United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 18-0027**
	)	**Issued: May 13, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Newport News, VA, Employer	)	

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

Case Submitted on the Record[1]

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 3, 2017 appellant filed a timely appeal of a July 25, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish total disability for the period April 13, 2017 and continuing causally related to his accepted employment injury.

[1] Appellant filed a timely request for oral argument. By order dated January 4, 2018, the Board, after exercising its discretion, denied her request as her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1805 (issued January 4, 2018).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 5, 2008 appellant then a 43-year-old letter carrier filed a traumatic injury claim (Form CA-1) alleging that on January 28, 2008 he developed mental stress when his station manager asked him to respond to a false complaint of sexual harassment asserted against him by a coworker while in the performance of duty. On June 27, 2008 OWCP accepted his claim for the condition of adjustment disorder with anxious mood/anxiety. Appellant stopped work on February 5, 2008 and worked intermittently thereafter, stopping completely on March 4, 2013.

Appellant treated with Dannah C. Garr, Ph.D., a licensed professional counselor, from May 17 to October 25, 2016, for work-related stress due to the accepted employment injury. He reported experiencing flashbacks of the January 28, 2008 employment injury. Appellant underwent psychological evaluation and testing on June 13, 2016 and was diagnosed with major depressive disorder, recurrent episode, moderate, and post-traumatic stress disorder. In a report dated October 25, 2016, Ms. Garr diagnosed post-traumatic stress disorder and major depressive disorder.

By decision dated December 22, 2016, OWCP denied appellant's claim for a consequential injury.[3]

In reports dated November 2, 2016 to February 27, 2017, Dr. Chevette S. Alston, a licensed professional counselor and clinical psychologist, noted that appellant feared driving since the October 4, 2016 automobile accident. She further indicated that he attempted to assist a coworker at the employing establishment, but was turned away because he was deemed a threat due to his psychological condition. This incident caused appellant to sustain additional psychological pain. Dr. Alston noted symptoms of distractible fear, rumination, stress, and trauma. She indicated that appellant was stable and his prognosis good. On January 29, 2017 Dr. Alston noted that he continued to struggle with trauma sequelae and cognitive ruminations that were related to the events that occurred at work in 2008 and 2010. She indicated that appellant was unable to redirect stressful cognitions and ruminations that impeded therapeutic progress and caused him to regress in functioning and noted that injuries sustained during a commute to therapy compounded his doubt about his safety. Dr. Alston diagnosed post-traumatic stress disorder, chronic, major depressive disorder, moderate, and migraine.

In reports dated March 6 to April 10, 2017, Dr. Alston noted that appellant presented anxious and reported pain related to a car accident. Appellant noted working full time as a minister. Dr. Alston noted that his appearance was normal, he was attentive, normal concentration, orientation in all spheres, normal memory, and eye contact with appropriate affect. She indicated that appellant had problems with anger, boundaries, distractible fear, rumination, stress, trust,

[3] On October 31, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2016 he was on his way to a weekly appointment for a work injury and collided with a deer causing his vehicle to overturn, OWCP File No. xxxxxx823. He sustained a head injury (concussion), cervical strain, left knee strain, and right shoulder strain. At the time of the accident appellant was disabled under claim, OWCP File No. xxxxxx530. In a memorandum dated December 20, 2016, OWCP combined OWCP File Nos. xxxxxx530 and xxxxxx823. It indicated that the injuries sustained in OWCP File No. xxxxxx823 were consequential to the accepted injuries in OWCP File No. xxxxxx530. A decision on the new injury would be made in OWCP File No. xxxxxx530, the master file.

trauma, and worry. Dr. Alston recommended cognitive behavior therapy, behavior modification, solution focused therapy, and emotionally focused therapy.

In a report dated March 20, 2017, Dr. Alston found that, despite ongoing therapeutic and mental health interventions, appellant's stress trauma continued to be unresponsive to positive change and post-traumatic triggers continued to impede his daily functioning. She opined that his current state of mental health functioning plateaued to "an inflexible and nonretractive point and appeared to be permanent." Dr. Alston opined that extensive psychological interventions did not appear to be helpful and total disability should be considered. She diagnosed post-traumatic stress disorder, chronic; major depressive disorder, moderate; and migraine, unspecified.

Appellant submitted a claim for compensation (Form CA-7) for leave without pay (LWOP) for total disability commencing April 13, 2017. He reported working as a pastor in a church from 2012 to the present. On the reverse side of the claim form the employing establishment's human resource specialist indicated that appellant was not entitled to compensation because a "reasonable accommodation for a nonwork-related condition was not compensable." In an e-mail dated June 22, 2017, the employing establishment indicated that the last day he worked had been March 4, 2013.

In development letter dated June 22, 2017, OWCP requested that appellant submit additional information to establish his claim for compensation. It requested that he submit medical evidence establishing that total disability was due to the accepted condition for the period claimed. OWCP afforded appellant 30 days to respond.

In a separate June 22, 2017 development letter, OWCP requested that appellant provide additional information regarding his alternate work with the his church, including his job title, his start date, the number of hours a day or week worked, and the pay rate.

In an undated statement, appellant indicated that he had been the pastor of his church since 2012. He reported working three to four hours a week, 52 weeks a year, and his salary was $42,600.00 a year. Appellant's duties included preaching, performing eulogies and weddings, serving communion, and bible study.

Appellant submitted a psychological evaluation dated June 13, 2016.

Appellant submitted a computed tomography (CT) scan of the cervical spine dated October 4, 2016 which revealed no evidence of fracture or subluxation. Similarly, a CT scan of the head revealed no evidence of intracranial injury. Appellant submitted discharge instructions for a head injury with additional diagnoses of cervical strain, left knee strain, rollover motor vehicle collision, and shoulder strain.

Appellant was treated by Dr. Tom Hollandsworth, a Board-certified family practitioner, on December 6, 2016, who noted that he sustained multiple injuries in a motor vehicle accident that occurred on October 4, 2016 when his car flipped. Dr. Hollandsworth reported shoulder and neck pain and worsening migraine headaches. He noted symptoms consistent with muscular injury and bursitis. Dr. Hollandsworth further reported short-term memory loss. He diagnosed musculoskeletal pain related to the October 4, 2016 injury.

On January 12 and August 2, 2017 Dr. Robert M. Paschall, an osteopath specializing in neurology, treated appellant for head and neck pain which began after an incident in which he rolled his car in an attempt to avoid hitting a deer. Appellant reported pain when moving his eyes to the right, memory issues, visual hallucinations, and vertigo. Dr. Paschall diagnosed postconcussion syndrome, cerebral concussion without loss of consciousness, migraine, unspecified, and vestibulopathy of the left ear.

Dr. Thomas Brandon, a Board-certified orthopedic surgeon, treated appellant on February 27 and March 28, 2017, for bilateral shoulder pain. He reported that appellant indicated that he had been driving to a physician's appointment when he hit a deer and rolled his car injuring both shoulders and his cervical spine. Appellant reported working as a pastor. Findings on examination of the bilateral shoulders revealed moderate subaromial tenderness, mild loss of motion, and positive impingement. X-rays of the bilateral shoulders revealed Type 2 acromion and osteophyte formation of the acromioclavicular (AC) joint. Dr. Brandon diagnosed bursitis of the bilateral shoulder, osteoarthritis of the bilateral shoulders, and bilateral mild frozen shoulder and he performed joint injections.

On March 3, 2017 Dr. John Greco, a Board-certified orthopedic surgeon, treated appellant for neck pain which began after an automobile accident on October 4, 2016. Appellant reported working as a pastor. Dr. Greco noted findings on examination of mild diffuse tenderness with palpation of the cervical spine and moderate restricted range of motion. He noted that a CT scan of the cervical spine revealed degenerative disc disease and mild bulging discs at C5-6. He diagnosed cervical disc displacement in the mid-cervical region and recommended physical therapy. On May 26, 2017 Dr. Greco reexamined appellant for bilateral shoulder pain, neck pain, and back pain after a motor vehicle accident in October 4, 2016. Appellant's prior history was significant for a S1 fusion. X-rays of the thoracic spine revealed disc space narrowing. X-rays of the lumbosacral spine revealed mild multilevel degenerative joint disease and implants at the S1 joint. Magnetic resonance imaging scans of the bilateral shoulders demonstrated mild to moderate AC scan osteoarthrosis. Dr. Greco diagnosed bilateral osteoarthritic changes of the shoulders, bursitis of both shoulders, and intervertebral disc disorders of the lumbosacral region.

On May 1, 2017 Dr. Alston treated appellant for adjustment disorder, trauma, and anxiety stemming from mental health stressors in 2008 and 2010. She noted that any ongoing stress triggers that he experienced would lead to anxiety and post-traumatic stress disorder. Dr. Alston opined that appellant's condition manifested itself in 2008 and was exacerbated in 2010. She diagnosed chronic post-traumatic stress disorder and major depression and recommended a medication regimen and scheduled therapy. In a June 27, 2017 letter, Dr. Alston indicated that appellant's mental health deficits were exacerbated by the accident that occurred on his way to therapy on October 4, 2016. In a report dated June 27, 2017, she indicated that in 2016 Ms. Garr diagnosed post-traumatic stress disorder and major depressive disorder and she noted that psychological evaluations revealed appellant's stress and depression started in 2008 and had been exacerbated by further occurrences with the employing establishment. Dr. Alston opined that his post-traumatic stress disorder did not have a predictable course of pathology. She noted that appellant continued to ruminate about related events including the accident that occurred in 2017 on his way to therapy.

By decision dated July 25, 2017, OWCP denied appellant's claim for compensation for the period beginning April 13, 2017.[4]

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[5] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[6] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[7] To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.[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. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation. 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability for the period April 13, 2017 and continuing causally related to his accepted employment injury.

OWCP accepted appellant's claim for adjustment disorder with anxious mood/anxiety. Appellant stopped work on February 5, 2008 and worked intermittently thereafter. He stopped

[4] On October 3, 2017 appellant appealed this present claim to the Board. On October 3, 2017 OWCP also issued a decision setting aside the decision dated December 22, 2016 which denied his consequential back, neck, shoulder, and knee injuries related to an automobile accident and remanded the matter for further medical development. By decision dated November 22, 2017, it accepted appellant's claim for consequential strain of the bilateral shoulders, cervical spine, and lumbar spine. On December 22, 2017 OWCP granted him compensation for LWOP for the period October 4, 2016 to October 27, 2017. As noted, the Board obtained jurisdiction over this matter on October 3, 2017. Therefore, these decisions are null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue in a case. OWCP may not issue a decision granting or denying disability compensation for the same period of disability on appeal before the Board. *See Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41ECAB 880 (1990); 20 C.F.R. § 501.2(c)(3).

[5] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Id.*

[7] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *C.S.*, Docket No. 08-2218 (issued August 7, 2009).

[9] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

work completely on March 4, 2013 and claimed wage-loss compensation for total disability commencing April 13, 2017.

Reports from Dr. Alston dated January 29 to April 10, 2017 noted that appellant continued to struggle with trauma sequelae and cognitive ruminations that were related to the events that occurred at work in 2008 and 2010 and he had regressed in his daily functioning. She diagnosed post-traumatic stress disorder, chronic, major depressive disorder, moderate, and migraine. On March 20, 2017 Dr. Alston noted that, despite ongoing therapeutic and mental health interventions, appellant's stress trauma continued to be unresponsive to positive change and his current state of mental health functioning plateaued and appeared to be permanent. She diagnosed post-traumatic stress disorder, chronic, major depressive disorder, moderate and migraine and opined that total disability should be considered. However, Dr. Alston did not explain why appellant's disability beginning April 13, 2017 was attributable to his accepted conditions.[10] Additionally, she partially attributed appellant's condition to post-traumatic stress disorder; however, OWCP has not accepted that he developed post-traumatic stress disorder as a result of the accepted events of January 28, 2008[11] and Dr. Alston not otherwise explained how the accepted adjustment disorder with anxious mood/anxiety caused the claimed disability.

A May 1, 2017 report from Dr. Alston noted treating appellant for adjustment disorder, trauma and anxiety stemming from mental health stressors in 2008 and 2010. She noted symptoms of his post-traumatic stress disorder included sleeplessness, bouts of tearfulness, anger, depression, emotional reactions, and hypervigilance which was still evident. Dr. Alston diagnosed chronic post-traumatic stress disorder and major depression and recommended a medication regimen and scheduled therapy. Similarly, in a June 27, 2017 letter, she indicated that appellant's mental health deficits were exacerbated by the accident that occurred on his way to therapy on October 4, 2016 and since that time appellant continued to face psychological struggles related to travel. In another report dated June 27, 2017, Dr. Alston opined that his 2008 mental health instability continued to manifest itself and was continually exacerbated by further occurrences with the employing establishment. She opined that appellant's post-traumatic stress disorder did not have a predictable course of pathology. Even though Dr. Alston noted that he continued to experience symptoms of major depression, she did not specifically explain how any accepted condition would cause disability beginning April 13, 2017.[12] Additionally, she attributed appellant's condition at least partially to post-traumatic stress disorder. However, as noted, OWCP has not accepted that appellant developed post-traumatic stress disorder as a result of the accepted events of January 28, 2008.[13]

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[11] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[12] *See Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[13] For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

Appellant submitted a December 6, 2016 report from Dr. Hollandsworth who treated him for muscular injuries sustained in a motor vehicle accident that occurred on October 4, 2016. Reports from Dr. Paschall dated January 12 and August 2, 2017, noted appellant's treatment for head and neck pain after a motor vehicle accident and he diagnosed post-concussion syndrome, cerebral concussion without loss of consciousness, migraine, and vestibulopathy of the left ear. Similarly, reports from Dr. Brandon dated February 27 and March 28, 2017 noted appellant's treatment for bilateral shoulder pain, bursitis, and osteoarthritis of the bilateral shoulders which developed after a motor vehicle accident in which he rolled his car. Likewise, in reports dated March 3 and May 26, 2017, Dr. Greco treated appellant for injuries sustained to his shoulders, neck, and back after a motor vehicle accident in October 4, 2016. However, these reports are of limited probative value as they either predate the period of claimed disability or they do not specifically attribute the period of claimed disability to the accepted conditions.[14]

Appellant also treated with and submitted reports of Ms. Garr who diagnosed post-traumatic stress disorder and major depressive disorder. However, Ms. Garr's report is of no probative value as she is not considered a physician as defined under FECA.[15]

Other diagnostic reports of record lack probative value as they do not otherwise address how total disability beginning April 13, 2017 was due to the accepted conditions.[16]

The Board finds that the medical evidence of record is insufficient to establish that the period of total disability beginning April 13, 2017 was caused or aggravated by the accepted conditions of adjustment disorder with anxious mood/anxiety. Consequently, appellant has not met his burden of proof.

On appeal, appellant asserts that OWCP ignored the diagnoses of post-traumatic stress disorder and continued to request redundant medical documentation from his medical professionals. The Board notes that matters pertaining to the acceptance of additional conditions are not before the Board on appeal. OWCP did not issue a final decision on this issue prior to appellant's appeal on October 3, 2017 and therefore the Board does not have jurisdiction over the matter.[17]

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.

[14] *See M.C.*, Docket No. 15-1762 (issued August 26, 2016) (medical reports are of limited probative value where they either predate the claimed period of disability or do not specifically address whether the claimed disability is causally related to the accepted condition).

[15] The Board has held that medical evidence must be from a qualified physician. *See S.S.*, Docket No. 13-1919 (issued May 16, 2014); 5 U.S.C. § 8101(2) (defines the term physician).

[16] *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *G.S.*, Docket No. 18-1696 (issued March 26, 2019).

[17] *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish total disability for the period April 13, 2017 and continuing causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2019
Washington, DC

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

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

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