

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions and order 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, including harassment by a supervisor and her union steward. She 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.

In a May 9, 2022 note, Dr. Rubin Moore, a Board-certified psychiatrist, diagnosed panic disorder, generalized anxiety disorder, and unspecified depressive disorder.

On May 24, 2021 Dr. Moore completed an attending physician's report (Form CA-20) diagnosing generalized anxiety disorder and unspecified depressive disorder. He found that appellant was totally disabled from work commencing May 29, 2017.

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 medical condition was causally related to the accepted employment factor(s). It further requested that he provide an opinion regarding whether any work-related condition had resolved, whether appellant was medically capable of performing her date-of-injury position, and if not, to provide her work capacity.

In a November 8, 2024 report, Dr. Pomerantz noted his review of the SOAF and appellant's evaluation findings. He opined that "she did additional work that she had to manage as a supervisor. Appellant's subjective complaints of depression are not supported by objective clinical observation in terms of no clear functional limitations." Dr. Pomerantz further opined that the 'work situation was a temporary aggravation,' and that appellant had the functional capacity to perform her date-of-injury position.

OWCP subsequently requested a supplemental report, clarifying whether appellant's employment caused or contributed to a temporary aggravation of her unspecified depressive disorder, and if so, whether the temporary aggravation had resolved.

In a supplemental report dated March 4, 2025, 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 her work duties, as noted in the SOAF, contributed to a temporary aggravation of her underlying unspecified depressive disorder, which had resolved.

² Docket No. 25-0654 (issued July 22, 2025); Docket No. 22-1367 (issued June 28, 2024); *Order Remanding Case*, Docket No. 21-1412 (issued April 26, 2022).

On March 11, 2025 OWCP accepted appellant's claim for a temporary aggravation of unspecified depressive disorder, as resolved.

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.

Appellant appealed to the Board. By decision dated July 22, 2025, the Board set aside OWCP's June 3, 2025 decision, finding that the case was not in posture for decision as OWCP had denied appellant's disability claim prior to receiving the supplemental report requested from Dr. Pomerantz.³ The Board directed OWCP to obtain a supplemental report from Dr. Pomerantz including a rationalized medical opinion on the issue of the claimed period of disability from work. Thereafter, OWCP was to issue a *de novo* decision.

On remand, on September 4, 2025, OWCP requested a well-rationalized supplemental report from Dr. Pomerantz addressing whether appellant was capable of performing the duties of her job as described in the SOAF for the period June 1, 2017 through November 8, 2024.

In a September 15, 2025 supplemental report, Dr. Pomerantz opined that there was no clinical evidence to support total disability commencing May 29, 2017 through the present. He opined that she was currently capable of returning to work and that the temporary aggravation had resolved.

By *de novo* decision dated October 30, 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.

³ *Id.* On June 10, 2025, OWCP received a supplemental report from Dr. Pomerantz. As noted in the Board's July 22, 2025 decision, 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 was precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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

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 the case is not in posture for decision.

On September 4, 2025 OWCP requested a well-rationalized supplemental report from Dr. Pomerantz addressing whether appellant was capable of performing the duties of her job as described in the SOAF for the period June 1, 2017 through November 8, 2024. In his September 15, 2025 supplemental report, Dr. Pomerantz opined that there was no clinical

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).

¹⁰ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, *supra* note 7; *Fereidoon Kharabi*, *supra* note 8.

evidence to support total disability commencing May 29, 2017 through the present. However, he did not provide sufficient rationale for his conclusory opinion.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹¹ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹² Accordingly, once OWCP undertook development of the evidence by referring appellant to Dr. Pomerantz, it had an obligation to obtain a proper evaluation that sufficiently addresses the issues in this case.¹³

The case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with a SOAF, and the case record to a new second opinion specialist in the appropriate field of medicine for a reasoned opinion on the issue of total disability for the period June 1, 2017 through November 8, 2024. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ See *J.W.*, Docket No. 26-0141 (issued April 24, 2026); *B.W.*, Docket No. 21-0785 (issued September 1, 2022); *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹² *Id.*; see also *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ *L.R.*, Docket No. 23-0508 (issued January 13, 2026); see *V.P.*, Docket No. 22-0706 (issued November 3, 2022); *E.M.*, Docket No. 20-1153 (issued August 4, 2022).

ORDER

IT IS HEREBY ORDERED THAT the October 30, 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: August 3, 2026
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