

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

K.P., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
Nashville, TN, Employer**

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**Docket No. 19-1695
Issued: March 23, 2020**

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 August 7, 2019 appellant filed a timely appeal from a July 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 18, 2019 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability for the period March 18 through April 10, 2019, causally related to his accepted conditions.

FACTUAL HISTORY

On March 2, 2018 appellant, then a 33-year-old claims specialist, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition due to stress caused by overwork, interacting with claimants, and processing disability applications on or before April 1, 2016 while in the performance of duty. He did not stop work. In an April 11, 2018 statement, the employing establishment confirmed that appellant was required to process a high volume of applications under short deadlines during a staffing shortage. OWCP accepted that appellant sustained generalized anxiety disorder and recurrent, moderate major depressive disorder due to compensable factors of his federal employment.

On May 3, 2019 OWCP received appellant's claims for compensation (Form CA-7) for intermittent disability for the period March 18 to April 10, 2019.³ A May 20, 2019 time analysis form (Form CA-7a) indicates that appellant claimed disability on the following dates to attend medical appointments: 2.5 hours on March 18, 2019; 1.25 hours on March 19, 2019; 2.25 hours on March 27, 2019; 2.25 hours on April 2, 2019; 1.25 hours on April 4, 2019; 8 hours on April 9, 2019. Appellant also claimed 30 minutes of disability on April 10, 2019 to attend a medical appointment.

In a development letter dated May 10, 2019, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It advised him of the type of evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

By decision dated July 18, 2019, OWCP denied appellant's claims for compensation (Form CA-7) for the period March 18 through April 10, 2019, finding that appellant had not provided medical evidence addressing the claimed period of disability.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the December 13, 2012 employment injury.⁵

³ Appellant had previously filed wage-loss compensation claims (Form CA-7) for intermittent periods of disability from May 14, 2017 to November 10, 2018. This period of disability is not before the Board on the present appeal.

⁴ *Supra* note 1.

⁵ *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁶ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.⁷ The employee is responsible for providing sufficient medical evidence to justify payment of compensation sought.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish intermittent disability for the period March 18 through April 10, 2019, causally related to his accepted conditions.

Appellant claimed compensation for intermittent leave use to attend medical appointments from March 18 to April 10, 2019. However, he has not submitted medical evidence establishing that the accepted emotional conditions disabled him from work during the period claimed. As there is no medical evidence of record establishing that appellant was disabled intermittently during the period March 18 to April 10, 2019 due to his accepted emotional conditions, the Board finds he has not met his burden of proof.¹¹

On appeal appellant contends that he submitted all required forms. As explained above, the question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹² Appellant has not submitted medical evidence establishing disability during the claimed period and therefore has not met his burden of proof.

⁶ 20 C.F.R. § 10.5(f).

⁷ *S.H.*, *supra* note 5; *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

⁸ *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *S.H.*, *supra* note 5; *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹¹ *S.H.*, *supra* note 5; *A.T.*, *supra* note 7; *Sandra Pruitt*, *id.*.

¹² *See supra* note 8.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish intermittent disability during the period March 18 through April 10, 2019, causally related to his accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 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