017 causally related to his accepted employment injury.

---

<sup>1</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its April 5, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 1, 2015 appellant, then a 35-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained anxiety, stress, and fear causally related to factors of his federal employment. He attributed his condition to harassment and assault by C.J., the postmaster. Appellant stopped work on November 2, 2015.

OWCP accepted the claim for post-traumatic stress disorder (PTSD).<sup>3</sup> It determined that appellant had established as a compensable factor of employment that C.J. physically prevented him from leaving a room on January 30, 2015 and shut his hand in the door. Appellant telephoned the police, who charged her with assault by contact. On July 11, 2016 C.J. pled no contest and paid a fine. OWCP also accepted as a compensable work factor that on August 8, 2014 C.J. told appellant to drive his employing establishment vehicle to the employing establishment even though the taillights and blinkers did not work. It also indicated that on February 17, 2014 he and a coworker discussed the brakes on his vehicle.

In a report dated November 3, 2015, Dr. Katherine S. Donaldson, a clinical psychologist, related that appellant's difficulties at work began three or four years ago with the arrival of a new postmaster. The postmaster trapped him in an office and assaulted him on January 30, 2015, crushing his hand in a door. Appellant telephoned the police emergency number with his mobile telephone. The postmaster took him off work the next day and alleged that he had brought a gun to the office. She also tried to fire appellant and accused him of threats. The employing establishment moved the postmaster to another office, but she was returned to his work location. Dr. Donaldson diagnosed anxiety, PTSD, and depression. She noted that appellant was currently off work "using his personal time," but that it was running low.

In a January 5, 2016 psychological evaluation, Dr. Donaldson discussed appellant's history of difficulty with his supervisor, culminating in the January 30, 2015 assault. She diagnosed PTSD, an adjustment disorder with depressed mood, and a history of attention deficit disorder. Dr. Donaldson indicated that a psychological assessment found that appellant had major depressive disorder that was "situational and related to his trauma." She opined that his symptoms were "exacerbated when presented with thoughts of being around his supervisor at work who reportedly accosted him."

Dr. Donaldson, in an April 14, 2016 work capacity evaluation form (OWCP-5a), found that appellant could work eight hours per day provided C.J. was not present at his work location.

Prior to accepting appellant's emotional condition claim, OWCP referred him to Dr. Irina Gromov, a Board-certified psychiatrist, for a second opinion examination regarding whether he had established an emotional condition causally related to the compensable work factors and, if so, whether his emotional condition disabled him from work for any period.

---

<sup>3</sup> By decision dated May 4, 2016, OWCP denied appellant's emotional condition claim after finding that he did not establish any compensable factors of employment. By decision dated December 19, 2016, it vacated its May 4, 2016 decision and accepted his claim for PTSD.

On November 18, 2016 Dr. Gromov noted that appellant's relationship with the postmaster deteriorated such that he filed Equal Employment Opportunity (EEO) complaints against her alleging harassment. In January 2015, C.J. assaulted him by blocking the exit to a copy room. Appellant yelled for help and telephoned the police, and ultimately the postmaster paid the fine from charges brought against her by appellant. He continued to work until October 2015, when the postmaster returned to his work location. Appellant resumed work on July 14, 2016 when she was again transferred to another location. Dr. Gromov diagnosed PTSD causally related to conflict with the postmaster that "culminated in [an] assault in January 2015." She noted that appellant was diagnosed with PTSD in November 2016 and advised to remain off work as long as the postmaster was present at his work location. Dr. Gromov related, "As per provider's recommendation, [appellant] was not attending the job due to [his] condition and significant factors. He was released to go back to work in July 2016.... I would concur that [PTSD] would prevent the claimant from returning back to work and I understand that he followed treatment recommendations of his provider." She concluded, "In summary, it is my impression that the claimant suffers from [PTSD], which directly related to stress at work, as conflicts between him and his postmaster caused significant emotional deterioration in his functioning and required [him] to be absent from work."

Appellant, on January 26, 2017, filed claims for compensation (Form CA-7) requesting compensation from October 31 to November 13, 2015 and November 16 to 27, 2015. The employing establishment indicated that he used sick leave, annual leave, and intermittent leave without pay during those periods.

OWCP paid appellant wage-loss compensation for temporary total disability beginning January 11, 2017, and placed him on the periodic compensation rolls effective March 5, 2017.

By letter dated March 3, 2017, OWCP requested that appellant submit evidence supporting that he was disabled from work for the period October 31, 2015 through January 10, 2017 as a result of his accepted work injury.

In an e-mail dated March 17, 2017, OWCP requested that the employing establishment clarify the dates that appellant used leave without pay from November 20, 2015 to January 10, 2017. It further inquired whether he would have been exposed to the postmaster had he worked during his period, noting that, if so, it would pay him compensation for that period.

The employing establishment did not respond to OWCP's request for additional information.

In a report dated November 16, 2015, received by OWCP on March 27, 2017, Dr. Donaldson diagnosed acute stress disorder. She noted that appellant was concerned for his safety "while under the authority of his supervisor" and was currently disabled from employment. Dr. Donaldson indicated that appellant's prognosis was poor if required to work in the described hostile and unsafe work environment.

By decision dated April 5, 2017, OWCP denied appellant's claim for compensation from October 31, 2015 through January 10, 2017. It found that he had not submitted sufficient medical evidence sufficient to demonstrate that he was unable to work during this period.

On appeal appellant contends that he submitted all necessary evidence to OWCP.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>5</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to become disabled from 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>7</sup>

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.<sup>8</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he was receiving at the time of injury, has no disability, and is not entitled to compensation for loss of wage-earning capacity.<sup>10</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or employment, he or she is entitled to compensation for any loss of wages.

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 his or her disability and entitlement to compensation.<sup>11</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>12</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>13</sup> Additionally, once OWCP

---

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986)

<sup>6</sup> *See Amelia S. Jefferson*, *id.*

<sup>7</sup> *See Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

<sup>9</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>11</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> *See S.M.*, Docket No. 16-0990 (issued February 8, 2017); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>13</sup> 20 C.F.R. § 10.121.

undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.<sup>14</sup>

### ANALYSIS

OWCP accepted that appellant sustained PTSD due to the compensable work factor of C.J., the postmaster, physically preventing him from leaving a room on January 30, 2015 and shutting his hand in the door. She was charged with assault, to which she pled no contest. OWCP also found, as compensable, that C.J. instructed appellant to drive a vehicle without working taillights and blinkers and that he discussed his vehicle's brakes with a coworker.

Appellant filed a claim for wage-loss compensation alleging disability from employment for the periods October 31 to November 13, 2015 and November 16 to 27, 2015. OWCP determined that he also requested wage-loss compensation from October 31, 2015 through January 10, 2017 due to his work injury.

The Board finds that the case is not in posture for decision.

In a report dated November 3, 2015, Dr. Donaldson discussed the actions of C.J. on January 30, 2015 and diagnosed anxiety, PTSD, and depression, noting that appellant was off work using personal time. On January 5, 2016 she diagnosed PTSD and an adjustment disorder with depressed mood. In an April 14, 2016 OWCP-5c form, Dr. Donaldson found that he could work as long as C.J. was not at his work location.

In developing the claim, OWCP referred appellant to Dr. Gromov for a second opinion examination. It requested that she address whether he sustained any periods of disability due to an employment-related emotional condition. In a November 18, 2016 report, Dr. Gromov noted that, after the January 2015 assault by C.J., appellant worked until October 2015, when he returned to his work location. Appellant resumed work on July 14, 2016 when C.J. transferred to a different location. Dr. Gromov diagnosed PTSD due to the January 2015 assault by C.J. and found that appellant was unable to work if she was at his location. She opined that PTSD caused him to miss work due to a deterioration of his functioning. Dr. Gromov noted that appellant's healthcare provider released him to resume work in July 2016 and indicated that she concurred that he could not work when C.J. was present.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>15</sup> Dr. Gromov's opinion supports that appellant sustained employment-related disability during the period October 21, 2015 to January 10, 2017. She did not, however, address the exact period of disability resulting from the accepted work injury.

---

<sup>14</sup> See *Melvin James*, 55 ECAB 406 (2004).

<sup>15</sup> See *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

Once OWCP undertakes to further develop the medical evidence, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>16</sup> After undertaking development of the evidence by referring appellant to Dr. Gromov for an opinion on any employment-related periods of disability, it was responsible for obtaining a rationalized medical opinion on this issue. As noted, however, Dr. Gromov did not fully address the issue of disability. Accordingly, the Board will remand the case to OWCP. On remand it should further develop the medical evidence to determine whether appellant was totally disabled from work from October 31, 2015 to January 10, 2017 as a result of his employment injury.<sup>17</sup> Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 19, 2018  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>16</sup> See *A.P.*, Docket No. 17-0813 (issued January 3, 2018).

<sup>17</sup> See *S.M.*, *supra* note 8.