

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

C.V., Appellant	)	
	)	
and	)	<b>Docket No. 18-0453</b>
	)	<b>Issued: August 6, 2020</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>Yuma, AZ, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On January 2, 2018 appellant filed a timely appeal from July 27 and September 7, 2017 merit decisions and two November 27, 2017 OWCP nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 27, 2017 decisions, 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish recurrences of disability for the periods June 30 to July 6, 2014 and October 19 to November 1, 2014, causally related to her accepted employment injury; and (2) whether OWCP properly denied appellant's requests for reconsideration of the merits of her claims pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 17, 2014 appellant, then a 40-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging an emotional condition due to factors of her federal employment, including sexual harassment by a supervisor from July 6 to August 31, 2012.<sup>4</sup>

On February 13, 2017 OWCP accepted the claim for major depressive disorder, recurrent, moderate; post-traumatic stress disorder (PTSD), unspecified; generalized anxiety disorder and panic disorder; and episodic paroxysmal anxiety without agoraphobia.

On June 8, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period October 19 to November 1, 2014.<sup>5</sup> On an accompanying time analysis form (Form CA-7a), appellant noted that she used leave without pay for the claimed period and that the reason for the leave was temporary total disability per her physician.

OWCP also received disability certificates from Dr. Inamdar, including a certificate dated October 20, 2014 in which he placed appellant off work until December 2, 2014. In a November 12, 2014 certificate, however, he released appellant to work on November 17, 2014.

---

<sup>3</sup> Docket No. 16-0699 (issued November 4, 2016).

<sup>4</sup> In a narrative statement dated November 17, 2014, appellant set forth additional details regarding the alleged sexual harassment and retaliation she had experienced at work. She also noted that on August 4, 2014 she began an intensive outpatient program (IOP) at Sharp Mesa Vista Hospital at the recommendation of her treating psychiatrist, Dr. Shashita Inamdar, a Board-certified psychiatrist. Appellant noted that, as part of mandatory settlement negotiations of her Equal Employment Opportunity (EEO) claim, the employing establishment had offered to pay her six weeks of administrative leave for her attendance at the outpatient treatment center at Sharp Mesa Vista Hospital. She noted that in accepting a settlement she did not waive her right to pursue her current workers' compensation claim.

<sup>5</sup> The Board notes that appellant also has a claim for a January 7, 2013 traumatic injury accepted under OWCP File No. xxxxxx036 for contusion of finger and sprains of neck, knee/leg, upper arm, and lumbar spine. Appellant's claims have not been administratively combined.

In a development letter dated June 21, 2017, OWCP informed appellant that it had received her wage-loss compensation claim for the period October 19 through November 1, 2014, but noted that its records indicated that she had returned to work on January 2, 2014, in a full-duty capacity. It therefore notified her that her claim for compensation was considered a claim for a recurrence of disability. OWCP advised appellant of the definition of a recurrence of disability and the type of evidence required to establish her claim. It afforded her 30 days to submit additional evidence.

Appellant thereafter filed a Form CA-7 for disability from work for the period June 30 to July 6, 2014. On an accompanying Form CA-7a she indicated that she had used eight hours of sick leave each day. Appellant noted temporary total disability as her reason for leave for July 1 and 6, 2014, and for July 5, 2014 she noted temporary total disability/July 4, 2014 holiday.

OWCP received a June 30, 2014 disability certificate from Dr. Inamdar, placing appellant off work until July 7, 2014.

In a development letter dated July 17, 2017, OWCP explained that it had received appellant's claim for 32 hours of compensation for total disability during the period June 30 to July 6, 2014; however, the medical evidence of record was insufficient to establish the claim and additional evidence was required. It noted that she was working full time up to the date of June 30, 2014, when Dr. Inamdar placed her off from work from June 30 to July 7, 2014. OWCP explained that there was no medical report with medical rationale establishing that the accepted conditions had worsened such that appellant was unable to work from June 30 to July 6, 2014. It requested additional medical evidence to establish how her accepted conditions spontaneously worsened, without an intervening event, such that she was unable to work during the period June 30 to July 6, 2014. OWCP requested that appellant submit the evidence within 30 days.

OWCP received an October 20, 2014 disability certificate from Dr. Inamdar noting that appellant was recommended for an IOP program and that she should remain off work until December 2, 2014.

By decision dated July 27, 2017, OWCP denied the claim for a recurrence for the period October 19 to November 1, 2014, as the evidence submitted was insufficient to establish that she was disabled from work during the claimed period due to a material change or worsening of her accepted work-related conditions. It found that the physician had not provided examination findings, nor had he discussed the cause of the claimed disability and its relationship to the original injury and accepted employment factors.

By decision dated September 7, 2017, OWCP denied the claim for a recurrence for the period June 30 to July 6, 2014, finding that the evidence submitted was insufficient to establish that appellant was disabled from work during the claimed period due to a material change or worsening of her accepted work-related conditions.

On November 21, 2017 appellant requested reconsideration of the July 27 and September 7, 2017 decisions.

In support thereof, appellant submitted a July 12, 2017 progress report, wherein Dr. Ruchira Densert, a Board-certified psychiatrist, diagnosed PTSD and major depressive disorder. Dr. Densert also reviewed appellant's treatment plan and indicated that she could return to work on September 11, 2017 with no restrictions or limitations.

By decision dated November 27, 2017, OWCP denied appellant's request for reconsideration of the September 7, 2017 decision. It found that she had not raised substantive legal questions or included relevant and pertinent new evidence sufficient to warrant a review of the prior decision.

By separate decision dated November 27, 2017, OWCP denied appellant's request for reconsideration of the July 27, 2017 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</sup>

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>7</sup>

OWCP procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>8</sup> A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>9</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>10</sup> The evidence should establish that a claimant attended an examination

---

<sup>6</sup> 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>9</sup> *Id.* at Chapter 2.901.19.a.

<sup>10</sup> *Id.* at Chapter 2.901.19.a(2).

or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.<sup>11</sup> For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the case is not in posture.

On June 8, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period October 19 to November 1, 2014. On an accompanying time analysis form (Form CA-7a) she noted that she used leave without pay for the claimed period and that the reason for the leave was temporary total disability per her physician. Appellant thereafter filed a Form CA-7 for disability from work for the period June 30 to July 6, 2014. On an accompanying Form CA-7a she indicated that she had used eight hours of sick leave each day.

As noted, wages lost for compensable medical examinations or treatment may be reimbursed.<sup>13</sup> To be compensable, the evidence should establish that a claimant attended an examination or underwent treatment for the accepted work injury on the dates claimed in order for compensation to be payable, and for a routine medical appointment a maximum of four hours of compensation may be allowed.<sup>14</sup> However, wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>15</sup>

The Board finds that the record does not contain sufficient information regarding exactly what dates and hours that appellant lost wages due to attendance at medical appointments or for treatment of the accepted conditions. The case must therefore be remanded to develop the record regarding time lost, if any, for medical appointments or treatment as allowed under FECA, to be followed by a *de novo* decision on appellant's claims for recurrence of disability.<sup>16</sup>

---

<sup>11</sup> *Id.* at Chapter 2.901.19.a(3).

<sup>12</sup> *Id.* at Chapter 2.901.19.c.

<sup>13</sup> *See supra* note 7.

<sup>14</sup> *See supra* note 11.

<sup>15</sup> *See supra* note 9.

<sup>16</sup> Upon return of the claim file, OWCP shall administratively combine the present file with OWCP File No. xxxxxx036.

**CONCLUSION**

The Board finds that the case is not in posture for decision.<sup>17</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, September 7, and November 27, 2017 decisions are set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: August 6, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>17</sup> Based upon the outcome of issue 1, issue 2 is rendered moot.