

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

_____)	
T.P., Appellant)	
)	
and)	Docket No. 22-1335
)	Issued: June 23, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Franford, DE, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 21, 2022 appellant filed a timely appeal from a July 27, 2022 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 over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing September 8, 2021 causally related to her accepted December 10, 2019 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 27, 2022 OWCP decision, appellant submitted additional evidence to the Board. 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.*

FACTUAL HISTORY

On May 13, 2020 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced a stress-related condition causally related to factors of her federal employment. She noted that she became aware of her condition and its relation to her federal employment on December 10, 2019. Appellant stopped work on May 4, 2020. OWCP found as compensable employment factors that she had a heavy workload on her route, delivered an overwhelming number of Amazon parcels, experienced an increase in mail volume due to the COVID-19 pandemic, and drove trucks packed so full that it adversely affected visibility. It accepted appellant's claim for a temporary aggravation of major depressive disorder and a temporary aggravation of generalized anxiety disorder. OWCP paid her wage-loss compensation.

Appellant returned to work in January 2021. On September 14, 2021 she filed claims for compensation (Form CA-7) for intermittent disability during the period May 5, 2020 through September 10, 2021.

In an August 30, 2021 form report, Dr. Ovais Khald, a Board-certified psychiatrist, found that appellant was unable to work full time due to generalized anxiety disorder and recurrent, severe major depressive disorder. He determined that she could work four days per week.

A September 8, 2021 report from an unidentifiable health care provider indicated that appellant was disabled from work for a week to 10 days due to an aggravation of anxiety and stress.

On September 24, 2021 a licensed clinical social worker opined that appellant could not work until October 8, 2020. She advised that appellant required treatment for generalized anxiety disorder and recurrent, severe major depressive disorder. On October 8, 2021 the social worker advised that she should remain off work until November 5, 2021. The record contains an after-visit summary dated October 8, 2021 indicating that appellant saw Dr. Khalid on October 8, 2021 for depression and anxiety.

On November 8, 2021 Dr. Khalid opined that appellant was disabled from work for the period November 5 through December 17, 2021 due to an aggravation of anxiety and stress. In an unsigned report dated December 17, 2021, he continued to hold appellant off work through January 28, 2022.

On September 22, 2021 appellant again filed a claim for compensation (Form CA-7) requesting intermittent wage-loss compensation from May 5, 2020 to September 10, 2021. She further filed a Form CA-7 claim for compensation for total disability from work for the period September 11 through October 8, 2021. Appellant continued to file Form CA-7 claims for compensation for disability from work.

In a development letter dated December 28, 2021, OWCP noted that appellant had submitted Forms CA-7 indicating that she had sustained a recurrence of disability. It informed her of the definition of a recurrence of disability. OWCP advised appellant of the deficiencies of her claim and the type of medical and factual evidence needed. It afforded her 30 days to submit the necessary evidence.

In a response dated December 28, 2021, appellant asserted that she had not sustained a recurrence of disability. She maintained that she had not been able to work full time since May 2020. Appellant related that she had worked part-time from November 2020 until September 8, 2021, when her depression and anxiety reoccurred.

OWCP subsequently advised that appellant had returned to work part time on November 6, 2020 and had stopped work on September 8, 2021 due to her employment injury.

In an unsigned report dated February 16, 2022, Dr. Khalid diagnosed recurrent, severe major depressive disorder without psychotic features and generalized anxiety disorder. He held appellant off work from January 28 through March 11, 2022 in order to stabilize the diagnosed conditions.

By decision dated March 8, 2022, OWCP denied appellant's claim for a recurrence of disability commencing September 8, 2021 causally related to her accepted December 10, 2019 employment injury.

In a report dated April 19, 2022, Dr. Khalid related that he had reviewed OWCP's March 8, 2022 decision. He advised that his office had provided treatment for appellant since May 2020 for the accepted conditions of recurrent major depressive disorder and generalized anxiety disorder. Dr. Khalid noted that she had returned to part-time work for one day a week in November 2020 and had worked four days per week from January to September 2021. He asserted that appellant's condition worsened when she tried to resume full-time employment. Dr. Khalid recommended leave in September 2021 to stabilize her mental health. He found that appellant's anxiety and depression, which had been in partial remission, worsened in August 2021. Dr. Khalid described her symptoms of depression and anxiety. He related, "[t]he precipitating events leading to the most recent exacerbation of both disorders were increased demands at work (shifts exceeding 9 hours *i.e.*, to be 10 [to] 12 hours)." Dr. Khalid noted that such work shifts were part of appellant's duty requirements and that she had "experienced increased difficulty to fulfill the duties of a [r]ural [c]arrier." He recommended continued treatment.

On April 28, 2022 appellant requested reconsideration.

By decision dated July 27, 2022, OWCP denied modification of its March 8, 2022 decision.

LEGAL PRECEDENT

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 which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.³ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the

³ 20 C.F.R. § 10.5(x); *C.Y.*, Docket No. 22-0474 (issued November 14, 2022); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁴

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

OWCP's procedures provide additional guidance as to when a notice of recurrence should be filed. Its procedures provide, in relevant part, that a recurrence of disability does not include a work stoppage caused by "[a] condition which results from a new injury, even if it involves the same area of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease."⁶ If a new work-related injury or exposure occurs, a Form CA-1 or CA-2 should be completed accordingly.⁷ OWCP's procedures further provide:

"[I]n some occupational disease cases where the diagnosis remains the same but disability increases due to additional exposure to the same work factors, the claimant may submit Form CA-2a rather than filing a new claim. For instance, a claimant with carpal tunnel syndrome who has returned to work but whose repetitive work activities result in the need for surgery, is not required to file a new claim.

"Note, however, that in emotional stress and hearing loss cases, a new claim should always be filed."⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing September 8, 2021 causally related to her accepted December 10, 2019 employment injury.

In a report dated April 19, 2022, Dr. Khalid discussed his treatment of appellant beginning May 2020 for recurrence of major depressive disorder and generalized anxiety disorder causally related to her employment. He noted that she had gradually returned to work beginning November 2020. Appellant worked four days a week from January to September 2021. Dr. Khalid advised that appellant had attempted to increase to five days per week, but her condition had worsened such that he found that she was unable to work in September 2021. He attributed

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁶ *Id.* at Chapter 2.1500.3c(5) (June 2013).

⁷ *Id.*

⁸ *Id.*

her depression and anxiety to increased demands at work and shifts over nine hours. Dr. Khalid advised that she had difficulty fulfilling her job requirements. As he attributed appellant's condition to new work factors, his opinion is of no probative value and insufficient to meet her burden of proof.⁹

On November 8, 2021 Dr. Khalid opined that appellant was disabled from work through December 17, 2021 due to an aggravation of anxiety and stress. He did not, however, address the cause of her disability or its relationship to his accepted employment injury. 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.¹⁰ Consequently, Dr. Khalid's report is insufficient to meet appellant's burden of proof.

OWCP also received unsigned reports dated September 8 and December 17, 2021 and February 16, 2022. The Board has held that reports that are unsigned or lack proper identification cannot be considered probative medical evidence as the author cannot be identified as a physician.¹¹

Appellant further submitted September 24 and October 8, 2021 reports from a licensed clinical social worker. However, certain healthcare providers such as physician assistants, physical therapists, nurse practitioners, and social workers are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

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.

⁹ 20 C.F.R. § 10.5(x); *A.G.*, Docket No. 16-1261 (issued November 17, 2016); *D.D.*, Docket No. 16-0701 (issued July 18, 2016).

¹⁰ *See T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *See D.F.*, Docket No. 22-0904 (issued October 31, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹² Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See id.* at Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also T.R.*, Docket No. 20-0666 (issued May 19, 2022); *B.B.*, Docket No. 06-0392 (issued January 22, 2007) (treatment notes from social workers are of no probative value as they are not considered to be physicians under FECA); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000); *Frederick C. Smith*, 48 ECAB 132 (1996).

¹³ *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing September 8, 2021 causally related to her accepted December 10, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board