

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

D.G., Appellant)	
and)	Docket No. 25-0654
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Kansas City, MO, Employer)	Issued: July 22, 2025
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Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 29, 2025 appellant filed a timely appeal from a June 3, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following June 3, 2025 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 her burden of proof to establish disability from work, for the period June 1, 2017 through November 8, 2024, as causally related to her accepted October 10, 1988 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior order and prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 28, 2020 appellant, then a 61-year-old retired claims examiner, filed an occupational disease claim (Form CA-2) alleging that she sustained stress, depression, anxiety, and claustrophobia causally related to her federal employment. She alleged stress and harassment by a supervisor and her union steward until her retirement on May 29, 2017. Appellant noted that she first became aware of her condition on October 10, 1988, and realized its relationship to her federal employment on June 1, 2001. On March 11, 2025 OWCP accepted the claim for unspecified depressive disorder.

On May 24, 2021 Dr. Rubin Moore, a Board-certified psychiatrist, completed an attending physician's report (Form CA-20) diagnosing generalized anxiety disorder and unspecified depressive disorder. He opined that appellant was totally disabled commencing May 29, 2017. In a May 9, 2022 note, Dr. Moore diagnosed panic disorder, generalized anxiety disorder, and unspecified depressive disorder. He did not address a period of disability.

On October 4, 2024 OWCP referred appellant, a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Sanford Pomerantz, a Board-certified psychiatrist, for a second opinion evaluation to determine whether appellant's work-related condition had resolved, whether she was medically capable of performing her date-of-injury position, and if not, to provide her work capabilities.

In a November 8, 2024 report, Dr. Pomerantz noted his review of the SOAF and appellant's evaluation findings. He opined that appellant's work-related conditions had resolved as the "work situation was a temporary aggravation," and that she had the functional capacity to perform her date-of-injury position. OWCP requested a supplemental report on March 4, 2025, regarding whether appellant's employment caused or contributed to a temporary aggravation of her unspecified depressive disorder, and if a temporary aggravation, the resolution of same. Dr. Pomerantz opined that appellant's complaints of severe depression were not supported by clinical observation and that she did not exhibit clear functional limitations. He determined that appellant sustained a temporary aggravation of her underlying unspecific depressive disorder due to accepted employment factors which had since resolved.

³ Docket No. 22-1367 (issued June 28, 2024); *Order Remanding Case*, Docket No. 21-1412 (issued April 26, 2022).

On March 7, 2025 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 1, 2017 through November 8, 2024.

In a development letter dated April 16, 2025, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

On April 17, 2025 OWCP requested a supplemental report from Dr. Pomerantz addressing whether appellant could have performed her date-of-injury position commencing May 29, 2017 through the present.

By decision dated June 3, 2025, OWCP denied appellant's claim for disability from work for the period June 1, 2017 through November 8, 2024, causally related to the accepted October 10, 1988 employment injury. It accorded the weight of the medical evidence to Dr. Pomerantz' second opinion reports.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸

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.⁹

⁴ *Supra* note 2.

⁵ *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).

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

⁷ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

⁹ *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).

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.¹⁰

ANALYSIS

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

On April 17, 2025 OWCP requested a supplemental report from Dr. Pomerantz addressing whether appellant could have performed her date-of-injury position commencing May 29, 2017 through the present. However, it issued its June 3, 2025 denial prior to receiving the requested report from Dr. Pomerantz.

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.¹¹ 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.¹²

In this case, OWCP issued its June 3, 2025 decision denying appellant's claimed period of disability from work prior to receiving the requested supplemental second opinion report.¹³ Thus it was premature for OWCP to issue its June 3, 2025 decision.

The case must therefore be remanded to OWCP for further development.¹⁴ On remand, OWCP shall obtain the supplemental second opinion report from Dr. Pomerantz, including a rationalized medical opinion on the issue of the claimed period of disability from work.¹⁵ Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁰ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 8.

¹¹ 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).

¹² *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹³ *W.H.*, Docket No. 24-0855 (issued November 26, 2024).

¹⁴ 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).

¹⁵ *L.N.*, Docket No. 24-0690 (issued November 4, 2024); *D.D.*, Docket No. 24-0203 (issued May 2, 2024); *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 22, 2025
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