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<b>M.K., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0081</b>
	)	<b>Issued: March 13, 2024</b>
<b>GENERAL SERVICES ADMINISTRATION,</b>	)	
<b>FEDERAL SUPPLY SERVICE FIELD OFFICE,</b>	)	
<b>Bell, CA, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 7, 2023 appellant filed a timely appeal from a June 6, 2023 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.

The issue is whether appellant has met his burden of proof to establish disability from work for the period May 31 through August 30, 1992, causally related to his accepted employment injury.

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

## **FACTUAL HISTORY**

This case has previously been before the Board regarding a different issue.<sup>2</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 October 23, 1992 appellant, then a 37-year-old quality assurance specialist, filed an occupational disease claim (Form CA-2) alleging that he developed an anxiety disorder causally related to factors of his federal employment.

In a consultation report dated August 12, 1992, Jack Boghosian., Ph.D., a licensed clinical psychologist, related appellant's medical, psychiatric, and injury histories, noting that appellant had been referred by his treating physician for work stress. He diagnosed anxiety disorder and moderate severity of psychosocial stressors (trouble with supervisor). Dr. Boghosian detailed a treatment plan where appellant would be seen on August 20, 1992 for an individual follow up and on August 18, 1992 would begin a stress management group.

In a certification of disability and/or return to work form dated August 31, 1992, Dr. Boghosian diagnosed anxiety disorder. He released appellant to return to work on October 5, 1992.

In a report dated September 14, 1992, Dr. Boghosian diagnosed anxiety disorder, reported appellant's symptoms, and detailed treatment provided, which included participation in a weekly stress management group. He opined that appellant's prognosis was good with at least a partial and probably full recovery by October 5, 1992.

Dr. Boghosian, in an April 5, 1993 report, related that appellant was first seen on August 12, 1992 when he was diagnosed with anxiety disorder not otherwise specified. He reported that appellant had been seen for five individual psychotherapy visits, five stress management group session, and a medication consultation with Dr. Jennifer Casey, a Board-certified psychiatrist.

By decision dated July 14, 2000, OWCP accepted the claim for anxiety reaction, resolved as of October 5, 1992. It informed appellant that the evidence of file established that he had reached preinjury status on October 5, 1992 when returned to full-duty unrestricted work. OWCP advised him that he may claim compensation benefits using a claim for compensation (Form CA-7). It informed appellant that medical evidence was required to support periods of wage-loss compensation due to disability to work. Specifically, OWCP informed appellant "[a]ll periods of disability must be supported by your physician in writing, indicating the disability is caused by job injury or condition."

On September 24, 2001 appellant filed a Form CA-7 claiming disability from work for the period May 31 through September 19, 1992.

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<sup>2</sup> Docket No. 98-89 (issued December 15, 1999).

In a development letter dated May 14, 2002, OWCP informed appellant that the evidence of record was insufficient to establish his disability claim. It explained that Dr. Boghosian's report dated August 31, 1992 referenced August 31 through October 5, 1992 as the period of disability and that he returned to work on September 12, 1992. OWCP provided appellant 30 days to submit additional medical documentation. If no documentation was received, it informed him that it would pay him for the period August 31 through September 11, 1992 and deny wage-loss compensation for the period May 31 through August 30, 1992.

In a letter dated September 6, 2006, appellant requested that his file be retrieved from archives and reviewed for payment of 640 hours of wage-loss compensation.

In a letter dated April 6, 2023, OWCP informed appellant that his case had been retired due to inactivity. It noted receipt of his inquiry regarding 640 hours of compensation claimed for the period June 1 through September 12, 1992. OWCP noted that appellant's file had been requested from the Federal Records Center. As it was unknown whether there were medical reports in the retired case for the period in question, it related that he should submit any medical documentation documenting disability for the period claimed to assist with processing his claim for compensation.

In a development letter dated April 18, 2023, OWCP informed appellant that the record contained no medical evidence addressing disability for the period May 31 through August 30, 1992. It advised him that the record would be held open for 30 days for submission of the requested evidence.

In a letter dated May 11, 2023, appellant referenced a July 14, 2000 Memorandum to the Director he enclosed, which he asserted related that further medical evidence was not required to allow benefits coverage from the date of injury to October 5, 1992.

By decision dated June 6, 2023, OWCP accepted appellant's claim for disability from work for the period August 31 through September 19, 1992 and added that it would pay appellant wage-loss compensation for this period once the employing establishment provided pay rate information. However, it denied his claim for wage-loss compensation for the period May 31 through August 30, 1992 as the record contained no medical evidence establishing disability for this period.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> See *A.E.*, Docket No. 23-0470 (issued September 5, 2023); *L.R.*, Docket No. 21-0018 (February 17, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

receiving at the time of the injury.<sup>5</sup> 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.<sup>6</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 the reliable, probative, and substantial medical evidence. 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.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period May 31 through August 30, 1992, causally related to his accepted employment injury.

The record contains reports covering the period August 12, 1992 through April 5, 1993 from Dr. Boghosian. In a consultation report dated August 12, 1992, Dr. Boghosian diagnosed anxiety disorder and moderate severity of psychosocial stressors (trouble with supervisor) and provided a treatment plan. In a certification of disability and/or return to work dated August 31, 1992, and in a September 14, 1992 report, he diagnosed anxiety disorder and released appellant to return to work on October 5, 1992. In an April 5, 1993 report, Dr. Boghosian related that appellant was first seen on August 12, 1992 when he was diagnosed with anxiety disorder not otherwise specified. He reported that appellant had been seen for five individual psychotherapy visits, five stress management group sessions, and a medication consultation with Dr. Casey. Dr. Boghosian did not address appellant's disability status during the period May 31 through August 30, 1992 in these reports dated from August 12, 1992 through April 5, 1993. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is insufficient to establish a claim.<sup>8</sup> As previously noted, an employee cannot self-certify his or her disability and entitlement to compensation.<sup>9</sup>

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<sup>5</sup> 20 C.F.R. § 10.5(f); *see A.E., id.*; *A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>6</sup> *Id.*; *see also C.J.*, Docket No. 21-1424 (issued February 27, 2024).

<sup>7</sup> *See A.N., id.*; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson, supra* note 4; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>8</sup> *See F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.T.*, Docket No. 19-1974 (issued November 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>9</sup> *See A.N., supra* note 5; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson, supra* note 4.

As the medical evidence of record is insufficient to establish disability from work for the period May 31 through August 30, 1992, the Board finds that appellant has not met his 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 his burden of proof to establish disability from work for the period May 31 through August 30, 1992, causally related to his accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2024  
Washington, DC

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

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

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