

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

P.S., Appellant	)	
	)	
and	)	Docket No. 23-0635
	)	Issued: February 13, 2024
U.S. POSTAL SERVICE, POINT BREEZE	)	
STATION, Philadelphia, PA, 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  
JANICE B. ASKIN, Judge

**JURISDICTION**

On March 27, 2023 appellant filed a timely appeal from a September 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the September 28, 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to compensation for the remaining claimed disability from work during the period June 25, 2017 through March 28, 2018 causally related to his accepted August 7, 2014 employment injury.

## FACTUAL HISTORY

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

On August 8, 2014 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2014 he sustained an emotional condition after hearing multiple gunshots nearby when he was delivering mail while in the performance of duty. He stopped work on August 7, 2014. On June 13, 2016 OWCP accepted the claim for post-traumatic stress disorder (PTSD). It paid appellant wage-loss compensation on the supplemental rolls from September 23, 2014 through April 29, 2017 and on the periodic rolls from April 30 through June 24, 2017.

On May 24, 2017 appellant accepted the employing establishment's May 8, 2017 job offer for a full-time, limited-duty city carrier/lobby assistant position.

In a May 24, 2017 letter, Dr. Anne W. Tax, an attending clinical psychologist, advised that appellant was unable to travel the extended distance to his limited-duty position because he suffered from symptoms of his accepted PTSD, which included an inability to sleep. Therefore, she concluded that he required a position closer to his home.

Appellant filed claims for wage-loss compensation (Form CA-7) for disability from work for the periods June 24 through July 7, and July 22 through September 29, 2017.

By decision dated October 19, 2017, OWCP denied appellant's claim for wage-loss compensation for the period commencing June 1, 2017. It found that the medical evidence submitted was insufficient to establish disability from work during the claimed period due to the accepted August 7, 2014 employment injury.

On October 25, 2017 appellant, through his then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on March 8, 2018.

Appellant filed additional Form CA-7 claims for intermittent disability from work during the period September 30, 2017 through March 30, 2018.

By decision dated April 10, 2018, OWCP's hearing representative modified the October 19, 2017 decision to find that the evidence of record supported appellant's entitlement to

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<sup>3</sup> Docket No. 20-1192 (issued July 20, 2021).

wage-loss compensation for up to 4 hours to attend documented medical appointments for his accepted condition on June 1 and 6, September 6, 14, and 20, and November 14, 2017, and January 17 and February 5, 2018, totaling 32 hours. The claim remained denied, however, with regard to the remaining claimed disability as appellant had not provided sufficient medical evidence establishing that he was disabled from work on the remaining claimed dates due to his accepted employment injury.<sup>4</sup>

In a letter dated May 2, 2018, appellant requested reconsideration.

In a May 1, 2018 note, Dr. Tax related that appellant had been seen in her office for outpatient psychotherapy for symptoms of his accepted PTSD on June 22 and 29, July 6, 13, and 20, August 3, 10, 17, and 24, September 7, 19, and 28, October 12, 18, and 25, November 1, 15, and 30, and December 7, 21, and 28, 2017, and January 4 and 18, February 1, 8, and 22, March 8 and 24, April 12 and 25, and May 1, 2018.

OWCP subsequently received reports dated April 25, May 16, and June 12, 2018, wherein Dr. Burton Weiss, a Board-certified psychiatrist, related that appellant had been working close to full time, but his symptoms of the accepted PTSD, with anxiety and depression had increased following the denial of his claim for wage-loss compensation. Dr. Weiss opined that all of appellant's absences were consistent with his accepted PTSD.

OWCP thereafter received a report dated July 19, 2018, wherein Dr. Tax again related that she had treated appellant since August 13, 2014 for psychotherapy due to his August 7, 2014 employment injury, and that he was seen from June 22, 2017 through May 1, 2018. She reported that he was also seen on May 14 and 31, June 14, 21, and 28, and July 5, 12, and 19, 2018.

In a March 5, 2019 report, Dr. Weiss noted that he was responding to OWCP's hearing representative's April 10, 2018 decision. He opined that appellant's accepted condition of PTSD and his consistent and present symptoms of PTSD, especially the most prominent symptoms of insomnia, nightmares, flashbacks, and extreme anxiety, were causally related to his August 7, 2014 employment injury, and resulted in his disability from work commencing June 1, 2017. Dr. Weiss explained that flashbacks and nightmares caused appellant's insomnia and inability to sleep, which impaired his ability to function.

Dr. Tax, in a March 14, 2019 report, also responded to the April 10, 2018 decision. She agreed with Dr. Weiss' opinion that appellant was totally disabled from work commencing June 1, 2017 due to his ongoing psychiatric symptoms.

By decision dated November 21, 2019, OWCP denied appellant's October 24, 2019 request for reconsideration, finding that it was untimely and failed to demonstrate clear evidence of error.

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<sup>4</sup> By *de novo* decision dated April 17, 2018, OWCP formally found that appellant was entitled to four hours of wage-loss compensation to attend the documented medical appointments for his accepted condition on June 1 and 6, September 6, 14, and 20 and November 14, 2017, and January 17 and February 5, 2018.

On May 19, 2020 appellant filed a timely appeal with the Board. By decision dated July 20, 2021, the Board set aside the November 21, 2019 decision, finding that OWCP improperly determined that appellant's request for reconsideration was untimely filed.<sup>5</sup> Thus, the case was remanded to OWCP to apply the proper standard of review for timely requests for reconsideration.

By decision dated September 30, 2021, OWCP modified the April 10, 2018 decision to find that the medical evidence of record established appellant's entitlement to up to four hours of wage-loss compensation to attend the documented medical appointments for his accepted condition on June 22 and 29, July 6, 13, and 20, August 3, 10, and 17, September 7, 19, and 28, October 18, 2017. OWCP, however, denied the remaining claimed disability because the medical evidence of record was insufficient to establish that appellant was disabled from work on those dates due to the accepted employment injury.

On July 11, 2022 appellant requested reconsideration.

In support thereof, appellant submitted a July 6, 2022 report, wherein Dr. Tax related that following appellant's return to modified-duty work in May 2017, he continued to be symptomatic from his employment-related PTSD, which resulted in his disability and inability to consistently work. She explained that his recurrent PTSD symptoms caused significant nightmares. These nightmares caused flashbacks and significant anxiety leading to insomnia and severe anxiety resulting in appellant's inability to work during the period June 1, 2017 through March 28, 2018. Dr. Tax explained that he attempted to perform his modified job but, was unable to complete a full day of work due to sleep deprivation from his recurrent PTSD symptoms. She opined that appellant was disabled during the period June 1, 2017 through March 28, 2018 due to his recurrent PTSD symptoms which caused an inability to work due to sleep deprivation and severe anxiety. Dr. Tax found that he was totally disabled from work on all the days he claimed eight hours and was partially disabled on the dates he claimed less than eight hours during the period June 2, 2017 through March 28, 2018. She listed the dates of claimed disability from June 2, 2017 through March 28, 2018. Dr. Tax concluded that there was no medical rationale in the record for why this 10-month period of disability was denied given that appellant's prior and current claims for disability had been accepted.

In reports dated August 25 and September 9, 2022, Dr. Weiss again noted that he had been treating appellant for his work-related August 7, 2014 injury, including nightmares, flashbacks, severe anxiety, and insomnia resulting in his total incapacity during the period August 13 through September 10, 2022.

By decision dated September 28, 2022, OWCP denied modification of the September 30, 2021 decision.

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<sup>5</sup> *Supra* note 3.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>6</sup> 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.<sup>7</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>11</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>12</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing employment, the employee is entitled to compensation for any loss of wages.<sup>13</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>14</sup>

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

<sup>8</sup> *See S.F., id.*; *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>9</sup> 20 C.F.R. § 10.5(f); *S.F., id.*; *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

<sup>10</sup> *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>11</sup> *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>12</sup> *Supra* note 9 at § 10.5(f); *see D.N.*, Docket No. 19-1344 (issued November 6, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019). *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>13</sup> *J.T.*, *supra* note 10; *S.L.*, *supra* note 9.

<sup>14</sup> *Id.*

## ANALYSIS

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

Dr. Tax, in her July 6, 2022 report, noted that following appellant's return to modified-duty work in May 2017, he continued to be symptomatic from his employment-related PTSD, which resulted in his disability and inability to consistently work during the period June 2, 2017 through March 28, 2018. She noted her treatment of appellant's accepted PTSD on intermittent dates from June 2, 2017 through March 28, 2018. Dr. Tax opined that appellant was either partially or totally disabled on these dates due to continued symptoms from his accepted PTSD, which included nightmares that caused flashbacks and significant anxiety leading to insomnia and severe anxiety. The Board finds that, while the report from Dr. Tax is not fully rationalized, it is sufficient to require further development regarding whether appellant was disabled from work due to his accepted PTSD on the remaining claimed dates of disability for the period June 25, 2017 through March 28, 2018.<sup>15</sup>

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>16</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>17</sup>

The case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts for a rationalized medical opinion on whether appellant's remaining claimed disability from work during the period June 25, 2017 through March 28, 2018 was causally related to his accepted employment injury. If the second opinion physician disagrees with the explanations provided by Dr. Tax, he or she must provide a fully-rationalized opinion explaining why the remaining claimed disability was not causally related to the accepted employment injury. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.<sup>18</sup>

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<sup>15</sup> A.C., Docket No. 20-1340 (issued November 1, 2022); *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>16</sup> A.C., *id.*; *V.K.*, Docket No. 20-0989 (issued January 25, 2022); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>17</sup> *Id.*

<sup>18</sup> Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for any unpaid lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.J.*, Docket No. 21-1211 (issued May 4, 2022); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). See also *K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 28, 2022 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: February 13, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board