

FACTUAL HISTORY

This is appellant's second appeal before the Board.² In the prior decision, the Board remanded the case for further development as to whether appellant had established that he sustained an emotional condition in the performance of duty. The facts and the circumstances of the case are presented in the prior decision and are hereby incorporated by reference. Pursuant to further development of the case by the Office, appellant's claim was accepted for agoraphobia with panic attacks and major depression, single episode. Appellant returned to work full time in a nursing assistant position in a location away from the psychiatric ward. He filed several CA-7 forms for various periods of temporary disability since the time the Office accepted the condition for which compensation was paid.

Appellant filed another CA-7 form, claiming a recurrence based on a period of temporary total disability from April 2, 2004 and continuing through April 12, 2004. Further medical documentation supported his request for an additional period from April 12 through 19, 2004. By letter dated April 22, 2004, the Office advised appellant that further evidence was necessary to substantiate his claim and directed him as to what type of evidence would be accepted. Appellant was provided 30 days to submit the evidence. The Office specifically noted: "It appears that a new incident on a specific day may have caused your recent work stoppage and a recurrence would involve a spontaneous worsening of your condition without intervening cause."

The employing establishment submitted a memorandum of the events that occurred with appellant beginning on March 31, 2004. The record reflects that there had been a performance discussion with appellant on that day. Appellant was unhappy with his report. The employing establishment had attempted to mediate the situation without success. On April 1, 2004, the next day, there was a complaint from one of the nurses that appellant had threatened her, for which appellant was told to leave work and go home. A witness statement in the record from Deborah Dantzler, dated April 1, 2004, noted that appellant had come into the union office "stating Ms. Cook (appellant's supervisor) told him to leave because nurse accused him of threatening her." The issue was to be discussed the next day with management, the union representative and appellant. On April 2, 2004 appellant was told to report to work before meeting with the union. Shortly thereafter, a coworker found appellant on the floor. The record notes that appellant did not lose consciousness but rather placed himself on the floor. He was taken by ambulance to the emergency room. Regarding the performance issues, appellant submitted a statement dated April 1, 2004, which read: "I dispute all issues of my job performance memorandum that was presented to me on March 31, 2004." Appellant filed a grievance over the matter on April 5, 2004.

In addition to the above documents, emergency medical treatment notes were submitted along with disability notes from the emergency room physician, Dr. Sarah Daughtridge, Board-certified in internal medicine. The treatment notes reflect that, although appellant refused treatment at first, he later agreed to be seen by Dr. Daughtridge. The record signed by Dr. Daughtridge reflects that appellant "has been under severe social stressors recently and

² Docket No. 02-851 (issued August 13, 2002). On November 1, 2000 appellant, then a 41-year-old nursing assistant filed a claim alleging that on July 31, 2000 he became aware that he had developed an anxiety disorder with social phobia, causally related to factors of his employment.

believe this precipitated his symptoms this a.m.” Further evidence consisted of medical reports, CA-20 forms, one from appellant’s treating physician, Dr. Valerie Murray, Board-certified in child and adolescent psychiatry, dated April 2, 2004 in which Dr. Murray provided a brief history of “panic attack under stressful situation with supervisor in the hospital in the unit” and another dated April 6, 2004 where Dr. Murray reiterated that appellant suffered “stressful situation with supervisor.” A further report from Dr. Murray, dated April 26, 2004, states that “[appellant] had an exacerbation of his injury at the job *i.e.*, panic attack with agoraphobia, severe. This was secondary to work-related stress between he (sic), his supervisor and a nurse. This was a worsening of his employment[-]related condition. Lessening of aggravation will be guaranteed after prior two weeks he had off.”

The Office denied appellant’s claim by decision dated June 2, 2004 finding the evidence submitted to be insufficient to prove a spontaneous worsening of his accepted condition causally related to his accepted July 31, 2000 employment injury.

On June 7, 2004 appellant disagreed with the prior decision and requested reconsideration. In support of appellant’s request, he resubmitted the emergency medical records and medical treatment slips dated April 2, 2004, and submitted new CA-7 and CA-20 forms for the period May 27 to June 8, 2004. Appellant also submitted a June 15, 2004 listing of suggested working restrictions from Dr. Murray.

By decision dated June 30, 2004, the Office declined to review the merits of appellant’s claim as the evidence submitted was cumulative, irrelevant or repetitive and therefore was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete, accurate, factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

Section 10.5(x) of the Office’s regulations provides, in pertinent part: 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ Therefore, the Board has held that, in order to establish a claim for a recurrence of disability,

³ See *Virginia Dorsett*, 50 ECAB 479 (1999); *Kenneth R. Love*, 50 ECAB 193 (1998).

⁴ 20 C.F.R. § 10.5(x).

appellant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.⁵

ANALYSIS -- ISSUE 1

Appellant submitted a Form CA-7 on April 2, 2004 claiming wage loss for temporary total disability beginning on that date, and running through April 19, 2004. His work stoppage was viewed as a recurrence of disability and, therefore, on April 22, 2004 the Office issued him a letter requesting both factual and medical evidence to support that his work-related conditions had worsened, causing him to stop working on April 2, 2004. Appellant was advised that he bore the burden of proving his contention, and the Office noted that the evidence of record would have to demonstrate a spontaneous worsening of his accepted conditions. However, no such evidence was presented. Appellant has failed to meet his burden that he suffered a recurrence of disability.

The evidence submitted by appellant in furtherance of his recurrence, in fact, support that this period of disability related to a superseding incident. The emergency medical records of Dr. Daughtridge note that appellant had “been under severe social stressors recently and believe this precipitated his symptoms this a.m.” Further, Dr. Murray’s report provided a brief history of a “panic attack under a stressful situation with his supervisor in the hospital unit.”

The Board notes that the record does not provide a complete account of the events that led up to appellant’s work stoppage on April 2, 2004, however, the factual evidence of record supports that appellant had a discussion with his supervisor on March 31, 2004 regarding his performance and later disputed the rating by filing a grievance. Further, appellant’s supervisor reported asking him to leave on April 1, 2004 after an encounter he had with a nurse, and that appellant’s supervisor was to meet with him and his union representative the next day, on April 2, 2004. The supervisor reported that on April 2, 2004 appellant arrived early and was told to return to his work and that he would be advised when his union representative arrived. Later, appellant was found on the floor, after which he was taken to the emergency room. There is no indication in the record that appellant lost consciousness, rather that appellant had simply placed himself on the floor and waited for the emergency personnel to take him to the hospital.

This series of events supports that this change in appellant’s medical condition was not spontaneous but rather was indeed due to a superseding event. Clearly, the negative performance report, which was bad enough for appellant to categorically deny all the issues and for him to shortly thereafter file a grievance, was an intervening event that could have caused the period of temporary disability or the intervening event could have been the incident with the nurse, whereby he was sent home from work. In either case, an intervening event was more likely the trigger for the change in medical condition. The record does not reflect that appellant suffered a spontaneous change in appellant’s condition.

None of the medical reports provide a reasoned opinion that the disability was causally related to his accepted injury. The reports are devoid of any specificity as to causal relationship, however, they consistently support that recent events likely caused the disability. The Board

⁵ *Carlos A. Marrero*, 50 ECAB 117 (1998).

finds that appellant has not met his burden of proof that his temporary period of disability was causally related to his originally accepted conditions.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act does not grant an employee the right to a merit decision of his case. Rather, this section vests the Office with discretionary authority to review prior decisions.⁶ To require the Office to reopen a case for merit review under section 8128(a), Office regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.⁷ When an employee fails to meet one of the regulatory requirements for reopening a case, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a).⁸ Evidence that repeats or duplicates evidence already in the case record does not constitute a basis for reopening a claim for merit review.⁹ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case for merit review.¹⁰

ANALYSIS -- ISSUE 2

The evidence in support of appellant's reconsideration request did not meet the criteria for a merit review. In fact, the evidence was either repetitious of previously submitted and considered evidence or completely irrelevant in that it addressed time frames after the disabling condition in issue. The emergency medical records had already been considered by the Office and the remaining evidence related to a period subsequent to the time frame at issue here rendering them irrelevant. As no new, probative, substantial, relevant and not previously considered evidence was submitted and as appellant made no argument that the Office erroneously applied or interpreted a point of law or advanced a point of law not previously considered by the Office, he has not established a basis upon which to reopen his claim for further review on its merits.

Therefore the Board finds that the Office properly denied reopening appellant's case for further review on its merits.

⁶ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ *James R. Bell*, 52 ECAB 414 (2001).

¹⁰ *Alan G. Williams*, 52 ECAB 180 (2000).

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of his previous injury and that the Office properly denied reopening appellant's case for further review on its merits.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 30 and 2, 2004 are hereby affirmed.

Issued: July 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member