

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 8, 2006 appellant, then a 27-year-old clerk, filed a traumatic injury claim alleging that on September 15, 2006 she suffered from stress resulting from the duties of her federal employment. In a later statement, she indicated that two colleagues were staring at her in a frightening manner at work.

Initially, in a decision dated January 29, 2007, the Office denied appellant's claim as she had not submitted sufficient factual evidence to support a specific factor or event that caused her alleged injury. However, in a decision dated July 20, 2007, the hearing representative reversed the Office's denial of the claim. The hearing representative, treating appellant's claim as an occupational disease claim, found that the evidence established a compensable employment factor in that appellant was subjected to inappropriate conduct and statements by a coworker, Danny Pisahl. The hearing representative also found that appellant submitted medical evidence affirmatively linking her anxiety and depression to harassment by this coworker. Accordingly, the hearing representative stated that appellant's claim should be accepted for anxiety and depression.

On July 30, 2007 the Office accepted appellant's claim for post-traumatic stress disorder (anxiety) and major depression, recurrent episode, and paid compensation and medical benefits. On April 10, 2008 appellant accepted the employing establishment's offer of full-time limited-duty work as a clerk and returned to work effective that date.

On February 24, 2010 appellant filed a claim for wage-loss compensation for the period January 1 through December 31, 2008. In a time analysis form, she indicated that she claimed compensation for eight hours a day on the following dates: October 17, 18 and 28, 2008; November 28 and 29, 2008; December 2, 3, 4, 6, 9, 23, 24, 26, 27, 30 and 31, 2008; and January 1, 2 and 3 and December 9, 2009. In support thereof, appellant submitted notes from her treating psychiatrist, Dr. Michael A. Patterson, indicating that she was excused from work on multiple dates. In an October 16, 2008 note, Dr. Patterson indicated that appellant was under his care and could return to work on October 21, 2008 with restrictions. In an October 28, 2008 note, he indicated that she was under his care and could return to work on October 29, 2008. In a December 4, 2008 note, Dr. Patterson indicated that appellant could return to work on December 5, 2008, but stated that she should be excused from work on November 28 and 29 and December 2, 3 and 4, 2008 for medical reasons. In a December 9, 2008 note, he requested that she be excused from work on December 6 and 9, 2008. In a December 29, 2008 note, Dr. Patterson asked that appellant be excused from work on December 23, 24, 26, 27, 30 and 31, 2008 and January 1, 2 and 3, 2009 for medical reasons.

By letter dated March 8, 2010, the Office noted that the work excuse slips were insufficient to establish disability for the claimed dates and asked that appellant submit competent medical evidence supporting disability for the claimed dates.

In a March 19, 2010 report, Dr. Patterson stated that appellant has been under his care for job-related post-traumatic stress disorder, anxiety, depression and adjustment disorder. He noted that he treated her with medication management and that he referred appellant to a clinical

psychologist for therapy treatment. Dr. Patterson further stated that the off-work statements all related to the job-related post-traumatic stress disorder claim arising from the 2006 incident.

By decision dated April 16, 2010, the Office denied appellant's claim for compensation for intermittent dates from October 17, 2008 through December 31, 2009.

LEGAL PRECEDENT

The term disability, as used in the Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.² In other words, if an employee is unable to perform the required duties of the job in which she was employed when injured, the employee is disabled.³ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁴

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury.⁵ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that her disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

Section 8103(a) of the Act provides that an employee may be furnished necessary and reasonable transportation and expenses incident to the securing of medical services.⁹ The Board has interpreted this section to authorize payment for loss of wages incurred while obtaining medical services. Compensation for wage loss may be authorized while obtaining the medical services and for a reasonable time.

² *Patricia A. Keller*, 45 ECAB 278, 286 (1993).

³ *Id.*

⁴ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁵ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also David H. Goss*, 32 ECAB 24 (1980).

⁶ *K.C.*, Docket No. 09-1666 (issued August 25, 2010); *Fereidoon Kharabi*, *supra* note 5.

⁷ *Ronald E. Eldridge*, 53 ECAB 218 (2001).

⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ 5 U.S.C. § 8103(a).

ANALYSIS

The Office accepted appellant's claim for post-traumatic stress disorder (anxiety) and a recurrent episode of major depression. Appellant returned to work with restrictions. However, she requested compensation for 8 hours a day for various dates between October 17, 2008 and December 31, 2009, totaling 152 hours. Appellant contends on appeal that the submitted medical evidence is sufficient to establish the claimed periods of disability.

The Board finds that appellant has not submitted sufficient medical evidence in support of her claim for disability of these dates. The record contains medical notes by Dr. Patterson indicating that she was off work on October 16, 17, 18 and 28, 2008; November 28 and 29, 2008; December 2, 3, 4, 6, 9, 23, 24, 26, 27, 30 and 31, 2008; and January 1, 2 and 3, 2009. Several of these notes referred vaguely to appellant being off work for "medical reasons." These notes provided no explanation as to why she was off work on those dates or as to why she could not perform her limited-duty work assignment, or that she underwent treatment for the employment-related condition. Dr. Patterson attempted to clarify this in a March 19, 2010 note wherein he indicated that appellant had been under his care for medication management for job-related post-traumatic stress disorder, anxiety, depression and adjustment disorder. He noted that all of the off work slips related to her post-traumatic stress disorder claim. However, Dr. Patterson again failed to provide a complete rationalized medical opinion explaining his conclusion that appellant could not work on these dates due to the effects of the accepted emotional condition. Such a rationalized medical report would have included a complete and accurate discussion of her case accompanied by sound medical reasons for her absence from work on the listed dates. Dr. Patterson never indicated if appellant was experiencing an increase of symptoms that was so serious that she could not work on these dates. He never provided sound medical reasoning supporting his conclusory statement that she could not work on these dates.

Finally, the Board finds that, although appellant may be allowed time off work to attend medical appointments necessitated by her work-related condition, there is no documentation provided as to dates of the appointments, length of time for the appointments, or commuting time to and from the appointments or explaining that her employment-related condition necessitated the treatments.

The Board finds that appellant has not met her burden of proof to establish intermittent periods of disability for the claimed dates, causally related to her post-traumatic stress syndrome and major depression, recurrent episode. The medical evidence of record does not provide sufficient facts or rationalized medical opinion to support this claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish wage-loss compensation for intermittent periods of disability from October 17, 2008 through December 31, 2009, totaling 152 hours.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2010 is affirmed.

Issued: April 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board