

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

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W.W., Appellant)	
)	
and)	Docket No. 23-0676
)	Issued: February 20, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Phoenix, AZ,)	
Employer)	

Appearances:
*Steven E. Brown, Esq., for the appellant*¹
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 April 10, 2023 appellant, through counsel, filed a timely appeal from a February 16, 2023 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 commencing March 21, 2018 causally related to his accepted employment injury.

FACTUAL HISTORY

On February 17, 2021 appellant, then a 44-year-old internal revenue agent, filed an occupational disease claim (Form CA-2) alleging that he developed major depressive disorder and adjustment disorder after experiencing workplace discrimination due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on February 20, 2018. On the reverse side of the claim form, an employing establishment supervisor indicated that appellant had resigned from federal employment effective March 20, 2018. OWCP accepted the claim for post-traumatic stress disorder (PTSD), unspecified. It determined that, pursuant to a finding by the Equal Employment Opportunity Commission (EEOC), appellant had established discrimination as a compensable employment factor in that he was not selected for a promotion.

In support of his claim, appellant submitted February 14 and August 14, 2018 visit notes from Dr. Faezeh Izadmanesh, a Board-certified family practitioner, who related that appellant reported a five to six month history of anxiety and fidgeting while driving, and had expressed concern about injuring someone again. Dr. Izadmanesh diagnosed migraines, PTSD, anxiety/depression, insomnia, and chronic low back pain.

In a June 1, 2018 unsigned report, Dr. Rick Webster, a clinical psychologist, evaluated appellant and noted that he had experienced depression and anxiety for the last 10 years. Appellant reported being in a car accident in the military, which caused flashbacks, sensitivity while driving, guilt, and anxiety. Dr. Webster recounted his familial, social, educational, and occupational history and noted that he was previously diagnosed with PTSD, depression, anxiety, and had a history of brain trauma. He diagnosed PTSD and persistent depressive disorder with anxious distress and noted that appellant appeared able to meet his basic needs without difficulty, could be expected to maintain socially appropriate behavior, and that, with medication and treatment, he could continue to meet his basic needs and adapt to his surroundings.

In a June 27, 2018 unsigned report, Dr. Gregory Hunter, a neurologist, noted that appellant was in a 2003 automobile accident in the military where a vehicle overturned and rendered him unconscious and injured his back and neck. He performed a physical evaluation, provided work restrictions, and diagnosed L1, L2, and L3 transverse process fractures, a C5 compression fracture, PTSD, anxiety, and migraines.

On November 15, 2018 Dr. Anne Koss-Leland, a Board-certified internist, examined appellant and noted that he was involved in a 2003 automobile accident and continued to experience depression, anxiety, PTSD, migraines, and neck and back pain. She related that he experienced anxiety when he drove and had stopped work in March 2018 due to mental stress. Dr. Koss-Leland provided work restrictions and diagnosed chronic back pain status post fractures in back and cervical spine, chronic neck pain, migraine headaches, speech issues, traumatic brain injury, and PTSD with anxiety and depression.

In a January 2, 2019 report, Dr. José Abreu, a clinical psychologist, noted that appellant was in a 2003 car accident in which he was driving and hit a hill, rendering him unconscious and leaving him with a broken neck and back. He related that appellant experienced flashbacks and fear while driving. Appellant noted that his conditions affected his ability to work because he experienced depression, difficulty concentrating, stress, and anxiety while driving to work, and explained that his heart rate would increase, which was the trigger that caused him to decide to quit his job. Dr. Abreu indicated that appellant resigned because he felt micromanaged by a supervisor. He diagnosed PTSD with delayed expression and other specified anxiety disorder and noted that appellant's symptoms may impair his ability to sustain concentration at work, his loss of motivation may impair his work attendance, and his dysphoric affect may impact socially appropriate behavior.

In a January 25, 2021 report, Dr. Sonja Straub, a clinical psychologist, noted that she had been treating appellant weekly since November 10, 2020. She diagnosed adjustment disorder, other specified trauma, and stressor-related disorder, and indicated that he was previously diagnosed with PTSD after a 2003 vehicle accident in the military in which another person was severely injured. Dr. Straub explained that adjustment disorder can continue for more than six months if a stressor, such as unemployment, was ongoing, which fit appellant's symptoms. Appellant reported depressed mood and anxiety, sleep disturbances, mental confusion, lack of concentration and ability to remember things, loss of direction, social withdrawal, nervousness, tearfulness, hopelessness, lack of pleasure, feelings of being overwhelmed, increased migraines, and repetitive intrusive and haunting thoughts about the discrimination he experienced at the employing establishment, which lead to shame and self-blame. Dr. Straub discussed appellant's demeanor, childhood experiences, and the near-lethal 2003 car accident which resulted in his back injury, traumatic brain injury, and PTSD. She related that appellant experienced shame and humiliation from the workplace discrimination that caused his diagnosed condition, as his self-esteem was tied to his career, and she opined that the stressful event of discrimination at his job and the loss of his job greatly aggravated his prior PTSD diagnosis. Dr. Straub indicated that it would be difficult to predict how much improvement he could make or when that would occur, due to his complicated history and injuries.

On September 22, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 21, 2018 through September 21, 2021.

In a development letter dated October 1, 2021, OWCP advised appellant of the deficiencies of his disability claim. It advised him of the type of evidence necessary to establish his claim and afforded him 30 days to respond.

Thereafter, OWCP received a March 20, 2018 notification of personnel action (Standard Form (SF) 50), which indicated that appellant resigned effective that date and noted that the reason for his resignation was "personal reasons."

By decision dated August 23, 2022, OWCP denied appellant's claim for disability from work commencing March 21, 2018 causally related to the accepted employment injury.

On November 29, 2022 appellant, through counsel, requested reconsideration of the August 23, 2022 decision and submitted additional evidence.

In a November 15, 2022 report, Dr. Straub noted that she treated appellant from November 10, 2020 until February 24, 2022 for his accepted condition of PTSD. She opined that his psychological condition caused “period(s) of disability during the period of time from March 21, 2018 to the present,” and that, during this time, he had work restrictions that prevented him from performing the duties of his federal employment. Dr. Straub diagnosed adjustment disorder, other specified trauma, and stressor-related disorder. She related that appellant was diagnosed with PTSD after a 2003 vehicle accident in the military. Dr. Straub advised that discrimination at the workplace, the initiating event, would not meet the criteria for PTSD by itself but noted that PTSD “does not simply disappear but often can be reagravated or ‘triggered’ by subsequent events, which is what happened in this case.” She indicated that the stress-related adjustment disorder that she diagnosed could continue for more than six months, which fit his symptoms. Dr. Straub noted that appellant reported depressed mood and anxiety, sleep disturbances, confusion, difficulty concentrating and remembering things, loss of direction, social withdrawal, nervousness, tearfulness, hopelessness, lack of pleasure, feeling overwhelmed, increased migraines, and repetitive, haunting thoughts “about the discrimination at the [employing establishment] which then led to shame and self-blame.” She explained that his medical condition was affected by his federal employment when his existing PTSD was substantially aggravated and recurred, causing a marked increase in PTSD-related symptoms, including migraines, inability to concentrate, lack of physical selfcare, and recurring intrusive thoughts of the discriminatory events. Dr. Straub concluded that appellant’s treated medical condition rendered him unable to perform his regular duties during the period claimed, at least through the last date she treated him.

By decision dated February 16, 2023, OWCP denied modification of its August 23, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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.⁵ 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.⁶ Whether a particular injury causes an employee to become disabled from

³ *Id.*

⁴ *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).

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

⁶ *A.E.*, Docket No. 21-0931 (issued September 11, 2023); *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

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 appellant, 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.⁸

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.⁹

ANALYSIS

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

OWCP accepted appellant's claim for unspecified PTSD. The issue is whether his accepted employment injury caused disability for the period March 21, 2018 to September 21, 2021. In support of his claim for compensation, appellant submitted January 25, 2021 and November 15, 2022 reports from Dr. Straub diagnosing adjustment disorder, other specified trauma, and stressor-related disorder. Dr. Straub treated appellant from November 10, 2020 until February 24, 2022 for his accepted condition of PTSD and opined that his psychological condition caused "period(s) of disability during the period of time from March 21, 2018 to the present," and that, during this time, he had work restrictions that prevented him from performing the duties of his federal employment. She noted that PTSD can be reagravated by subsequent events, which happened in this case, and that the stress-related adjustment disorder that she diagnosed can continue for more than six months, which fit appellant's symptoms. Dr. Straub opined that the stressful event of being discriminated against at appellant's workplace and the loss of his job greatly aggravated his prior PTSD diagnosis, causing a marked increase in PTSD-related symptoms, including migraines, inability to concentrate, lack of physical selfcare, and recurring intrusive thoughts of the discriminatory events. She concluded that his condition rendered him unable to perform his regular duties during the claimed period.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *See J.C.*, Docket No. 23-0261 (issued August 16, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *See L.R.*, Docket No. 23-0573 (issued September 15, 2023); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 7.

responsibility for the development of the evidence.¹⁰ OWCP has an obligation to see that justice is done.¹¹

While Dr. Straub's opinion is not fully rationalized, it is sufficient to require further development of the medical evidence.¹² On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted factors of federal employment either caused or aggravated her diagnosed conditions.¹³ If the second opinion physician disagrees with the opinion of Dr. Straub, he or she must provide a fully-rationalized explanation as to why the accepted employment factors were insufficient to have caused or aggravated appellant's diagnosed conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ See *id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

¹¹ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *Id.*; see also *C.A.*, Docket No. 22-0067 (issued October 26, 2023); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 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: February 20, 2024
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