

<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). In support of her oral argument request, she asserted that oral argument was necessary to assert her entitlement to compensation for the claimed period, based on the evidence of record. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the evidence of record. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the period October 5, 2013 through April 6, 2014, causally related to her accepted employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board on different issues.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decisions and prior order are incorporated herein by reference. The relevant facts are set forth below.

On May 31, 2013 appellant, then a 49-year-old disciplinary hearing officer (DHO), filed a traumatic injury claim (Form CA-1) alleging that she sustained an emotional condition due to staff intimidation after she reported misconduct on May 23, 2013, while in the performance of duty. In a July 2, 2013 statement, she asserted that R.A., a fellow DHO, subjected her to harassment, intimidation, and profane, vulgar language after she had reported his misconduct.<sup>5</sup>

In a July 7, 2013 report, Dr. Judith E. Turian, a licensed clinical psychologist, recounted appellant's history of work stress commencing in 2009 related to R.A.'s "inappropriately familiar remarks to the female secretarial staff, his vulgar language," unprofessional conduct, and hostility. She recounted that R.A. had ignored appellant, and that he would leave the room whenever she walked in. Appellant had attempted to have her office space moved away from R.A., but her request was denied. On mental status examination, Dr. Turian noted depressed mood and anxious affect. Appellant also had insomnia, daily panic attacks, poor appetite, and anhedonia. Dr. Turian diagnosed post-traumatic stress disorder (PTSD), stress-induced migraine headaches, and occupational psychosocial and environmental problems. She prescribed weekly psychotherapy "to deal with anxiety, depression and hypervigilance stemming from [appellant's] feelings of being unsafe at work." Dr. Turian held appellant off work for 12 weeks (through September 29, 2013). In an August 28, 2013 work slip, she held appellant off work through November 1, 2013.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the April 1, 2025 decision, appellant submitted additional evidence to OWCP. 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.*

<sup>4</sup> Docket No. 23-0882 (issued February 8, 2024); Docket No. 21-0962 (issued February 23, 2023); Docket No. 18-1270 (issued September 4, 2020); *Order Remanding Case*, Docket No. 14-1663 (issued September 29, 2015).

<sup>5</sup> Appellant retired from federal employment in April 2015.

In reports dated from October 29, 2013 through February 18, 2014, Dr. Thomas B. Jackson, a psychiatrist, related appellant's account of anxiety and depression due to intimidation by a coworker, including an incident where the coworker was described as "wolf in a henhouse." He diagnosed major depressive affective disorder, single episode, and panic disorder without agoraphobia. Dr. Jackson prescribed medication.

In an October 30, 2013 work slip, Dr. Turian held appellant off work for the period November 1, 2013 through January 15, 2014.

In a March 19, 2014 letter, Dr. Turian noted that appellant "initially experienced stress at work when [R.A.] began working with her and exhibiting inappropriate behavior." Appellant's stress escalated over time. Dr. Turian opined that "[t]he stress and depression for which [appellant] is currently being treated are specifically related to the hostile workplace conditions."

By decision dated February 23, 2023, the Board found that appellant's allegations of harassment constitute compensable factors of employment.<sup>6</sup> In an April 4, 2024 statement of accepted facts (SOAF), OWCP outlined the accepted events that constituted factors of employment as follows: In August 2009 and June 2010, R.A. and appellant argued over office space when appellant placed office supplies in a storage area that R.A. had taken over as his office. In August 2010 management denied appellant's request to change offices as "someone had to watch the wolf in the hen house." On February 7, 2013, R.A. used profanity during a personal telephone call and on February 8, 2013 R.A. received a personal call during which he stated that utility problems were "a pain in the ass" loudly enough for appellant to hear. On April 26, 2013, he used profanity during a personal telephone call. On May 14, 2013, R.A. grunted at appellant. On May 23, 2013 he gave her "a very dirty stare" as she walked through a door he held open for her. R.A. also glared at her on June 4, 6, and 7, 2013. OWCP also accepted that R.A. excluded appellant from group interactions with co-workers on April 25, May 3, and May 9, 2013.

On April 5, 2024, OWCP referred appellant, along with the April 4, 2024 SOAF, the medical record, and a series of questions, for a second opinion evaluation with Dr. Erlinda Belvis, a Board-certified psychiatrist, to determine whether appellant's emotional condition was causally related to the accepted employment factors.

In an April 22, 2024 report, Dr. Belvis reviewed the medical record and SOAF, and recounted a history of injury and treatment. She related appellant's symptoms of hypervigilance, insomnia, flashbacks, and outbursts, and noted findings on mental status examination. Dr. Belvis diagnosed PTSD causally related to the accepted factors of federal employment. She noted that following a May 2013 incident with R.A., appellant "became more fearful of him, and she became very anxious that she could not work that she was taken off work for nine months." Dr. Belvis opined that appellant was able to perform her job for the period July 18, 2013 through her retirement "but she was working where she could avoid seeing [R.A.]. When she would see him coming, she would just go over to the building where her husband works and try to work from an office closer to her husband."

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<sup>6</sup> Docket No. 21-0962 (issued February 23, 2023).

On May 2, 2024, OWCP requested that Dr. Belvis provide a supplemental report addressing whether appellant was disabled from work commencing July 18, 2013.

In a June 14, 2024 supplemental report, Dr. Belvis repeated that appellant was able to work for the period July 18, 2013 through her retirement.

On June 24, 2024, OWCP accepted appellant's claim for post-traumatic stress disorder.

On July 29, 2024, appellant filed a claim for compensation (Form CA-7) for disability from work the period October 5, 2013 through April 6, 2014. OWCP received timekeeping forms for the period April 7 through June 24, 2014.

In a development letter dated January 14, 2025, OWCP informed appellant of the deficiencies of her disability claim for the period October 5, 2013 through April 6, 2014. It advised her of the type of medical and factual evidence needed, including additional time and attendance records for the claimed period. OWCP afforded her 30 days to respond.

In a January 22, 2025 statement, appellant asserted that the employing establishment was responsible for providing timekeeping records.

By decision dated April 1, 2025, OWCP denied appellant's claim for disability from work for the period October 5, 2013 through April 6, 2014. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</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>8</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> 20 C.F.R. § 10.5(f).

<sup>10</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

of injury, has no disability as that term is used in FECA.<sup>11</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 in his or her employment, he or she is entitled to compensation for loss of wages.<sup>12</sup>

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 the claimant, 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.<sup>13</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to the accepted employment injury.<sup>14</sup> 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 their disability and entitlement to compensation.<sup>15</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.<sup>16</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>17</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>18</sup>

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<sup>11</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>12</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>13</sup> *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>14</sup> *A.M.*, Docket No. 25-0788 (issued November 17, 2025); see *C.W.*, Docket No. 25-0243 (issued July 17, 2025); *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>15</sup> *Id.*

<sup>16</sup> 5 U.S.C. § 8123(a); *L.J.*, Docket No. 23-0270 (issued September 19, 2023); *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>17</sup> 20 C.F.R. § 10.321.

<sup>18</sup> *L.J.*, *supra* note 16; *K.C.*, *supra* note 16; *M.W.*, *supra* note 16; *C.T.*, *supra* note 16; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

### ANALYSIS

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

Dr. Turian provided a report dated July 7, 2013 wherein she related appellant's account of R.A.'s inappropriate behavior, vulgar language, and hostility commencing in 2009. She described several of the accepted work factors. Dr. Turian recounted appellant's symptoms of anxiety, depression, and hypervigilance caused by "feelings of being unsafe at work." She diagnosed PTSD and held appellant off work through September 29, 2013. In work slips dated August 28 and October 30, 2013, she held appellant off work for the period November 1, 2013 through January 15, 2014.

Dr. Belvis, an OWCP second opinion physician, opined in reports dated April 22 and June 14, 2024 that appellant was able to work for the period July 18, 2013 through her retirement.

The Board finds that there is an unresolved conflict of medical opinion between Dr. Turian, for appellant, and Dr. Belvis, for the government, regarding disability from work during the period October 5, 2013 through April 6, 2014 causally related to the accepted employment injury.

As explained above, OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.<sup>19</sup> The Board will, thus, remand the case to OWCP for referral to an IME regarding whether appellant has met her burden of proof to establish disability from work during the period October 5, 2013 through April 6, 2014 causally related to the accepted employment injury.<sup>20</sup> Following this and any such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>19</sup> *Supra* note 16.

<sup>20</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 1, 2025 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: December 9, 2025  
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