

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

| | | |
|---|--|--|
| <p>V.H., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, WEATHERS POST OFFICE, St. Louis, MO, Employer</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Docket No. 23-1013</p> <p>Issued: July 24, 2025</p> |
|---|--|--|

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 July 25, 2023 appellant filed a timely appeal from April 28 and July 25, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to wage-loss compensation for disability from work commencing April 20, 2019.

¹ By Order dated July 24, 2025, the Board granted the Director's petition for reconsideration of the Board's February 15, 2024 Order Remanding Case.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 28, 2023 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

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

On September 16, 2016 appellant, then a 55-year-old supervisor of customer services, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2016 she developed anxiety, panic attacks, and depression when she was "suddenly informed that [she] would be returning to a hostile and abusive work environment⁵ -- after the postmaster told [her] that [she] would not be returning back there."⁶ She stopped work on September 17, 2016.

On April 19, 2019 appellant stopped work as she was granted disability retirement from the Office of Personnel Management (OPM).

On November 24, 2020 OWCP referred appellant, together with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Radhika Rao, a Board-certified psychiatrist, for a second opinion evaluation regarding whether appellant sustained an emotional/stress-related condition causally related to the accepted September 15, 2016 employment incident; whether she could return to her date-of-injury position; and appellant's work capacity.

In a June 9, 2021 report, Dr. Rao related appellant's employment history, including the directive to return to work in a hostile environment. Appellant reported that she retired as she was constantly harassed and stress was aggravating her chronic pain. Dr. Rao diagnosed post-traumatic stress disorder (PTSD), but opined that she did not report symptoms that met the criteria for panic disorder. He recommended additional treatment. In response to OWCP's questions regarding appellant's work capacity, Dr. Rao responded only that she had retired on April 19, 2019. On a work capacity evaluation for psychiatric/psychological conditions (Form OWCP-5a) dated June 14, 2021, he opined that appellant was competent to work eight hours a day in her usual job, but that she had retired in 2019.

On April 18, 2022 OWCP requested a supplemental report from Dr. Rao. It specifically requested that he clarify his opinion regarding appellant's work capacity and explain with medical rationale whether appellant was currently able to perform work in any capacity.

In an April 18, 2022 response, Dr. Rao related appellant's complaints of experiencing trauma at work. In response to OWCP's question regarding appellant's work capacity, he noted

⁴ Docket No. 25-0063 (issued January 13, 2025); *Order Remanding Case*, Docket No. 23-1013 (issued February 15, 2024); Docket No. 19-0827 (issued November 20, 2019); Docket No. 19-0807 (issued December 3, 2019); Docket No. 18-0273 (issued July 27, 2018).

⁵ The Timothy Gaffney location.

⁶ OWCP assigned the present claim OWCP File No. xxxxxxx837. Appellant has a prior claim before OWCP. On September 22, 2000 she filed an occupational disease claim (Form CA-2) alleging that she developed constant pain in her neck and down her left shoulder and arm in the course of her federal employment. OWCP assigned that claim OWCP File No. xxxxxxx535 and accepted it for a cervical myofasciitis on May 9, 2002 and major depressive disorder on October 8, 2003. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxxx535 serving as the master file.

only that appellant “reported that she could not return to work so, she retired.” In response to OWCP’s request that he explain with medical rationale whether appellant was currently able to perform work in any capacity, Dr. Rao noted only that “[a]t this point vocational rehabilitation can be an option if [appellant] agrees.”

On September 8, 2022 OWCP accepted the claim for PTSD.

On October 6, 2022 Dr. Michael A. Hinz, a clinical psychologist, related that significant progress had been made in reducing anxiety and panic symptoms, but that appellant became panicky when considering a return to work in the St. Louis area as harassment had tended to follow her from one station manager to another. He opined that being assigned to any location associated with a past abuser would result in relapse.

On January 5, 2023 Dr. Wynndel Buenger, a physician Board-certified in pain management, completed a Form OWCP-5c and provided work restrictions due to cervical neck pain. He recommended that appellant be required to work only eight hours a day from 6:00 a.m. to 4:00 p.m. Dr. Buenger listed her restrictions as no continuous repetitious movements, no pushing, pulling, or lifting greater than 10 pounds, and no prolonged working in damp, cold conditions.

On January 6, 2023 appellant filed a Form CA-7 claim for wage-loss compensation for disability from work for the period April 20, 2019 through January 5, 2023.

In a February 3, 2023 report, Dr. Hinz opined that her mental health sessions had been resumed because of the job offer. He related that appellant was unable to sleep, that her pain condition had increased, and that she began to experience flashbacks with increased anxiety and depression, symptoms of PTSD. Dr. Hinz determined that her PTSD symptoms would worsen if she were actually to return to work at the employing establishment.

In March 10 and 22, 2023 development letters, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to respond.

By decision dated April 28, 2023, OWCP denied appellant’s January 6, 2023 Form CA-7 claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing April 20, 2019 causally related to the accepted employment injury.

OWCP subsequently received a report from Dr. Hinz dated May 24, 2017 who noted that appellant stopped work on September 15, 2016 and related that an Equal Employment Opportunity Commission (EEOC) settlement agreement included the offer of a supervisor position at a different location for appellant. Appellant returned to work, but had previously experienced difficulties with the management of this location. Dr. Hinz opined that appellant was totally disabled from work commencing February 10, 2017 as she was fearful of further harassment and as being assigned to any associated past abusive situation had a high probability of resulting in a worsening of her major depression. He also opined that her chronic pain worsened and became unmanageable. Dr. Hinz provided additional restrictions including not working for a manager who had previously engaged in harassment and emotionally abusing behaviors and noted that she had physical restrictions associated with her chronic pain condition.

On May 1, 2023 appellant requested reconsideration.⁷

By decision dated July 25, 2023, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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.⁹ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁰ 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.¹¹ 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.¹²

The Board has noted that the term disability means the incapacity because of injury to earn the wages which the employee was receiving at the time of such injury. Disability benefits are payable regardless of whether the termination of employment was for cause if the medical evidence establishes that appellant was unable to perform his assigned duties due to her injury-related condition.¹³

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.¹⁴

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

⁷ On July 10, 2023 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions for an additional second opinion examination with Dr. Rao with regard to appellant's work capacity in 2017.

⁸ *Supra* note 2.

⁹ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

¹⁰ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹¹ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹² *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹³ *See K.E.*, Docket No. 19-1922 (issued July 10, 2020); *T.L.*, Docket No. 09-1066 (issued February 17, 2010).

¹⁴ *See B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁵

ANALYSIS

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

On November 24, 2020 OWCP referred appellant, together with the medical record, a SOAF, and series of questions, to Dr. Radhika Rao, a Board-certified psychiatrist, for a second opinion evaluation regarding whether appellant sustained an emotional/stress-related condition causally related to the accepted September 15, 2016 employment incident; whether she could return to her date-of-injury position; and appellant's work capacity. In his June 9, 2021 report, Dr. Rao responded only that appellant had retired on April 19, 2019. On a June 14, 2021 Form OWCP-5a, he concluded without rationale that appellant was competent to work eight hours a day in her usual job, but that she had retired in 2019. On April 18, 2022 OWCP requested that Dr. Rao further explain with medical rationale whether appellant was currently able to perform work in any capacity. In an April 18, 2022 response, Dr. Rao related appellant's complaint of experiencing trauma at work. In response to OWCP's question regarding appellant's work capacity, he noted only that appellant "reported that she could not return to work so, she retired." In response to OWCP's request that he explain with medical rationale whether appellant was currently able to perform work in any capacity, he noted only that "[a]t this point vocational rehabilitation can be an option if [appellant] agrees." It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁶ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁷

Therefore, as Dr. Rao has not sufficiently explained whether appellant was disabled from work during the claimed period causally related to the accepted employment injury, the case must be remanded to OWCP for further development of the medical evidence.¹⁸ On remand, OWCP shall refer appellant to a new physician in the appropriate field of medicine for a rationalized opinion on causal relationship between appellant's disability from work during the claimed period and the accepted employment injury. 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.

¹⁵ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 12.

¹⁶ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁷ *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹⁸ See *F.A.*, Docket No. 22-0167 (issued December 16, 2022); *T.C.*, Docket No. 17-1906 (issued January 10, 2018); *X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 28 and July 25, 2023 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 24, 2025
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