

FACTUAL HISTORY

On April 6, 2004 appellant, then a 39-year-old air traffic control specialist, filed an occupational disease claim alleging that he sustained post-traumatic stress disorder (PTSD) beginning April 25, 2001 due to stressful incidents at work, including three near collisions of aircraft. On August 13, 2004 the Office accepted his claim for PTSD caused by operational errors which resulted in “near miss” aircraft incidents. The Office advised appellant that he needed to submit medical evidence documenting any periods of disability. On June 24, 2002 he was assigned to temporary light duty performing administrative tasks in the quality assurance section because he was unable to perform his regular duties. From November 17 to December 14, 2003 appellant was assigned to administrative tasks in the plans and programs section. On December 15, 2003 he was assigned to “A-side Duties” working with air traffic controllers. Appellant used sick leave beginning December 15, 2003 and, beginning in April 2004, LWOP. He was permanently medically disqualified from air traffic control work by the regional flight surgeon on November 12, 2003.

On August 25, 2004 appellant filed a claim for leave buyback for the period December 20, 2003 to April 2, 2004 for disability causally related to his accepted PTSD. He filed a claim for compensation for lost wages for April 3, 2004 and continuing.²

On September 29, 2004 the Office advised appellant that he needed to submit additional medical evidence establishing that his claimed periods of total disability were causally related to his accepted PTSD.

In a report dated October 25, 2004, Dr. Joel S. Steinberg, a Board-certified internist specializing in forensic psychiatry and an Office referral physician, provided a comprehensive psychiatric evaluation of appellant’s condition based on the medical records, statement of accepted facts, mental status examination and clinical interview. He diagnosed PTSD and panic disorder, both in a moderately good degree of remission. Dr. Steinberg stated:

“[Appellant] had been assigned to office duty until October 2003. He had then been assigned to another office duty. By Christmas of 2003 there was no more work to do with regard to the second assignment of office duty. As a result, he was ‘put back on the floor’ as an associate on the A-side. His task there was to coordinate and disseminate various kinds of information. However, when he returned to the floor, he found that many of the symptoms that he had previously experienced (which primarily were panic attacks ...) returned suddenly and in severe form.”

* * *

² Employing establishment time analysis forms show that appellant used sick and annual leave for intermittent dates between December 15, 2003 and April 14, 2004. He worked 56 hours from December 16 to 23, 2003, five hours from January 2 to 3, 2004 and 16 hours from January 5 to 6, 2004. Appellant was in LWOP status from April 5 to 9 and 14, 2004 (4 hours) and continuing. He used 16 hours of sick leave for April 12 to 13, 2004 and 4 hours for April 14, 2004.

“I asked [appellant] if he presently was working. He replied that he was not working now. [Appellant] had last worked in January 2004. He thought that he might have lasted as long as seven or even ten days once he had been transferred out of the office duty to the A-side in January 2004. [Appellant] recalled that as he entered the A-side for a return to work in the active part of controlling airplanes that he had developed all of his old apprehensions again.”

* * *

“The most significant events in terms of [appellant’s] inability to carry out his job was his *forced return to work in early January 2004 after most of his psychiatric symptoms were in a considerable degree of remission*. He still found that he experienced an overwhelming sense of anxiety when he was put out on the active floor.”

* * *

“[Appellant] has been totally disabled from his work as an air traffic controller since January 13, 2004. However, *he has not been totally disabled from work*. [Appellant] retains the capacity to do a wide variety of substantial gainful activities.”

* * *

“[Appellant] *currently is relatively asymptomatic and can be expected to remain that way as long as he is not forced to take an active role as an air traffic controller*. He found that he was able to work at the tower in other capacities without disabling symptoms. [Appellant] *simply cannot function as an air traffic controller*.” (Emphasis in the original.)

In an undated letter to his representative, appellant stated that he did not believe Dr. Steinberg was fully aware of the nature of his A-side work in 2004. He stated that the A-side was a part of the air traffic control team and, even though he did not talk to the air traffic controllers directly, he had direct contact with other individuals in the control room and his duties as part of the air traffic control team made him responsible if anything went wrong. He could be held accountable for an operational error. Appellant indicated that it was the direct contact with the air traffic control room that aggravated his PTSD.

By decision dated June 2, 2006, the Office denied appellant’s claim for leave buy back and compensation for lost wages on the grounds that the medical evidence did not establish that he was totally disabled for work.

Appellant requested an oral hearing that was held on March 29, 2006.

By decision dated June 14, 2006, an Office hearing representative affirmed the June 2, 2005 decision.

LEGAL PRECEDENT

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.³ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁴ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁵

In situations where compensation is claimed for periods where leave was used, the Office has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.⁶ The Office determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buyback the leave used.⁷

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that he cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁸

ANALYSIS

Appellant has the burden to provide medical evidence establishing that he was totally disabled for the period December 20, 2003 and continuing due to a worsening of his accepted work-related condition, PTSD, or a change in his job duties such that he was unable to perform his light-duty work. However, it is well established that proceedings under the Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to

³ *David H. Goss*, 32 ECAB 24 (1980).

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

⁵ *Edward H. Horten*, 41 ECAB 301 (1989).

⁶ *Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425, which provides: “The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing [establishment]. Forms CA-7 and CA-7b are used for this purpose.”

⁷ *Laurie S. Swanson*, *supra* note 6.

⁸ *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

compensation, the Office shares responsibility in the development of the evidence.⁹ The Office has an obligation to see that justice is done.¹⁰ Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.¹¹

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

Dr. Steinberg found that appellant was totally disabled from his work as an air traffic controller but indicated that appellant was able to work at the employing establishment in other capacities without disabling symptoms. He indicated that, when appellant was assigned to the A-side, returning to work in the active part of controlling airplanes, he developed the previous symptoms of his PTSD suddenly and in severe form. Dr. Steinberg stated that appellant could be expected to remain asymptomatic as long as he was not forced to take an active role as an air traffic controller. Appellant indicated that the A-side job, to which he was assigned on December 15, 2003, gave him an active role in the air traffic control team and, even though he did not talk to the air traffic controllers directly, he had direct contact with other individuals in the control room. He stated that his duties as part of the air traffic control team made him responsible if anything went wrong and he could be held accountable for an operational error. Appellant indicated that it was the direct contact with the air traffic control room functions that aggravated his PTSD.

The Board finds that further development of the medical evidence is needed on the issue of whether the change in the nature and extent of appellant's light-duty assignment in January 2004 caused a change in his accepted PTSD such that he was totally disabled. While his first two light-duty assignments involved administrative duties in an area away from the air traffic control room, his change in light-duty assignment in January 2004 required his involvement in air traffic control functions which he alleged caused a recurrence of total disability causally related to his accepted PTSD.

CONCLUSION

The Board finds that this case requires further development of the medical evidence. On remand, the Office should ask Dr. Steinberg for a supplemental report addressing the issue of whether appellant's change in light-duty work on December 15, 2003, in which he had an active role in the air traffic control functions, caused an aggravation of his accepted PTSD and a recurrence of total disability. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁹ See *Udella Billups*, 41 ECAB 260 (1989).

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ See *Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2006 is set aside and the case is remanded for further development consistent with this decision.

Issued: January 29, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board