

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

A.M., Appellant)	
)	
and)	Docket No. 19-1870
)	Issued: February 10, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 9, 2019 appellant filed a timely appeal from an August 1, 2019 merit decision and an August 30, 2019 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability, commencing May 8, 2001, causally related to her accepted employment injury;

¹ 5 U.S.C. § 8101 *et seq.*

² The case record, as transmitted to the Board, includes evidence received after OWCP issued its August 30, 2019 decision. 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.*

and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case had previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On March 21, 1989 appellant, then a 31-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 1989 she sustained an emotional condition when she was robbed at gunpoint on the employing establishment's premises while in the performance of duty. On July 10, 1989 OWCP accepted her claim for the condition of anxiety disorder. It subsequently accepted recurrences of total disability for periods from September 18, 1995 through April 23, 2001. Appellant stopped work on May 8, 2001 and did not return. OWCP subsequently expanded its acceptance of the claim to include a sleep disorder, post-traumatic stress disorder (PTSD), anxiety, and recurrent major depression.

On July 11, 2001 appellant filed a notice of recurrence (Form CA-2a) claiming disability, commencing May 8, 2001. OWCP initially denied the claim by decision dated June 2, 2001 and in subsequent adjudications as set forth in the Board's prior decisions.⁴ Following adjudication of the recurrence claim, by order dated December 20, 2016,⁵ the Board remanded the case to OWCP for review of appellant's timely March 2, 2016 reconsideration request, under 5 U.S.C. § 8128(a), to be followed by issuance of an appropriate final decision.

On remand of the case OWCP obtained a second opinion examination report regarding the nature and extent of appellant's emotional condition from Dr. Arwen Podesta, a Board-certified psychiatrist. In a report dated January 24, 2017, Dr. Podesta noted his review of the medical records and provided a history of injury and treatment. He noted that appellant had no psychiatric issues until January 5, 1989 when she was robbed at gunpoint and subsequently diagnosed with PTSD and that, in 2001, she felt that she could no longer function at work due to coworker harassment. On examination Dr. Podesta observed a flat affect and low mood. Appellant informed him of her daily suicidal thoughts, occasional nightmares, and panic attacks. Dr. Podesta diagnosed chronic PTSD, severe recurrent major depressive disorder, generalized anxiety, and panic disorder "initially brought on by the event at work in January 1989." The condition worsened with further insults and stressors in the workplace, exacerbated by the death of her husband in December 2001. "Since then [appellant's] condition has been such that she cannot work. Had she had her mental faculties about her, it is unlikely that a loss, no matter how

³ *Order Remanding Case*, Docket No. 18-1040 (issued June 21, 2019); *Order Remanding Case*, Docket No. 16-1250 (issued December 20, 2016); Docket No. 12-0533 (issued May 3, 2012); Docket No. 11-0967 (issued October 7, 2011); Docket No. 10-0324 (issued August 13, 2010); Docket No. 08-2300 (issued July 6, 2009); Docket No. 02-0471 (issued August 26, 2002).

⁴ *Id.*

⁵ *Order Remanding Case*, Docket No. 16-1250 (issued December 20, 2016).

significant, would cripple her. [Appellant] is totally disabled psychiatrically.” Dr. Podesta recommended a safety contract, to be followed by voluntary psychiatric hospitalization.

By decision dated March 22, 2017, OWCP denied modification of its prior decision denying her claim for recurrence of disability. Pursuant to requests for reconsideration on August 21 and December 20, 2017, it denied modification by decisions dated November 16, 2017 and April 11, 2018, respectively. Appellant then appealed to the Board.

By order dated June 21, 2019,⁶ the Board set aside OWCP’s April 11, 2018 decision and remanded the case for proper consideration of all the evidence of record at the time of the April 11, 2018 decision, including Dr. Podesta’s report, to be followed by issuance of a *de novo* decision on appellant’s recurrence claim.

On remand, by decision dated August 1, 2019, OWCP denied modification of the November 16, 2017 decision, finding that Dr. Podesta had attributed appellant’s condition, on and after May 9, 2001, to intervening causes of coworker harassment and the death of her husband, thereby breaking the chain of causation from the accepted emotional conditions caused by the January 5, 1989 employment injury.

On August 22, 2019 appellant requested reconsideration. She asserted that OWCP should have requested a supplemental report from Dr. Podesta rather than denying her claim. Appellant submitted appointment forms and group therapy treatment notes dated from June 6 to August 22, 2019 by Marvin W. Clifford, Ph.D., a social worker.

By decision dated August 30, 2019, OWCP denied appellant’s request for reconsideration of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.⁷ Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn, or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸ Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.⁹

⁶ *Order Remanding Case*, Docket No. 18-1040 (issued June 21, 2019).

⁷ 20 C.F.R. § 10.5(x).

⁸ *Id.*

⁹ *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also* *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.¹⁰ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the recurrent disability is causally related to the employment injury.¹¹ The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.¹² Where no such rationale is present, the medical evidence is of diminished probative value.¹³

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

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record establishes that appellant sustained a recurrence of total disability commencing May 8, 2001, causally related to her accepted employment injury.

OWCP referred appellant to Dr. Podesta for a second opinion examination regarding whether she had sustained a recurrence of disability, as alleged. In his January 24, 2017 report, Dr. Podesta attributed appellant's condition to the natural progression of the accepted emotional conditions from her accepted January 5, 1989 employment injury. He found that her condition had worsened with further insults and stressors in the workplace, and was exacerbated by the death of her husband in December 2001. Dr. Podesta noted that, "Since then [appellant's] condition has been such that she cannot work. Had she had her mental faculties about her, it is unlikely that a loss, no matter how significant, would cripple her. [Appellant] is totally disabled psychiatrically." He recommended a safety contract, to be followed by voluntary psychiatric hospitalization. Dr. Podesta concluded that, but for appellant's accepted conditions following her employment injury, she would not have been fully disabled, as alleged.

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares

¹⁰ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

¹¹ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 218-19 (2008).

¹² *Id.*

¹³ *G.L.*, Docket No. 19-0898 (issued December 5, 2019); *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁴ *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁵ *Id.*, *Fereideoon Kharabi*, 52 ECAB 291 (2001).

responsibility in the development of the evidence.¹⁶ OWCP undertook development of the evidence by referring appellant to Dr. Podesta, a second opinion examining physician, who opined that appellant's accepted emotional conditions had worsened such that she was rendered totally disabled from work. Dr. Podesta based his opinion on a proper factual and medical history and physical examination findings. He also provided medical rationale for his opinion that appellant sustained a recurrence of total disability due to her employment-related emotional conditions.¹⁷

Thus, the Board finds that the evidence of record establishes that appellant sustained a recurrence of total disability commencing May 8, 2001, causally related to her accepted employment injury. The case shall therefore be remanded for payment of wage-loss compensation and related medical expenses.¹⁸

CONCLUSION

The Board finds that the evidence of record establishes that appellant sustained a recurrence of total disability commencing May 8, 2001, causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 1 and 30, 2019 decisions of the Office of Workers' Compensation Programs are reversed and the case is remanded for payment.¹⁹

Issued: February 10, 2021
Washington, DC

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁶ See *B.B.*, Docket No. 17-1949 (issued October 16, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁷ *T.C.*, Docket No. 19-1383 (issued March 2 2020); see *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹⁸ In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.

¹⁹ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.