

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

_____)	
D.P., Appellant)	
)	
and)	Docket No. 22-0184
)	Issued: June 7, 2022
DEPARTMENT OF THE ARMY, U.S. ARMY)	
CORPS OF ENGINEERS, Fort Knox, KY,)	
Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 16, 2021 appellant, through counsel, filed a timely appeal from a November 3, 2021 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 his burden of proof to establish disability from work for the period December 6, 2019 through January 24, 2020, causally related to his accepted employment injury.

FACTUAL HISTORY

On June 7, 2010 appellant, then a 45-year-old construction control representative, filed an occupational disease claim (Form CA-2) alleging that he suffered from post-traumatic stress disorder (PTSD) due to factors of his federal employment, including his deployment to Afghanistan. He noted that he first became aware of his condition and its relationship to his federal employment on May 20, 2010. On December 23, 2010 OWCP accepted the claim for PTSD. Appellant subsequently returned to full-time, full-duty work, but stopped work again on October 23, 2019.

On December 2, 2019 appellant filed a notice of recurrence (Form CA2a) claiming disability from work commencing October 23, 2019 due to his accepted employment injury.

By decision dated June 23, 2020, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish that he was disabled from work due to a material change or worsening of his accepted work-related condition. By decision dated February 9, 2021, it vacated the June 23, 2020 decision. OWCP found that appellant sustained a recurrence of disability commencing October 28, 2019 and expanded its acceptance of his claim to include other recurrent depressive disorders, pain disorder with related psychological factors, and chronic PTSD.

On March 9, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability.³ In an accompanying time analysis form (Form CA-7a) of even date, he claimed wage-loss compensation for eight hours of leave without pay (LWOP) on December 6, 13, 20, and 27, 2019 and January 3, 17, and 24, 2020, and four hours of LWOP on January 10, 2020 due to a PTSD crisis.

OWCP, by development letter dated March 16, 2021, advised appellant that no evidence had been submitted to establish his claim for intermittent disability during the period December 6, 2019 through January 24, 2020.⁴ It afforded him 30 days to submit the necessary evidence.

OWCP received a progress note dated February 2, 2021 from Dr. Robert L. Sasser, a Board-certified internist. Dr. Sasser related appellant's history of injury and provided examination findings. He noted the accepted condition of PTSD and additional conditions of current mild episode of major depressive disorder without prior episode, essential hypertension, arthritis, and

³ The Form CA-7 included December 20, 2019 through January 24, 2020 as the period of disability.

⁴ The Board notes that it appears that OWCP misidentified appellant's claimed period of disability as December 6, 2020 through January 24, 2021 rather than December 6, 2019 through January 24, 2020. As noted, appellant filed a Form CA-7 claim along with a Form CA-7a dated March 9, 2021 requesting compensation for the period December 6, 2019 through January 24, 2020.

polycythemia vera. Dr. Sasser opined that appellant was totally disabled and unable to perform his date-of-injury position. He concluded that appellant should not be deployed again.

OWCP, by decision dated April 27, 2021, denied appellant's claim for intermittent disability from work during the period December 6, 2019 through January 24, 2020,⁵ finding that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

On May 3, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received a request for reasonable accommodation dated June 30, 2020 in which appellant requested that he be allowed to work off base, telework at least two days of week, and be provided with a flexible work schedule as a reasonable accommodation for PTSD with symptoms such as flashbacks, irritability, nightmares, difficulty falling asleep, and staying asleep.

OWCP also received a July 30, 2020 report from Dr. Charles R. Noplis, an attending Board-certified psychiatrist, who diagnosed PTSD and opined that appellant could perform all necessary duties with minor accommodations.

A telephonic hearing was held on August 19, 2021. By decision dated November 3, 2021, OWCP's hearing representative affirmed the April 27, 2021 decision.⁶

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 employment injury.⁸ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.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 the

⁵ *Id.*

⁶ In her November 3, 2021 decision, OWCP's hearing representative properly identified appellant's claimed period of disability as December 6, 2019 through January 24, 2020.

⁷ *Supra* note 2.

⁸ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

¹⁰ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

reliable, probative, and substantial medical evidence.¹¹ The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.¹²

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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish intermittent disability from work for the period December 6, 2019 through January 24, 2020, causally related to his accepted employment injury.

In support of his claim for compensation, appellant submitted a February 2, 2021 progress note from Dr. Sasser. Dr. Sasser noted a history of the accepted employment injury and diagnosed the accepted condition of PTSD and additional conditions of current mild episode of major depressive disorder without prior episode, essential hypertension, arthritis, and polycythemia vera. He opined that appellant was totally disabled and unable to perform his date-of-injury position and advised against future deployment. While Dr. Sasser opined that appellant was totally disabled from work, he did not specifically address the claimed period of disability. The Board has held that medical evidence that does not address the specific dates of disability claimed is of no probative value on the issue of causal relationship.¹⁴ Therefore, Dr. Sasser's progress note is insufficient to meet appellant's burden of proof.

Dr. Noplis' July 30, 2020 medical information sheet diagnosed the accepted condition of PTSD and found that appellant could perform his required work duties with restrictions. 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 on the issue of causal relationship.¹⁵ This report is, therefore, of no probative value and insufficient to establish appellant's disability claim.

¹¹ *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹² *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹³ *See C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ *See T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to his accepted conditions, the Board finds that he has not met his burden of proof.

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 his burden of proof to establish disability from work for the period December 6, 2019 through January 24, 2020, causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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