

establishment terminated appellant's employment due to a positive drug test. On August 23, 2006 the Office accepted the claim for post-traumatic stress disorder (PTSD).

On August 31, 2006 appellant filed a CA-7 claim for compensation commencing October 30, 2004. He submitted a March 7, 2005 report from Dr. Catherine Whitehouse, a Board-certified psychiatrist, who advised that her report was based on her interview with appellant and review of the Krohn Clinic history.¹ Dr. Whitehouse stated:

“[I]n terms of PTSD [appellant] feels he is probably burned up from his job and is bothered by his work. He feels that he remembers every ambulance run he has ever had and that several of the serious ones have really bothered him.... [Appellant] states that over the last eight months or so he has occasional nightmares and gets extreme anxiety whenever he has a trigger that reminds him of work.... The anxiety will only go away if he stops thinking about reminders of work or leaves the area. [Appellant] gets intrusive thoughts about work about twice a week and feels extreme disappointment and dislike for some of the people he works with.”

Dr. Whitehouse diagnosed PTSD from work situation and opined that appellant was permanently and totally disabled from all work in which he would see trauma involving others and where lives were at stake.

In a December 11, 2006 letter, the Office advised appellant that Dr. Whitehouse's report was insufficient to establish his claim for wage-loss compensation as he held his regular-duty position as a firefighter until he was removed for cause on October 29, 2004. Appellant was advised that his entitlement to compensation was dependent upon well-rationalized medical opinion evidence which explained why time loss from work was attributable to his disability associated with any work-related trauma(s) as opposed to his termination for cause.

In a December 20, 2006 letter, appellant's attorney advised that appellant had been on sick leave for several weeks before his termination due to his PTSD symptoms and was not working at the time he was terminated. Counsel referenced various medical records to support his contention that appellant's time loss from work was attributable to his work-related PTSD. In a November 11, 2004 note, Judith Munkhom-Jones, a counselor and psychotherapist, stated that appellant had work-related PTSD which had significantly worsened two to three months earlier. She found that appellant was unable to work. Dr. James M. Kesler, a Board-certified family practitioner provided a November 8, 2004 work capacity evaluation and a November 17, 2004 disability certificate.² He diagnosed PTSD and anxiety and opined that appellant was totally disabled from work. Dr. Kesler advised that appellant had increasing signs and symptoms of PTSD, likely secondary to repeated traumatic and/or perceived traumatic events. He noted the

¹ The record indicates that Dr. Whitehouse treated appellant at the Krohn Clinic where he also received treatment from other mental healthcare providers.

² The record does not contain a November 1, 2004 report from Dr. Kesler as appellant's attorney had indicated in his December 20, 2006 letter. Likewise, the record does not contain a November 17, 2005 report from Dr. Whitehouse.

onset of PTSD was at least four years prior with increasing symptoms over the prior four months. Dr. Kesler advised that appellant needed to refrain from anxiety/stress experiences and likely could not return to his previous job.

On May 13, 2006 Dr. Whitehouse noted that appellant was seen at the Krohn Clinic from October 25, 2004 to April 21, 2005 and that she first evaluated him on March 7, 2005. When she saw appellant, he was suffering from symptoms of PTSD caused by his work situation. Dr. Whitehouse noted some of the work incidents which caused appellant's PTSD included separate tragedies involving a 17-year-old boy and a 14-year-old girl. As of March 2005, appellant had been working on behavioral therapy as a way of coping and dealing with his PTSD symptoms. Dr. Whitehouse advised that appellant was unable to work as a firefighter because anything that reminded him of his work, or actually being in a position where he had to see or be involved with trauma, was anxiety-provoking. She opined that appellant's job increased his PTSD symptoms which worsened the longer he was there and that they were chronic. Appellant was totally and permanently disabled from any employment where people were exposed to trauma. Dr. Whitehouse noted that appellant reported not being able to work and left his position in October 2004. Because of intense anxiety and depressed mood stemming from appellant's PTSD, he was totally disabled from any employment. Dr. Whitehouse advised that appellant was not taking any medication and no longer saw his counselor.

In a November 2, 2006 report, Steve Firkins, MS, of Krohn Clinic, diagnosed PTSD and recurrent, moderate major depressive disorder.

On December 11, 2006 the employing establishment indicated that appellant was working regular duty at the time his employment was terminated.

By decision dated January 16, 2007, the Office denied appellant's claim for wage-loss compensation commencing October 30, 2004. It found that he failed to submit sufficient medical evidence to establish that he was totally disabled for work due to his accepted condition.

On March 8, 2007 appellant, through his attorney, requested reconsideration contending that his disability for work arose prior to the termination from his employment.

In a February 1, 2007 report, Dr. Whitehouse reported that appellant's use of sick leave and work time during October 2004 were consistent with PTSD symptoms from his job situation. She explained that PTSD was a chronic illness symptoms could wax and wane in their severity. Dr. Whitehouse advised that for appellant, being at work in October 2004 was enough to trigger his symptoms. She stated "we sometimes do not know what brings out PTSD symptoms if there is not a clear trigger, but this is definitely consistent with the diagnosis." Dr. Whitehouse advised that appellant had trouble for many months, if not years, before he was terminated from his position. In the two to three weeks before he was let go, appellant was showing signs that he was unable to continue working. Dr. Whitehouse opined that for appellant not to know exactly why his anxiety got so bad in October 2004 was not unusual. She stated that it was clear that the anxiety from his work situation had been building and, before he was ever terminated, he was unable to work on a regular basis.

By decision dated May 31, 2007, the Office denied modification of the January 16, 2007 decision.

In a November 19, 2007 letter, appellant's counsel requested reconsideration. In an October 29, 2007 medical report, Dr. Kesler indicated that he saw appellant for a total of three times, the first being on November 1, 2004. Appellant had signs and symptoms consistent with significant anxiety as well as PTSD that he attributed to being a firefighter as well as to experiences he had as an emergency medical technician (EMT). Dr. Kesler stated: "In regards to your specific question whether [appellant's] diagnosis allowed him to work as a firefighter and an EMT as of October 29, 2004, all I can state is that he subjectively gave me symptoms of anxiety and [PTSD] on November 1, 2004, and stated that this had been occurring for three weeks prior." He agreed with Dr. Whitehouse's statements and that there were no specific scientific markers for PTSD. Dr. Kesler advised that the majority of the information comes from a description of how the patient is feeling as well as the patient's experiences.

By decision dated December 14, 2007, the Office denied modification of its prior decisions.

In a January 24, 2008 letter, appellant's counsel again requested reconsideration, contending that Dr. Kesler's October 29, 2007 report was probative and that the medical evidence, even if insufficient to fully discharge appellant's burden of proof, required further development by the Office.

By decision dated April 24, 2008, the Office denied modification of its December 14, 2007 decision. It found that the medical evidence was not sufficient to support disability on or after October 30, 2004.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, 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 injury.³ Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.⁴ The claimant has the burden of proving that he is disabled for the period claimed as a result of the employment injury. The medical evidence of record must directly address the particular period of disability for which compensation is sought, to do otherwise would essentially allow employee's to self-certify their disability and entitlement to compensation.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability on and after October 30,

³ See *Robert A. Flint*, 57 ECAB 369 (2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ See *Carol A. Lyles*, 57 ECAB 265 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *William A. Archer*, 55 ECAB 674 (2004).

2004 and his accepted emotional condition.⁶ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.⁷ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸ The Board has held that when a claimant stops work for reasons other than his accepted employment injury, he has no disability within the meaning of the Act.⁹

ANALYSIS

The Office accepted appellant's claim for PTSD. Appellant requested compensation benefits for wage loss as of October 30, 2004. The record reflects that he was terminated from the employing establishment on that date for cause. In general, compensation for a work stoppage attributable to misconduct cannot be paid.¹⁰ The record reflects that appellant, while receiving medical treatment, was also performing his regular duties when he was terminated for cause.

The reports by Dr. Whitehouse are insufficient to meet appellant's burden of proof. Dr. Whitehouse advised that, when she first evaluated appellant on March 7, 2005, he was suffering symptoms of PTSD caused by his work situation and had been working on behavioral therapy as a way of coping and dealing with his symptoms. She stated that appellant was permanently and totally disabled from work in which he would see people exposed to trauma because that was anxiety-provoking. Dr. Whitehouse noted that PTSD was a chronic illness as to appellant's disability for work in October 2004. She stated that for appellant just being at work in October 2004 was enough to trigger his symptoms. Dr. Whitehouse noted that he increased use of sick leave prior to his termination due to his PTSD.

While Dr. Whitehouse opined that appellant was permanently and totally disabled from work, she provided insufficient reasoning in addressing why he was disabled as of October 30, 2004 due to his accepted emotional condition as opposed to his termination for cause. Although she noted that appellant's being at work in October 2004 was a trigger for his accepted condition, she did not address his history of working through the date that he was terminated for cause. Rather, Dr. Whitehouse generally addressed PTSD as a chronic illness, the duration and length of appellant's total disability and the reasons why this would be attributable to his accepted emotional condition. In particular, she did not offer sound medical reasoning to explain why

⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁷ *Alfredo Rodriguez*, *supra* note 6.

⁸ *Fereidoon Kharabi*, *supra* note 4.

⁹ *John W. Normand*, 39 ECAB 1378 (1988).

¹⁰ *See id.* *See also Major W. Jefferson, III*, 47 ECAB 295 (1996) (where there was no evidence that appellant was not capable of performing his assigned duties after the date of his termination for cause, he had no disability within the meaning of the Act after that date and had no entitlement to compensation for total disability for that period).

appellant, who was in a regular duty status when he was terminated, became totally disabled due to his accepted emotional condition following his termination for cause. Medical conclusions unsupported by rationale are of little probative value.¹¹ Dr. Whitehouse's reports are insufficient to establish appellant's claim for disability.

Dr. Kesler diagnosed PTSD and anxiety and opined that appellant was totally disabled for work. However, his reports fail to discuss any specific traumatic work events or provide any explanation as to how any work-related trauma would render him disabled commencing October 29, 2004. In an October 29, 2007 report, Dr. Kesler indicated that on November 1, 2004 appellant had signs and symptoms consistent with anxiety and PTSD, which appellant stated had been occurring three weeks prior. However, he provided no discussion or explanation as to why any PTSD arising from appellant's employment would render him totally disabled from all work or how appellant's symptoms had manifested prior to his termination. Additionally, Dr. Kesler's agreement with Dr. Whitehouse that there are no specific scientific markers for PTSD, does not address why appellant's work-related trauma intensified his condition to the extent that he became totally disabled after he was terminated for cause while he was in a regular-duty status prior to his termination. He provided insufficient explanation to establish appellant's claim for disability.¹²

The remaining medical evidence is also insufficient to support appellant's claim for wage-loss disability. The evidence received from Steve Firkins, a social worker, and Judith Munkhom-Jones, a psychotherapist, does not constitute probative medical evidence. A social worker and a psychotherapist are not physicians as defined under the Act.¹³

As noted, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury for each period of disability claimed. There is no evidence that appellant was terminated for his physical inability to perform his assigned duties, nor is there sufficient evidence to show that appellant stopped work due to his accepted condition.¹⁴ As the withdrawal of appellant's position was premised on misconduct, the Board finds that appellant is not entitled to wage-loss compensation for periods on and after October 29, 2004, the date he was terminated.

¹¹ S.S., 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008); see *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹² *Id.*

¹³ 5 U.S.C. § 8101(2). This subsection defines the term physician to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician); *Sedi L. Graham*, 57 ECAB 494 (2006) (the reports of a social worker do not constitute competent medical evidence, as a social worker is not a physician as defined by section 8101(2)).

¹⁴ See *Normand*, *supra* note 9. The Board also notes that there is no evidence that appellant's job would not have remained available but for appellant's termination for cause.

CONCLUSION

The Board finds that appellant has not established that he was entitled to wage-loss compensation benefits on and after October 29, 2004.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2008 and December 14, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board