United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant **and** **DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, San Ysidro, CA, Employer**	)	**Docket No. 22-0821** **Issued: March 20, 2023**

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 May 2, 2022 appellant filed a timely appeal from an April 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work during the period November 19, 2021 through January 6, 2022, causally related to her accepted August 3, 2021 employment injury.

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[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the April 19, 2022 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*.

FACTUAL HISTORY

On August 3, 2021 appellant, then a 49-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she experienced stress, headache, anxiety, crying spells, and shaky body as a result of verbal harassment by her immediate supervisor while in the performance of duty. On November 3, 2021 OWCP accepted the claim for acute stress reaction and anxiety disorder, unspecified.

On December 9, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work from November 18 through December 9, 2021. She submitted work status reports dated November 18 and December 9, 2021 from Dr. Terence Mulvaney, a family practitioner. Dr. Mulvaney diagnosed the accepted conditions of acute stress/anxiety. In the November 18, 2021 work status report, he advised that appellant was unable to return to work effective that date until she was evaluated by a psychologist. In the December 9, 2021 work status report, Dr. Mulvaney advised that she was unable to return to work effective that date for four weeks.

In a development letter dated December 20, 2021, OWCP informed appellant that additional evidence was needed to establish her claim for compensation for disability from work during the period November 18 through December 9, 2021. It afforded her 30 days to submit the necessary evidence.

In a December 20, 2021 letter, appellant noted that she was forced back to work after being off work for 42 days due to her accepted August 3, 2021 employment injury. On November 18, 2021 she received an e-mail indicating that her previously agreed-upon holiday work schedule had been changed from working the midnight shift on New Year's Day, so that she could be off work on Thanksgiving and Christmas, to being removed from the midnight shift, and assigned to work on Christmas and New Year's Day. Appellant described her resulting physical and emotional symptoms.

Appellant submitted medical reports dated November 18 and December 9, 2021 signed by Arthur Amanfo, a certified physician assistant. Mr. Amanfo noted that appellant was seen on November 18, 2021, prior to her scheduled appointment, because she had an episode of "anxiety and breakdown" at work due to issues regarding her work schedule. He provided assessments of the accepted conditions of acute stress reaction and unspecified anxiety disorder. Mr. Amanfo also provided an assessment of adjustment disorder with anxiety. He advised that appellant was disabled from work until she was evaluated by a psychologist.

On December 27, 2021 appellant filed an additional Form CA-7 claiming compensation for disability from work from December 10 through 24, 2021.

In a January 4, 2022 report, Dr. Michael M. Takamura, a Board-certified psychiatrist, noted a history of appellant's August 3, 2021 employment injury, reviewed medical records, discussed findings on mental examination, and diagnosed adjustment disorder with mixed anxious and depressed features. He advised that appellant's diagnosed condition was related to her industrial work stressors. Dr. Takamura advised that appellant should remain off work until March 15, 2022.

In an additional report dated January 6, 2022, Mr. Amanfo reiterated his prior assessments of the accepted conditions of acute stress reaction and unspecified anxiety disorder. He opined

that appellant's "breakdown" at work on November 18, 2021 resulted in her temporary total disability, which was a continuation and an exacerbation of her preexisting August 3, 2021 employment injury and not an aggravation/new injury. Mr. Amanfo concluded that her time off work was related to her accepted employment injury, and thus, she was entitled to compensation.

OWCP, by development letter dated January 12, 2022, requested that appellant submit additional medical evidence supporting total disability commencing December 10, 2021. It noted that the evidence of record indicated that she stopped work on November 18, 2021. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently filed several additional CA-7 forms claiming compensation for disability from work from November 18, 2021 through January 6, 2022.

On April 19, 2022 OWCP paid appellant wage-loss compensation for the claimed disability on November 18, 2021.

By decision dated April 19, 2022, OWCP denied appellant's claim for compensation for disability from work during the period November 19, 2021 through January 6, 2022, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted August 3, 2021 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[5] 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 probative and reliable medical opinion evidence.[6]

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[8]

[3] *Supra* note 1.

[4] *See 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).

[5] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[6] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[7] *Id.* at § 10.5(f); *see e.g.*, *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[9] The opinion of the physician 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 accepted employment injury.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work during the period November 19, 2021 through January 6, 2022, causally related to her accepted August 3, 2021 employment injury.

Appellant submitted work status reports dated November 18 and December 9, 2021, from Dr. Mulvaney, who found that appellant was disabled from work as of November 18, 2021 and December 9, 2021 respectively. However, Dr. Mulvaney did not provide an opinion on causal relationship. 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.[11] Thus, these reports are of no probative value, and are insufficient to establish appellant's disability claim.

Dr. Barman's December 29 and 30, 2021 letters indicated a provisional diagnosis of adjustment disorder with mixed anxiety and depressed mood but, did not offer an opinion as to whether appellant was disabled from work due to the accepted employment injury.[12] For these reasons, her letters are of no probative value, and are insufficient to establish appellant's disability claim.

Appellant also submitted a January 4, 2022 report from Dr. Takamura, who diagnosed adjustment disorder with mixed anxious and depressed features. Dr. Takamura opined that appellant's diagnosed condition was related to her industrial work stressors. He found that she should remain off work until March 15, 2022. However, Dr. Takamura did not offer an opinion explaining how appellant's claimed disability was causally related to the accepted August 3, 2021 employment injury. As such, his report is of no probative value, and is insufficient to establish appellant's disability claim.

The record also contains reports dated November 18 and December 9, 2021, and January 6, 2022 from Mr. Amanfo, a certified physician assistant. These reports, however, do not constitute competent medical evidence because physician assistants are not considered physicians as defined

[9] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[10] *T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

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

[12] *Id*.

under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.[13]

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to the accepted employment injury, the Board finds that appellant has not met her 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 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 disability from work during the period November 19, 2021 through January 6, 2022, causally related to her accepted August 3, 2021 employment injury.

[13] 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See* 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also L.K.,* Docket No. 21-1155 (issued March 23, 2022); *D.B.,* Docket No. 20-0192 (issued November 2, 2020); *E.T*., Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 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