

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

M.B., Appellant)	
)	
and)	Docket No. 21-0012
)	Issued: May 12, 2021
DEPARTMENT OF THE ARMY, OFFICE OF)	
THE PROGRAM MANAGER -- SAUDI)	
ARABIAN NATIONAL GUARD,)	
Riyadh, Saudi Arabia, Employer)	
)	

Appearances:
Erik Blowers, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2020 appellant, through counsel, filed a timely appeal from an April 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period commencing February 9, 2013, causally related to her accepted employment injury.

FACTUAL HISTORY

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

On June 12, 2012 appellant, then a 62-year-old information technology (IT) specialist, filed an occupational disease claim (Form CA-2) alleging that she developed clinical depression and anxiety due to factors of her federal employment as a result of a greatly increased workload and excessive expectations by senior leaders beginning in 2009. She indicated that the working conditions exacerbated her preexisting clinical depression and anxiety and precipitated its worsening. Appellant stopped work on August 21, 2011 due to a nonwork-related condition and returned to full-time modified duties in January 2012. She worked from January 2012 through April 22, 2012 when she stopped work completely and remained on sick leave until her retirement on January 12, 2013.

On January 11, 2013 OWCP accepted appellant's claim for exacerbation of major depression, recurrent episode, moderate, and exacerbation of anxiety state, unspecified.

Appellant was treated by Dr. Melanie Tew, a Board-certified psychiatrist, on May 15, 2013 who noted that appellant's symptoms began in 2009 and that appellant had attempted to return to work in 2012, but was unsuccessful. Dr. Tew diagnosed major depression and panic disorder. She noted that appellant continually reported symptoms despite aggressive medication management and appellant questioned whether appellant's symptoms were related to a stroke she had during the onset of this illness. Dr. Tew opined that appellant's current level of functioning would persist for at least another year such that appellant could not perform any regular work duties. She indicated that appellant's stroke occurred when appellant had been stressed in a work environment and her anxiety and depression were exacerbated by work stress. Dr. Tew opined that appellant was unable to perform any and all types of work-related daily activities.

On August 1, 2013 OWCP received a claim for compensation (Form CA-7) for total disability from work for the period February 9 through July 27, 2013.

In support of her Form CA-7 claim for compensation, appellant submitted a series of treatment reports and obtained testimony from her attending physician, Dr. Tew. In reports dated March 10 and April 21, 2014, January 15 and 21, and March 19, 2015, and March 30, 2016, Dr. Tew noted appellant's employment history, her history of injury, and examination findings, and provided diagnoses. She noted that appellant was sensitive to stress, depression, and

³ Docket No. 18-1455 (issued March 11, 2019); Docket No. 15-1638 (issued May 5, 2016); Docket No. 14-1032 (issued November 12, 2014).

symptoms of anxiety and that she had reported symptoms and had intermittent periods of disability, which began in 2009. Dr. Tew diagnosed major depressive affective disorder, recurrent episode moderate, panic disorder, and anxiety state unspecified. She noted that appellant continually reported symptoms despite aggressive medication management. In May 2013, Dr. Tew noted that appellant could not perform her regular work duties and thereafter consistently opined that she was unable to return to work.

In a transcript of a deposition of Dr. Tew taken on March 19, 2015 she opined that appellant had been unable to perform “a real job” in the marketplace commencing August 2012. She stated that her diagnosed conditions were related to extremely stressful work conditions.

By decision dated April 14, 2016, OWCP denied appellant’s claim for disability from work commencing February 9, 2013.

On March 30, 2016 Dr. Tew diagnosed major depression and anxiety. She opined that appellant’s conditions were work related and caused significant disability commencing January 2013. Dr. Tew indicated that appellant’s illnesses were triggered and exacerbated by stressful experiences at work including excessive criticism, heavy workload, and expectations above her grade level. She advised that appellant continued to experience disabling residual symptoms related to these experiences including fearfulness, excessive worry, depressed mood, panic attacks, poor sleep, fatigue, difficulty concentrating, and poor memory.

On April 25, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review regarding the April 14, 2016 decision. The hearing was held on December 14, 2016. In her hearing testimony from December 14, 2016, Dr. Tew stated that appellant had been totally disabled due to work-related depression and anxiety. She advised that the 2011 stroke had resolved and had not disabled appellant from work at any time. Dr. Tew indicated that work factors contributed to depression and disabled appellant from work.

By decision dated January 30, 2017, the hearing representative affirmed OWCP’s April 14, 2016 decision.

On January 26, 2018 appellant, through counsel, requested reconsideration of the January 30, 2017 decision. In support of the reconsideration request, appellant submitted a January 15, 2018 report from Dr. James Bellard, a Board-certified psychiatrist, who noted that her stressors at work caused her depression to significantly worsen in 2009. Dr. Bellard indicated that her anxiety and depression were significantly worsened by her workplace prior to suffering a stroke. He opined that it was unlikely that appellant’s subarachnoid hemorrhage contributed to her continuing depressive problems, given that it completely resolved.

By decision dated April 26, 2018, OWCP denied modification of the January 30, 2017 decision.

On July 27, 2018 appellant, through counsel, appealed to the Board. By decision dated March 11, 2019, the Board affirmed OWCP's April 26, 2018 decision.⁴

On January 27, 2020 appellant, through counsel, requested reconsideration.

In support of her claim, appellant submitted a new narrative medical report from Dr. Tew dated January 27, 2020. Dr. Tew diagnosed major depression and anxiety, and opined that appellant's conditions were work related and caused significant disability commencing February 9, 2013. She indicated that appellant's illnesses were triggered and exacerbated by stressful experiences at work which compounded the frequency of appellant's panic attacks and heightened symptoms of depression and anxiety to cause total disability commencing February 9, 2013. Dr. Tew advised that appellant worked as an IT specialist and this employment significantly contributed to appellant's panic symptoms, exacerbating appellant's depression and anxiety related to frequently acting on appellant's supervisor's behalf during her episodes out of work. She noted the employment factors that caused disability during the relevant period were: heavy workload, counseling staff in conflict resolution and behavior without training, reporting to supervisors who were intimidating and demanding, performing highly technical tasks and increased workload, increased work hours, performing dual roles, and attending command level meetings. Dr. Tew opined that these situations originating in 2009 caused severe exacerbations of appellant's anxiety and depression. She opined that based on her symptomology it was abundantly clear that appellant's conditions of anxiety and depression caused a period of total disability beginning February 9, 2013. Dr. Tew addressed appellant's stroke of 2011 relating that it was a residual effect of appellant's stressful work conditions and her total disability was due to an exacerbation of her chronic and debilitating anxiety and depression. She opined to a high degree of medical certainty that the work activities, factors, and exacerbated conditions of anxiety and depression are the direct and proximate cause of her total disability.

By decision dated April 30, 2020, OWCP denied modification of the March 11, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

⁴ Docket No. 18-1455 (issued March 11, 2019).

⁵ *Supra* note 2.

⁶ *A.B.*, Docket No. 18-0834 (issued June 11, 2020); *N.S.*, 59 ECAB 422 (2008).

⁷ *Id.*

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.⁸ 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.⁹

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.¹⁰ 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.¹¹

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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability commencing February 9, 2013 causally related to her accepted employment injury.

OWCP accepted appellant’s claim for exacerbation of major depression, recurrent episode, moderate, and exacerbation of anxiety state, unspecified. The issue is whether appellant accepted employment injury caused total disability beginning February 9, 2013. By decision dated March 11, 2019, the Board affirmed OWCP’s denial of her claim for total disability beginning February 9, 2013. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³ The Board will therefore not review the medical evidence addressed in the prior appeal.

Following the Board’s review of the case, appellant submitted a report from Dr. Tew dated January 27, 2020. Dr. Tew diagnosed major depression and anxiety and opined that appellant’s conditions were work related and caused significant disability commencing February 9, 2013. She

⁸ 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).

⁹ *See B.C.*, Docket No. 18-0692 (issued June 5, 2020).

¹⁰ *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

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

¹² *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹³ *See M.M.*, 18-1366 (issued February 27, 2019); *E.L.*, 16-0635 (issue November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). *See also A.P.*, Docket No. 14-1228 (issued October 15, 2014).

indicated that her anxiety and depression were triggered and exacerbated by stressful experiences at work originating in 2009 causing total disability commencing February 9, 2013. Dr. Tew opined that based on her symptomology it was abundantly clear that appellant's conditions of anxiety and depression caused a period of total disability beginning February 9, 2013. She further opined that to a high degree of medical certainty the work activities, factors, and exacerbated conditions of anxiety and depression are the direct and proximate cause of her total disability.

The Board notes that, while Dr. Tew opined that appellant was totally disabled from work, she did not specifically explain how any disability beginning February 9, 2013 was employment related. As noted above appellant stopped work completely on April 22, 2012 and was on sick leave until she retired on January 12, 2013. Her burden of proof includes submitting rationalized medical evidence, which supports a causal relationship between the period of disability and the accepted injury.¹⁴ Dr. Tew's opinion is conclusory and insufficient to establish a causal relationship between the period of disability and the accepted injury.¹⁵

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed and specifically referenced Dr. Tew's January 27, 2020 report. For the reasons set forth herein, she has not met her burden of proof to establish her claim for a period of total disability.

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 total disability for the period commencing February 9, 2013 causally related to her accepted employment injury.

¹⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁵ *D.H.*, Docket No. 17-1913 (issued December 13, 2018) (while the physician supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2021
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