

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

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H.D., Appellant)	
)	
and)	Docket No. 18-1212
)	Issued: September 4, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Seattle, WA, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On May 29, 2018 appellant filed a timely appeal from an April 18, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1212.¹

On June 28, 2016 appellant, then a 55-year-old truck driver, filed an occupational disease claim (Form CA-2) alleging that he experienced stress due to threats he received while serving as an acting supervisor. He noted that he first realized that the condition was related to his employment on May 5, 2016. Appellant stopped work on July 1, 2016.

In a July 11, 2016 statement, appellant alleged that on March 11, 2015 he was threatened by Supervisor K.B, which he reported to management. He further alleged that on May 25, 2016

¹ The Board notes that following the April 18, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

an off-duty employee threatened him on the south dock of the employing establishment and knocked his cell phone out of his hand.

Dr. Chris Belcher, a family practitioner Board-certified in pediatric medicine, diagnosed adjustment disorder and anxiety. He released appellant to full-duty work on September 6, 2016. Appellant returned to full-duty work on or about September 7, 2016 and worked sporadically thereafter.

In a December 3, 2016 report, Dr. Jean Dalpe, a Board-certified psychiatrist serving as an OWCP second opinion physician, reviewed the statement of accepted facts (SOAF) along with the medical evidence of record in which appellant reported that he continued to feel threatened at work. He concluded that appellant had a temporary aggravation of major depressive disorder due to the accepted May 5, 2016 employment injury. Dr. Dalpe advised that appellant was currently in a major depressive episode causally related to the accepted employment incident and that he would be disabled for 12 to 16 weeks for aggressive psychopharmacologic treatment needed to resolve the depressive episode. He also recommended that appellant be evaluated by a psychiatrist for treatment.

On December 20, 2016 OWCP accepted appellant's claim for temporary major depressive disorder, recurrent severe without psychotic features causally related to the accepted May 5, 2016 injury based upon Dr. Dalpe's report. It paid appellant retroactive wage-loss compensation and authorized leave buy back from June 25 through September 7, 2016.

Appellant thereafter filed claims for intermittent wage-loss compensation (Form CA-7) for ongoing periods commencing October 5, 2016, due to recurrent disability as a result of his accepted emotional condition.

By decision dated March 10, 2017, OWCP denied appellant's claims for compensation from October 5, 2016 and continuing because the medical evidence of record was insufficient to establish disability due to the accepted work-related temporary major depressive disorder.

On March 25, 2017 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on September 18, 2017. By decision dated December 1, 2017, an OWCP hearing representative affirmed the March 10, 2017 decision.

On January 30, 2018 appellant requested reconsideration.

OWCP referred appellant to Dr. Michael Friedman, an osteopath Board-certified in psychiatry, for a second opinion examination. In a January 23, 2018 report, Dr. Friedman opined that the accepted condition had not resolved and that appellant needed additional treatment for his work-related condition. However, he further opined that appellant could return to work for eight hours per day with restrictions relating to interactions with coworkers.

By decision dated April 18, 2018, OWCP denied modification of its prior decision finding that evidence of record did not establish disability due to a material change or worsening of his accepted emotional condition.

Having reviewed the case record submitted by OWCP, the Board finds that this case must be remanded to OWCP. OWCP accepted appellant's emotional condition claim based upon Dr. Dalpe's December 3, 2016 second opinion report. In his December 3, 2016 report, Dr. Dalpe found that appellant was in the midst of a major depressive event causally related to the accepted incident and that he would remain disabled for 12 to 16 weeks for aggressive psychopharmacologic treatment needed to resolve the depressive episode. He recommended that OWCP have appellant evaluated by a psychiatrist for treatment. Appellant was referred to a second opinion examination with Dr. Friedman, who in a January 23, 2018 report determined that appellant's condition had not resolved, that he was in need of further medical treatment, and that he could return to work with restrictions.

The Board finds that OWCP's April 18, 2018 decision failed to provide findings of fact and a statement of reasons in denying appellant's recurrence claim.² OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition. It did not explain why Dr. Friedman carried the weight of the medical evidence such that appellant could understand the basis for the decision as well as the precise defects and the evidence required to establish the recurrence claim.³

The case must therefore be remanded to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding denial of appellant's claim for recurrence of disability commencing on October 5, 2016. Following any other development deemed necessary, OWCP shall issue a *de novo* decision on appellant's recurrence claim.⁴ Accordingly,

² 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013).

⁴ *See A.J.*, Docket No. 18-0727 (issued February 21, 2019); *G.S.*, Docket No. 16-0908 (issued October 26, 2017).

IT IS HEREBY ORDERED THAT the April 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order of the Board.

Issued: September 4, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board