United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 09-962**
	)	**Issued: December 28, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Birmingham, AL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2009 appellant filed a timely appeal from a February 5, 2009 decision of the Office of Workers' Compensation Programs denying psychotherapy and wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she was totally disabled from January 3 to February 4, 2008 as a result of her accepted work injury; and (2) whether the Office abused its discretion by denying her request for treatment with a psychotherapist.

FACTUAL HISTORY

On September 7, 2006 appellant, then a 30-year-old rural carrier, filed a traumatic injury claim alleging that on August 28, 2006 she developed right shoulder pain as a result of casing and delivering mail to multiple routes. The Office accepted her claim for right shoulder strain and impingement with tenosynovitis. Appellant worked modified duty until she underwent right shoulder surgery on May 8, 2007. On September 18, 2007 Dr. Daryl G. Dykes, a Board-certified

orthopedic surgeon, released her to return to full duty with no restrictions. The Office paid wage-loss compensation.

On February 2, 2008 appellant filed a Form CA-7 claim for compensation for the period January 3 to February 4, 2008. Theron M. Covin, Ed.D., a licensed professional counselor, submitted a January 21, 2008 report. He reviewed the history of injury, noting that appellant's family physician took her off work due to job-related stress. When appellant was released to return to work, the employing establishment gave her a letter stating she had to undergo a mental health evaluation prior to returning to work. Mr. Covin diagnosed major depression and generalized anxiety disorder. He opined that chronic pain from appellant's right shoulder caused the major depression and anxiety and recommended that she return to work with physical restrictions. In a January 30, 2008 attending physician's report, Mr. Covin stated that appellant was treated on January 21, 29 and 30, 2008 and was totally disabled since January 3, 2008. He opined that her major depression and generalized anxiety disorder was the direct result of chronic pain from the shoulder injury. Mr. Covin recommended ongoing psychotherapy.

In a February 7, 2008 letter, the employing establishment controverted the claim. It noted that appellant returned to regular duty for her shoulder sprain on September 5, 2007.

In a March 3, 2008 letter, the Office advised appellant that additional medical evidence was needed to establish her disability. Appellant was referred for a fitness-for-duty examination after a January 3, 2008 incident at work and her family physician held her off work due to job stress. The Office noted that Mr. Covin reported that she had chronic pain but could return to light duty; however, the medical evidence of record established that she had pain but was physically able to resume regular duties. There was no evidence that appellant's disability beginning January 3, 2006 was a recurrence of her right shoulder condition. It advised that she could file a new claim for the January 3, 2008 incident.

In a March 11, 2008 letter, appellant addressed the circumstances surrounding the January 3, 2008 incident in which she alleged a personality conflict with her postmaster and a coworker. She contended that the employing establishment denied her request for accommodation on February 28, 2008.

On April 24, 2008 the Office approved appellant's request for treatment with Mr. Covin.

In additional reports, Mr. Covin advised that appellant was totally disabled from February 25 through March 10, 2008 and was able to return to work with physical and psychological restrictions on March 11, 2008. Appellant could resume full-duty work on March 31, 2008.

In a May 20, 2008 letter, the Office noted that appellant had not provided an explanation for traveling 300 miles round trip for treatment by Mr. Covin. It also inquired why she scheduled her appointments on her scheduled workday. The Office stated that the distance to Mr. Covin's office was not a reasonable distance to seek treatment as he was not a physician and could not provide any restrictions in her case. Appellant was also advised that her CA-7 forms were not completed correctly. She was provided 30 days to submit medical evidence from a

physician addressing why she should continue under the care of Mr. Covin. Appellant did not respond.

In a July 21, 2008 decision, the Office denied further treatment by Mr. Covin or travel to his office. It also denied appellant's claim for wage loss from January 3 through February 4, 2008.

On July 24, 2008 appellant's attorney requested a telephonic hearing, which was held on November 13, 2008. Appellant testified that she was seeking help from the Employee Assistance Program when her supervisor requested a fitness-for-duty examination. She refused and was subsequently taken off work by her physician until January 14, 2008. When the employing establishment advised appellant that she needed medical clearance in order to return to work, she sought counseling with Mr. Covin as she was unable to locate anyone in her area within the time frame provided. Appellant stated that she was not interested in mileage reimbursement but wanted to be reimbursed for lost time from work.

In a December 11, 2008 report, Dr. Gary L. Howard, a Board-certified internist, stated that appellant had anxiety and depression which necessitated psychiatric treatment after she sustained a work-related right shoulder injury and underwent surgery. He indicated that appellant was out of work for approximately three months as a result of her mental condition. Dr. Howard indicated that she had significant improvement and had been granted permission to return to work without restrictions. He noted her shoulder was better but still had "some problems."

By decision dated February 5, 2009, the Office hearing representative affirmed the July 21, 2008 decision.[1]

LEGAL PRECEDENT -- ISSUE 1

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.[2] As used in the Federal Employees' Compensation Act, the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[3] Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[4] Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[5] The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing

[1] On January 14, 2009 the Office denied appellant's claim for a schedule award. Appellant did not appeal this decision to the Board.

[2] *William A. Archer*, 55 ECAB 674 (2004).

[3] *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

[4] *See Fred Foster*, 1 ECAB 21 (1947).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

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]

Where an employee claims that, a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[7] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.[8] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS -- ISSUE 1

Appellant has an accepted injury for right shoulder strain impingement and tenosynovitis. She claimed total disability from January 3 through February 4, 2008. Appellant has the burden to establish through probative medical evidence that she was disabled causally related to her accepted injury.

In support of her claim, appellant submitted reports from Mr. Covin, a licensed counselor, who stated that she had major depression and a generalized anxiety disorder for which she was disabled during the claimed period. Mr. Covin opined that chronic pain from her right shoulder condition caused major depression and anxiety. However, his reports are of no probative medical value as he is not a "physician" as defined under the Act.[12] The term physician includes a clinical psychologist; however, the evidence does not establish that Mr. Covin is a clinical psychologist. Therefore, his opinion regarding the cause of appellant's condition or disability is of no probative medical value.

---

[6] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, 55 ECAB 674 (2004).

[7] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[9] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[10] *Phillip L. Barnes* 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *V.W.*, 58 ECAB ___ (Docket No. 07-234, issued March 22, 2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[12] 5 U.S.C. § 8101(2). Section 8101(2) 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).

In a December 11, 2008 report, Dr. Howard stated that appellant required psychiatric treatment for anxiety and depression after her shoulder injury and surgery and that she was out of work for approximately three months. He reiterated that appellant's shoulder still had "some problems," but offered no explanation of the relationship of her emotional condition to the accepted shoulder conditions and did not specifically address whether the shoulder "problems" were work related or disabling.[13] Dr. Howard's report does not establish compensable disability during the period claimed or establish that her emotional condition is due to the accepted shoulder injury.

The remaining medical evidence of record does not address whether appellant had employment-related disability during the period claimed. Without reasoned medical evidence supporting that she was disabled, she has not met her burden of proof to establish wage loss from January 3 through February 4, 2008.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Federal Employees' Compensation Act[14] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[15]

In interpreting section 8103 of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.[16] The Office has the general objective of ensuring that an employee recovers from her injury to the fullest extent possible in the shortest amount of time. It has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[17] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[18] It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[19]

---

[13] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[14] 5 U.S.C. §§ 8101-8193.

[15] *Id.* at § 8103; *see also L.D.*, 59 ECAB ___ (Docket No. 08-966, issued July 17, 2008).

[16] *See P.C.*, 59 ECAB ___ (Docket No. 07-1691, issued June 20, 2008).

[17] *A.O.*, 60 ECAB ___ (Docket No. 08-580, issued January 28, 2009); *L.W.*, 59 ECAB ___ (Docket No. 07-1346, issued April 23, 2008); *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[18] *L.W., id.*

[19] *J.C.*, 58 ECAB ___ (Docket No. 07-530, issued July 9, 2007).

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[20] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[21] Proof of causal relation must include rationalized medical evidence.[22]

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained employment-related right shoulder strain, right shoulder impingement and tenosynovitis. It initially paid for treatment by Mr. Covin but denied authorization for further treatment when it became aware that he was not treating appellant for an accepted condition.[23] Appellant has the burden of proof to establish that her treatment was for the effects of an employment-related condition.[24]

As noted, the Office is obligated to authorize and pay for treatments it reasonably finds likely to cure, give relief or aid in lessening the period of disability associated with an accepted employment-related condition.[25] It is not obligated to compensate appellant for treatment of nonaccepted conditions.[26] Appellant must first establish that psychotherapy is for treatment of a condition that is causally related to her employment injury and that it is medically warranted.[27] As noted, Mr. Covin is not a physician under the Act. His opinion on causal relation and whether appellant's psychotherapy is necessary due to the accepted injury is of no probative value. Dr. Howard's report does not provide a specific opinion on whether such treatment was necessary to treat her accepted shoulder condition.

The Office provided appellant the opportunity to submit evidence to support her need for psychotherapy. However, the evidence appellant provided is insufficient. The Office properly denied authorization for continued treatment with Mr. Covin.

---

[20] *R.L.*, 60 ECAB ___ (Docket No. 08-855, issued October 6, 2008).

[21] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

[22] *Id.; Bertha L. Arnold*, 38 ECAB 282 (1986).

[23] The fact that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related. *See Gary L. Whitmore*, 43 ECAB 441 (1992); *James F. Aue*, 25 ECAB 151 (1974). *See also Sophia Maxim (Edward Gerard Maxim)* 10 ECAB 61 (1958) (gratuitous authorization of medical services for a condition unrelated to the employment do not create a liability on the Office to furnish further benefits).

[24] During the November 13, 2008 telephonic hearing, appellant advised she was not seeking reimbursement of travel expenses.

[25] *See supra* note 15.

[26] *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[27] *Id.*

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her disability for the period January 3 to February 4, 2008 was as a result of her accepted work injury. The Board further finds that the Office properly denied authorization for her continued treatment with Mr. Covin.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2009 is affirmed.

Issued: December 28, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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