

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of intermittent disability commencing August 2, 2017, causally related to his accepted July 12, 2016 employment injury.

FACTUAL HISTORY

On July 23, 2018 appellant, then a 29-year-old deportation officer, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition causally related to factors of his federal employment. He indicated that he first became aware of the condition on July 12, 2016, and he realized that the condition was caused or aggravated by his federal employment on July 12, 2018. Appellant explained that on July 12, 2016 he worked the nightshift and drove to pick up a detainee in gridlocked traffic. His supervisor repeatedly called him while he was in gridlocked traffic to tell him that he had to drive back to an airport to handle an arriving flight, which required him to remain on duty and work overtime.

In an August 1, 2018 statement, appellant described his duties involving driving to pick up detainees in county jails in different states and up to 60 miles away. He further explained that in January or February 2017 he was reassigned from the transportation section to the docket section, where he was assigned a case load of around 4,000 cases and, in the third week of July 2017, about 10,000 additional cases were added to his docket.

On August 2, 2017 appellant stopped work. He returned to work in September 2017. Appellant noted that in September 2017 he was moved to another work location where he had a case load of around 64 cases instead of thousands.

Following further development, OWCP prepared an April 3, 2019 statement of accepted facts (SOAF) and accepted as factual appellant's allegations regarding his work on July 12, 2016 and his allegations regarding his case load following his transfer in early 2017 to in the docket section. The April 3, 2019 SOAF noted that appellant was hospitalized twice in the past due to his mood disorder related to bipolar disorder.

On May 17, 2019 OWCP referred appellant to Dr. Ravinder Bhalla, a Board-certified psychiatrist, for a second opinion examination. It asked Dr. Bhalla to address whether the accepted factors of employment caused or aggravated appellant's medical condition, and if so, to characterize appellant's current disability status.

In a report dated June 12, 2019, Dr. Bhalla noted appellant's current job duties and his current examination findings regarding mental status. He indicated that appellant had experienced emotional problems since childhood, and had been diagnosed with bipolar disorder. Dr. Bhalla opined that while appellant was working his work conditions and demands had exacerbated his bipolar disorder and he had been temporarily disabled due to work-related stresses, which included nightshift work and overtime work. He further opined that after appellant's employment-related stress was accommodated, he still could not concentrate due to his preexisting condition. Despite these accommodations, appellant's workload and work conditions were too difficult for him to cope due to his bipolar disorder. Work conditions and his psychiatric condition interacted in a

way that he was not successful. Appellant's employment-related condition was therefore a mismatch of his psychiatric disorder and the work he was expected to do. The exacerbation of his bipolar disorder continued even after the employment-related stresses had been accommodated. Dr. Bhalla opined that appellant "is disabled due to bipolar disorder, not directly related to the accepted factors of employment listed in the SOAF, but the demands of his work are too stressful that these contribute and exacerbate his symptoms."

By decision dated July 15, 2019, OWCP accepted the claim for aggravation of bipolar disorder. The acceptance was based upon the June 12, 2019 second opinion report from Dr. Bhalla.

OWCP continued to receive evidence. In a September 1, 2017 note, Dr. Paul Gordon a Board-certified internist specializing in cardiology, indicated that appellant needed a flexible work schedule, and that he needed to work closer to home. He asked that appellant be excused from work from September 1 through 15, 2017.

Appellant was hospitalized from September 14 through October 5, 2017 for bipolar disorder. In a note dated October 6, 2017, Dr. Shimon Schwartz, a Board-certified psychiatrist, related that appellant had been hospitalized from September 15 through October 5, 2017. He requested that appellant be excused from work during this time.

In an August 14, 2019 report, Dr. Gusta Shurdut, a Board-certified psychiatrist, indicated that appellant had been seen at a psychiatric outpatient clinic since May 2018 for treatment of bipolar disorder, and that he had been her patient since July 2019. She explained that bipolar disorder can restrict the speed of thought processes (while at work) and cause interference while staying focused if the volume of work was very large. Dr. Shurdut opined that his work-related job duties overwhelmed appellant and exacerbated his condition. Due to a work-related aggravation of appellant's bipolar disorder, Dr. Shurdut opined that appellant was totally disabled from work on August 24, August 28 through 31, September 18 through 22, September 25 through 29, October 2 through 10, October 11 through 13, October 16 through 20, October 23 through 27, and October 30, 2017.

In a December 16, 2019 report, Dr. Martin A. Hurwitz, a Board-certified psychiatrist, reported that appellant was referred to him by a psychiatric clinic for continued treatment of appellant's bipolar disorder. He noted that appellant was diagnosed with this disorder over 10 years ago, and had been treated with psychopharmacological regimen and psychotherapeutically with various modalities for a considerable period of time. After reviewing medical reports by appellant's previous psychiatrist and current therapist and having conducted a thorough history, Dr. Hurwitz opined that appellant's condition was greatly exacerbated by his work environment. Particularly detrimental to appellant's condition was mandatory overtime with unsustainable workloads. Dr. Hurwitz noted that appellant's requests for accommodation were met with hostility from supervisors (*i.e.*, 12,000 additional cases assigned to appellant), which he opined was a retaliatory event. He noted that appellant was currently totally disabled and not able to perform the regular duties of his occupation, and that it was not clear at this point whether a change in the work environment would be beneficial.

OWCP received forms dated from January 31, 2020 onward from a licensed social worker, bearing an illegible signature which noted appellant's continued psychiatric treatment for bipolar disorder.

The record reflects that on June 26, 2020 appellant's application for disability retirement was approved by the Office of Personnel Management.

On September 3, 2020 OWCP received two notices of recurrence (Form CA-2a) for recurrences on August 2, 2017, and September 11, 2017, wherein appellant claimed disability from work due to a change or worsening of his accepted work-related condition. Appellant alleged that his symptoms returned spontaneously without any intervening cause. The first form indicated that he had stopped work on August 2, 2017, and returned on September 5, 2017. The second form indicated that appellant stopped work again on September 11, 2017, and returned on December 13, 2017.

In a developmental letter dated September 24, 2020, OWCP provided the definition of a recurrence of disability. It advised appellant of the type of factual and medical evidence necessary to establish his claim, provided a questionnaire for his completion, and afforded him 30 days to submit additional evidence.

In response, OWCP received a November 9, 2020 report from Dr. Hurwitz who reviewed appellant's medical records and opined that appellant's work environment, particularly the assignment of 10,000 additional cases, severely exacerbated appellant's bipolar disorder, for which he has had two prior psychiatric hospitalizations. Dr. Hurwitz explained that this exacerbation was the reason appellant was disabled, because the manner in which his workload was scheduled made it impossible to regulate his sleep with any of the medications commonly used to treat bipolar disorder. That factor alone made the recurrence of a manic episode more likely. Dr. Hurwitz also opined that appellant was currently totally and permanently disabled and required twice weekly psychotherapy and a constant regulation of his psychopharmacological regimen.

By decision dated April 30, 2021, OWCP denied appellant's recurrence claim. It found that it had not received sufficient evidence to establish that the accepted condition worsened as of August 2, 2017, without intervening cause, such that he became totally disabled from work.

On May 25, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 9, 2021. He provided an additional statement and submitted additional medical reports. In a September 14, 2017 emergency department note, Dr. Rose Anna Roantree, an osteopath Board-certified in emergency medicine, diagnosed bipolar 1 disorder.

In an undated report, Dr. Shurdut discussed how bipolar disorder can limit major life activities. She indicated, per appellant, that his work became problematic when he began experiencing continual stress during the performance of his job duties, and was then assigned to monitor over 10,000 cases. Dr. Shurdut noted that appellant had a history of testing modifications and could not successfully complete this task. She explained that, as part of a mood disorder diagnosis, appellant periodically requires extra time to complete tasks. Dr. Shurdut opined that appellant's disability was permanent.

In an October 4, 2021 report, Dr. Hurwitz opined that appellant's ongoing difficulties from 2017 to the present were directly related to the work duties he described, and which overwhelmed him causing manic episodes in 2017 that required hospitalization. He indicated that the medical records showed that appellant was experiencing work stress in 2016 and 2017, and it was only after those work stressors became severe that he required in-patient treatment and changes in his medications. Dr. Hurwitz noted that appellant was hospitalized in September, October, and November 2017 and opined that those hospitalizations were directly attributable to his work-related circumstances and were necessary for treatment of the manic episodes that were caused by his assigned duties. He noted that although appellant attempted to return to work, he still had difficulty concentrating, sleep problems, and continued to have a difficult time functioning. Dr. Hurwitz indicated that bipolar disorder is treated on an individual basis and even now, several years after appellant's stress resulted in hospitalizations, he was not sure that appellant was capable of any gainful employment. Thus, he opined that the aggravation of appellant's bipolar disorder was permanent.

By decision dated November 23, 2021, an OWCP hearing representative affirmed OWCP's April 30, 2021 decision.

On November 21, 2022 appellant, through counsel, requested reconsideration.

In an undated report, Dr. Nader Okby, a Board-certified anatomic and clinical pathologist, indicated that he had been in regular contact with Dr. Cesar Rojas, appellant's attending psychiatrist, while appellant was hospitalized from September to October 2017. He recalled significant work stressors and appellant's perseveration on tensions at his place of employment, including a very heavy caseload on top of a hectic schedule and midnight duties, which he opined led to detrimental effects compounded by underlying mental illness. Dr. Okby opined that a mere shift change would not improve appellant's mental condition. He noted that at no time was there any indication that appellant's condition and hospitalizations were solely related to personal relationships.

By decision dated February 8, 2023, OWCP denied modification of its November 23, 2021 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

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

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

condition that results from a new injury, even if it involves the same part of the body previously injured.⁴

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁵ Where no such rationale is present, the medical evidence is of diminished probative value.⁶

ANALYSIS

The Board finds that this case is not in posture for decision.

In his June 12, 2019 second opinion report, Dr. Bhalla opined that appellant's bipolar disorder was exacerbated while he was working, and that he had been temporarily disabled due to work-related stresses. He further opined that the exacerbation of appellant's bipolar disorder had continued even after the employment-related stresses had been accommodated. Dr. Bhalla, however, was not asked to address and he did not specifically discuss the dates appellant was disabled due to the accepted factors of employment.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.⁷ Once it undertakes development of the record, OWCP must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.⁸

OWCP shall prepare an updated SOAF and obtain a supplemental opinion from Dr. Bhalla, or if Dr. Bhalla is unavailable, from another physician in the appropriate field of medicine, to determine whether appellant's intermittent disability from work commencing August 2, 2017 was causally related to his accepted employment conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

⁵ *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

⁶ *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

⁷ See *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *J.C.*, Docket No. 20-0064 (issued September 4, 2020); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ *Id.*; see also *J.C.*, Docket No. 21-1216 (issued April 19, 2022); *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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