

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability between February 2 and October 20, 2018.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On March 4, 2011 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging an injury to her right arm when she was attacked and bitten by a dog that day while in the performance of duty. OWCP initially accepted her claim for open wound of upper arm without complications.⁵

By decision dated May 29, 2013, OWCP expanded acceptance of the claim to include post-traumatic stress disorder (PTSD).⁶ It subsequently accepted panic disorder without agoraphobia. OWCP compensated appellant for 296 hours of wage loss from September 12 to November 1, 2011. Appellant stopped work on July 1, 2012 and returned to a full-time position as a passport scheduler on October 17, 2013. OWCP paid her wage-loss compensation for the period July 1, 2012 to October 17, 2013. On December 1, 2014 appellant's work hours were reduced to four hours a day to relieve stress. OWCP thereafter paid compensation based on her reduced hours, and on January 23, 2017 began paying compensation based on her loss of wage-earning capacity (LWEC).

In correspondence dated February 15, 2017, Dr. Mohamed S. Ahmed, a treating Board-certified psychiatrist, indicated that on February 15, 2017 appellant reported having a panic attack at work that day, and was sent home. He reported that she had been his patient since September 12, 2011 and had been diagnosed with severe anxiety, PTSD, panic disorder, and depression. Dr. Ahmed indicated that appellant had always been compliant with medication, psychotherapy, and follow-up appointments, and that there was no evidence of malingering.

On November 8, 2017 appellant accepted a modified position for four hours daily with duties including lobby and side door assistance. The passport scheduler position had been discontinued.

Dr. Richard M. Barrett, Board-certified in psychiatry, performed a second-opinion evaluation on December 18, 2017. He noted the history of injury and accepted conditions.

⁴ Docket No. 12-1503 (issued February 11, 2013).

⁵ By decisions dated January 12 and May 23, 2012, OWCP denied expansion of the acceptance of appellant's claim for an emotional condition caused by the March 4, 2011 dog bite. By decision dated February 11, 2013. The Board set aside OWCP's decisions and remanded the case for OWCP to further develop the medical evidence, to be followed by an appropriate decision on the merits of the claim. *Id.*

⁶ OWCP had referred appellant to Dr. Tony A. Pham, a Board-certified psychiatrist. In an April 15, 2013 report, he advised that appellant had PTSD caused by the March 14, 2011 attack by a dog.

Dr. Barrett performed a mental status examination. He opined that appellant continued to have residuals of the employment injury. Dr. Barrett advised that she could work no more than four hours daily because working more hours would trigger more panic attacks.

In a February 7, 2018 report, Dr. Ahmed noted his agreement with Dr. Barrett's conclusions, advising that appellant could work no more than five, four-hour days per week. He opined that her condition was chronic and could last a lifetime.

On February 20, 2018 Ann Browning, a physician assistant, described appellant's condition and treatment.

On January 8, 2019 appellant filed a claim for compensation (Form CA-7) for the period December 18, 2017 through April 10, 2018. An attached time analysis (Form CA-7a) indicated that she was claiming 1.97 hours compensation on December 18, 2017 for a medical appointment, and 4 hours each on February 2 and April 10, 2018 due to anxiety attacks. Appellant also filed a second Form CA-7 on January 8, 2019 for intermittent disability for the period August 27 through October 20, 2018. The attached Form CA-7a indicated that she was claiming four hours of daily compensation for August 27 and 28 and October 9, 17, 19, and 20, 2018 due to anxiety attacks.

By decision dated March 1, 2019, OWCP noted that she had been compensated for October 16, 17, and 18, and December 18, 2017. It denied her claim for four hours of disability each on February 2 and April 10, 2018 because there was no medical evidence to substantiate claimed disability on those dates.

By separate decision dated March 1, 2019, OWCP found that appellant had not established entitlement to claimed compensation for intermittent disability for the period August 27 through October 20, 2018. It noted that she received compensation on the periodic rolls for four hours daily and had submitted no medical evidence to substantiate disability from work on the dates claimed.

On March 15, 2019 appellant, through counsel, requested a hearing before a hearing representative of OWCP's Branch of Hearings and Review.

In a narrative statement dated March 5, 2019, received by OWCP on March 18, 2019 Dr. Ahmed noted that appellant was last seen on February 28, 2019 when she had to leave work because she had a panic attack. He repeated that her condition was chronic and that she was only able to work four hours daily. Dr. Ahmed reiterated his findings and conclusions on April 8, 2019.

During the July 11, 2019 hearing, appellant testified that she could not work on certain days because she had panic attacks. Counsel argued that appellant should be compensated for the dates claimed. The hearing representative advised that supportive medical evidence needed to be submitted for the claimed dates of disability. She held the record open for 30 days.

In a narrative report dated August 6, 2019, Dr. Ahmed described appellant's treatment beginning in 2011. He mentioned dates of treatment on December 20, 2017 and February 7, March 21, September 7, and October 22, 2018. Dr. Ahmed concluded that when appellant was unable to work it was because her symptoms were significant enough to interfere with her daily function as she was very emotional and on edge, easily became irritated with others, and had difficulty maintaining her composure in the work setting.

By decision dated September 13, 2019, OWCP's hearing representative affirmed both March 1, 2019 decisions. She found that appellant did not establish claimed total disability for intermittent dates from February 2 through October 20, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹¹

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.¹² Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of reliable, probative and substantial medical opinion evidence.¹³

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 their disability and entitlement to compensation.¹⁴

⁷ *Supra* note 2.

⁸ *A.B.*, Docket No. 18-0834 (issued June 11, 2020); *N.S.*, 59 ECAB 422 (2008).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

¹¹ *See B.C.*, Docket No. 18-0692 (issued June 5, 2020).

¹² *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

¹³ 20 C.F.R. § 10.5(f); *see W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability between February 2 and October 20, 2018.

Appellant claimed compensation for total disability for eight days in 2018.¹⁵ However, there is no medical evidence of record addressing the dates of claimed disability or that she had a medical appointment on any of those dates. In his February 7, 2018 and March 5, 2019 reports, Dr. Ahmed related that appellant was partially disabled from work, and entitled to four hours of wage-loss compensation each workday. However, he did not address whether she was disabled from work during the dates in question. Similarly, on August 6, 2019 Dr. Ahmed listed specific dates he treated appellant. None of the claimed dates of disability were listed. While Dr. Ahmed noted in general terms that appellant was unable to work when her symptoms interfered with her daily function, he did not specifically address the dates of disability claimed. As such, his reports are of no probative value.¹⁶

OWCP also received a February 20, 2018 report from a physician assistant. This report is of no probative value regarding appellant's total disability claim.¹⁷ The Board has held that the reports of a physician assistant are of no probative value as a physician assistant is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.¹⁸

As there is no medical evidence of record establishing that appellant was disabled from work on the dates claimed during the period February 2 to October 20, 2018 due to her accepted emotional conditions, the Board finds that she has not met her burden of proof.¹⁹

On appeal, counsel contends that the case *B.I.*,²⁰ is controlling. This argument, however, is misplaced. In that case the Board found that OWCP committed a procedural error by not developing the claim as a consequential injury and remanded the case for evaluation of the medical evidence. It noted that PTSD was recognized as a compensable consequential injury under circumstances where a certain triggering event has been medically demonstrated to have caused a

¹⁵ The dates claimed were February 2, April 10, August 27 and 28 and October 9, 17, 19, and 20, 2018.

¹⁶ The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value. See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

¹⁸ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See *M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁹ See *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

²⁰ Docket No. 18-0253 (issued August 2, 2018).

reawakening or exacerbation of PTSD symptoms.²¹ In the instant case, PTSD is an accepted condition, and appellant continued to receive LWEC disability compensation for four hours daily at the time this appeal was filed. Furthermore, appellant was also paid additional compensation when the medical evidence of record supported her claimed total disability. As the medical evidence of record does not include a rationalized opinion on causal relationship between her claimed intermittent disability and her accepted March 4, 2011 employment injury, the Board finds that appellant has not met her burden of proof.²²

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability between February 2 and October 20, 2018.

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²¹ *Id.*

²² *See E.B.*, Docket No. 19-1548 (issued July 14, 2020).