United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 08-1217**
	)	**Issued: October 6, 2008**
U.S. POSTAL SERVICE, CARDISS COLLINS FACILITY, Chicago, IL, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 18, 2008 appellant filed a timely appeal from a January 3, 2008 decision of the Office of Workers' Compensation Programs, denying her claim for disability beginning on July 25, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she was unable to work eight hours a day beginning July 25, 2006 due to her September 25, 2005 employment injury.

FACTUAL HISTORY

On September 25, 2005 appellant, then a 56-year-old mail processor, sustained a postconcussion syndrome and aggravation of a panic disorder when a shelf struck her on the head as she lifted it while getting mail from an all-purpose container. She was released to return

to work for four hours a day as of March 18, 2006. Appellant returned to full-time regular work on July 18, 2006 but resumed working four hours a day on July 25, 2006.

In progress notes dated July 13, 2006, Dr. Harold F. McGrath, an attending psychiatrist, reviewed appellant's medical history and course of treatment. He stated that she could return to work for eight hours a day. In a July 28, 2006 disability certificate, Dr. McGrath indicated that appellant should work for four hours a day.

Appellant filed a claim for leave without pay for four hours a day beginning July 25, 2006.

On August 16, 2006 the Office asked appellant to provide rationalized medical evidence establishing that her ability to work only four hours a day beginning July 25, 2006 was due to her September 25, 2005 employment injury.

In an August 21, 2006 disability certificate, Dr. David A. Olmstead, a Board-certified specialist in internal medicine, stated that appellant was unable to perform full-time work due to her anxiety disorder, panic disorder and posthead trauma concussion sustained September 25, 2005. Appellant required psychiatric follow up and he recommended long-term disability.

By letter dated August 31, 2006, the Office requested a medical report with a description of ongoing symptoms, test results, objective findings and a well-reasoned explanation as to how her symptoms were causally related to her September 25, 2005 employment injury.

In progress notes dated September 7, 2006, Dr. McGrath reviewed appellant's medical history and noted symptoms of panic, anxiety, dizziness and nausea. She attributed appellant's symptoms to being struck on the head on September 25, 2005. Appellant experienced panic attacks while shopping and driving. She had a feeling of apprehension that something bad was going to happen at home two or three times a week and at work when she attempted to walk across the floor. Dr. McGrath provided the results of a mental status evaluation. Appellant was sad but fully communicative. There were no signs of psychosis, associations were intact, thinking was logical and thought content was appropriate. Cognitive functioning, short and long-term memory, the ability to abstract and do arithmetic calculations was intact. There were no signs of anxiety or hyperactive or attention difficulties. Dr. McGrath did not address the issue of her work capacity.

In a form report dated September 5, 2006, Dr. Olmstead indicated that appellant was unable to work for eight hours a day indefinitely due to headaches, dizziness and anxiety caused by her postconcussion syndrome and anxiety/pain disorder.

Appellant submitted April 24 and September 9, 2006 reports from two chiropractors who diagnosed degenerative joint and disc disease, cervicalgia, cephalgia, vertigo and panic attacks.[1]

By decision dated December 11, 2006, the Office denied appellant's claim on the grounds that she failed to establish that her ability to work only four hours a day beginning July 25, 2006 was causally related to her September 25, 2005 employment injury.

Appellant requested reconsideration and submitted additional evidence. In a July 29, 2007 report, Dr. McGrath stated that in January 2006 appellant presented with symptoms of generalized anxiety, avoidance of locations or situations that she recognized as a trigger for such anxiety and moderate feelings of tension. Appellant indicated that her anxiety had escalated into fully expressed panic attacks that interfered with her normal daily functioning capacity. Dr. McGrath stated that he had treated appellant on 11 occasions. During the course of these visits, "she mentioned that she was hit on the head on September 25, 2005 at work." Appellant informed him that she was off work for a long time and returned to work on a part-time basis. Dr. McGrath noted some improvement in her symptoms beginning May 24, 2007, but she continued to experience periods of feeling light headed. He provided his progress notes dated October 5, 2006 to May 24, 2007 in which he reviewed appellant's course of treatment and provided mental status evaluations. Dr. McGrath noted that she was working four hours a day. Dr. McGrath's November 30, 2006 notes indicated appellant's comment, "Lawyer told me to stay on [four] hours." In his January 30, 2007 notes, he indicated appellant's statement that her "work performance was marginal" and she wanted to increase her hours at work. On March 27, 2007 appellant denied having feelings of anxiety except at work. She advised Dr. McGrath that she still could not work eight hours and most of her shifts were six hours. On May 24, 2007 appellant complained of uncomfortable sensations of excessive muscular tension at work and a concern that she would "fall out." Dr. McGrath did not provide an opinion on the issue of whether appellant's inability to work more than four hours a day was due to her September 25, 2005 employment injury.

In a January 3, 2007 report, Dr. Olmstead indicated that he saw appellant for her September 25, 2005 accepted postconcussion syndrome and panic disorder on various dates between September 26, 2005 and November 27, 2006. He stated:

> "[Appellant's] injuries sustained on September 25, 2005 resulted in a permanent disability due to recurrent postconcussion symptoms of dizziness and headaches. Also, the injuries on September 25, 2005 resulted in the exacerbation of a chronic anxiety disorder due to post-traumatic stress disorder.

[1] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under the Federal Employees' Compensation Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist. *See Mary A. Ceglia*, 55 ECAB 626 (2004). The Office's implementing regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb) (2006) The chiropractors who treated appellant did not diagnosis a subluxation demonstrated by x-ray. Therefore, they are not physicians as defined in the Act and their reports are not probative on the issue of whether appellant's ability to work only four hours a day beginning July 25, 2006 was causally related to her September 25, 2005 employment injury.

> "[Appellant's] reduction in work hours to four hours per day was causally related to the injuries sustained on September 25, 2005. These permanent disabling conditions have reached maximum medical improvement as of November 27, 2006. These permanent residuals of her injuries will not allow her to tolerate work as a mail processor on an eight-hour a day basis."

By decision dated January 3, 2008, the Office denied modification of its December 11, 2006 decision.

LEGAL PRECEDENT

Under the Act, a claimant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that appellant was disabled for work as the result of an employment injury.[2] Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.[3] 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.[4]

ANALYSIS

On July 13, 2006 Dr. McGrath stated that appellant could return to work for eight hours a day. In a July 28, 2006 disability certificate, he indicated that appellant should work for only four hours a day. Dr. McGrath provided no explanation for his change in opinion as to the number of hours that she could work. In progress notes dated September 7, 2006 to May 24, 2007, he reviewed appellant's medical history and provided the results of mental status evaluations. Dr. McGrath found that she was fully communicative. There were no signs of psychosis, associations were intact, thinking was logical and thought content was appropriate. There were no signs of depression or mood elevation. Cognitive functioning, short and long-term memory, the ability to abstract and do arithmetic calculations was intact. There were no signs of anxiety or hyperactive or attentional difficulties. On March 27, 2007 appellant denied having feelings of anxiety except at work. She advised Dr. McGrath that she still could not work eight hours a day. On May 24, 2007 appellant complained of uncomfortable sensations of excessive muscular tension at work and a concern that she would faint. On July 29, 2007 Dr. McGrath noted appellant's belief that her anxiety had progressed to panic attacks that interfered with her normal daily functioning. Dr. McGrath's reports are not sufficient to establish that appellant was unable to work for eight hours a day beginning July 25, 2006 due to her September 25, 2005 employment injury. He did not provide sufficient medical rationale explaining how her inability to work eight hours a day was causally related to being struck on the head by a shelf on September 25, 2005. Such an explanation is particularly important in light of the fact that Dr. McGrath found appellant capable of working eight hours a day on July 13, 2006

[2] *David H. Goss,* 32 ECAB 24 (1980).

[3] *Debra A. Kirk-Littleton,* 41 ECAB 703 (1990).

[4] *Edward H. Horten,* 41 ECAB 301 (1989).

and the employing establishment reported that she performed full-time regular work as of July 18, 2006. His reports do not explain why appellant was unable to work eight hours a day beginning July 25, 2006 due to her accepted postconcussion syndrome and aggravation of a panic disorder sustained on September 25, 2005.

Dr. Olmstead stated that appellant was unable to work for eight hours a day indefinitely due to her anxiety disorder, panic disorder and posthead trauma concussion sustained on September 25, 2005. He indicated that appellant's accepted conditions resulted in a permanent disability caused by recurrent postconcussion symptoms of dizziness and headaches and exacerbation of a chronic anxiety disorder. Dr. Olmstead stated that permanent residuals of appellant's injuries would not allow her to perform work as a mail processor on an eight-hour a day basis. However, Dr. Olmstead did not discuss the period in question; appellant's claimed disability for full-time work beginning July 25, 2006. He provided no test results or other objective evidence that her accepted conditions had worsened to the point that she was unable to work for eight hours a day. Dr. Olmstead did not provide sufficient medical rationale explaining how appellant's inability to work an eight-hour day beginning July 25, 2006 was causally related to being struck on the head by a shelf on September 25, 2005. As noted, such medical rationale is particularly important in light of the fact that Dr. McGrath found appellant capable of working eight hours a day on July 13, 2006 and she returned to full-time regular work on July 18, 2006. For these reasons, Dr. Olmstead's reports are not sufficient to establish that appellant was unable to work for eight hours a day beginning July 25, 2006 due to her September 25, 2005 employment injury.

Appellant failed to provide a thorough rationalized medical report explaining why she was unable to work eight hours a day beginning July 25, 2006 due to her September 25, 2005 employment injury. Therefore, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she was unable to work eight hours a day beginning July 25, 2006 due to her September 25, 2005 accepted conditions, a postconcussion syndrome and aggravation of a panic disorder.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2008 is affirmed.

Issued: October 6, 2008
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