United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 08-2369**
	)	**Issued: June 18, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 29, 2008 appellant filed a timely appeal from an October 11, 2007[1] merit decision of the Office of Workers' Compensation Programs' denying modification of an August 1, 2007 merit decision.[2] The Board also has jurisdiction to review an August 15, 2008 nonmerit decision denying reconsideration of an October 11, 2007 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits and nonmerits of appellant's case.

[1] The record reflects that both appellant's appeal request and an August 15, 2008 letter from the Office reference an October 17, 2007 Office decision. The record does not contain a decision dated October 17, 2007. The record does contain a decision dated October 11, 2007. Assuming that this discrepancy is an error and not a defect in the record, the Board will substitute October 11 for October 17 as the date of the final decision.

[2] On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

ISSUES

The issues are: (1) whether appellant established that he was disabled from work between May 4 and August 3, 2007; and (2) whether the Office properly denied reconsideration of his claim.

FACTUAL HISTORY

On February 14, 2007 appellant, a 50-year-old sales service associate filed a traumatic injury claim (Form CA-1) for stress and anxiety. He attributed his injury to an incident when an individual pointed a gun at him while robbing the employing establishment. Appellant also believed that the employing establishment was harassing him by requesting medical evidence in support of his claim. He did not return to work.

In a March 20, 2007 medical report, Dr. Daniel Spurlock, a psychiatrist, diagnosed appellant with post-traumatic stress disorder (PTSD). In a subsequent note dated March 21, 2007, he reported that he was treating appellant for acute PTSD.

By decision dated March 26, 2007, the Office denied appellant's claim because the evidence of record was insufficient to establish that he had sustained an injury as defined by the Federal Employees' Compensation Act.

In a May 3, 2007 medical report, Dr. Spurlock asserted that appellant was able to return to work. He explained that he had evaluated appellant on several occasions for symptoms of PTSD, following a robbery at his place of employment. Dr. Spurlock stated "I now believe that [appellant] is able to return to work." He also noted appellant's concerns regarding handling of money or returning to work at a station that had been robbed, as well as his concerns regarding deadline pressures. Dr. Spurlock stated, "if it can be arranged for [appellant] to be relocated to a different facility that might help to allay his concerns…. If there are any temporary positions available where he can get back into the day-to-day pattern of working, I guess that would be optimal. However, I realize there are pressures with any job and I feel that [appellant] should be capable, at this point, in functioning at his previous level."

By letter dated August 1, 2007, the Office accepted his claim for PTSD. By separate decision dated August 1, 2007, it disallowed appellant's claim for wage-loss compensation benefits after May 3, 2007 because the evidence of record, specifically a medical report (Form CA-17) dated April 30, 2007, and the medical note dated May 3, 2007. The Office noted that appellant's claim remained open for medical benefits for the accepted condition.

Appellant submitted a compensation claim (CA-7 form) for lost wages for April 23 through August 3, 2007. Time analysis revealed appellant claimed 592 hours leave without pay (LWOP). By informational letter dated August 16, 2007, the Office noted that the employing

establishment reported that appellant used sick leave for the period April 23 through May 4, 2007 and therefore was not entitled to compensation for this period.[3]

Appellant submitted reports from Robert R. Pauly, a licensed clinical social worker.

By letter dated August 23, 2007, appellant requested reconsideration, and by decision dated October 11, 2007, the Office denied modification of its August 1, 2007 decision.

Appellant submitted duplicate copies of the documentation from his social worker and, by request dated October 11, 2007, he requested reconsideration.

By decision dated August 15, 2008, the Office denied reconsideration of its October 11, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[4] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[5]

For each period of disability claimed, appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of his employment injury. 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.[6] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[7] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly

[3] As to the claim for compensation from April 23 through May 4, 2007, the Office made only a brief finding in an informational letter that appellant had used paid leave for this period. Even if appellant used paid leave, he is not precluded from claiming compensation for wage loss. The Office must adjudicate the claim for compensation and make a determination as to whether an employment-related disability for the claimed period is established. *Glen M. Lusco*, 55 ECAB 148 (2005); *see also* 20 C.F.R. § 10.425

[4] 5 U.S.C. §§ 8101-8193.

[5] *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

[7] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained PTSD on February 13, 2007 as a result of a robbery at the employing establishment. Appellant claimed that this condition caused disability from work from May 4 through August 3, 2007. The Board finds that this contention is not supported by the medical evidence of record.

Following the February 13, 2007 employment incident, appellant sought treatment for his PTSD from Dr. Spurlock. On May 3, 2007 Dr. Spurlock reported that, appellant could return to work and that appellant "was capable of functioning at his previous level." Appellant did not submit any probative medical evidence after May 3, 2007 to establish any further periods of disability.

Appellant submitted several form reports and notes from Mr. Pauly, a social worker. The evidence of record signed by Mr. Pauly, a social worker, is insufficient to meet appellant's burden of proof and is of no probative medical value as social workers are not physicians for purposes of the Act.[10] Thus his reports and opinions do not constitute competent medical evidence.[11]

As there is no reliable, probative rationalized medical evidence of record to support a finding of disability after May 3, 2007, the Board finds that appellant did not establish that he was disabled from work from May 4 through August 3, 2007.

[8] *G.T.*, *supra* note 7; *Fereidoon Kharabi*, *supra* note 6.

[9] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See Phillip L. Barnes*, 55 ECAB 426 (2004). *See* 5 U.S.C. § 8101(2).

[11] *See* 5 U.S.C. § 8101(2). *See* also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinions, in general, can only be given by a qualified physician).

LEGAL PRECENT -- ISSUE 2

Section 8128(a) of the Act[12] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[13]

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[14] Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[15] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[16]

ANALYSIS -- ISSUE 2

Appellant's request for reconsideration dated October 11, 2007, neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a new legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second requirements under section 10.606(b)(2).[17]

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Board, appellant submitted a collection of medical reports from Mr. Pauly. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[18] As these reports were previously submitted and considered by the Office they are of no probative value and are insufficient to meet appellant burden of proof.

---

[12] 5 U.S.C. § 8128(a) ([t]he Secretary of Labor may review an award for or against payment of compensation at any time on appellant's own motion or on application).

[13] *Jeffrey M. Sagrecy*, 55 ECAB ___ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

[14] 20 C.F.R. § 10.606(b)(2).

[15] *Id*. at § 10.608(b).

[16] *Annette Louise*, 54 ECAB 783 (2003).

[17] 20 C.F.R. §§ 10.608(b)(2)(i) and (ii).

[18] *See Brent A. Barnes*, 56 ECAB 336 (2005) (evidence that is repetitious or duplicative of evidence already in the case record does not constitute a basis for reopening the claim).

As appellant did not submit any relevant and pertinent new evidence, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).[19]

CONCLUSION

The Board finds that appellant has not established that he was disabled from work for the periods between May 4 and August 3, 2007. Furthermore, the Board finds that the Office properly denied his request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2007 and August 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[19] 20 C.F.R. § 10.608(b)(2)(iii).