United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 10-878**
	)	**Issued: December 17, 2010**
GENERAL SERVICES ADMINISTRATION, OFFICE OF FEDERAL SUPPLIES & SERVICES, Duluth, GA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 17, 2010 appellant filed a timely appeal from a September 29, 2009 merit decision of the Office of Workers' Compensation Programs terminating his compensation. He also appealed an October 27, 2009 nonmerit decision denying his request for reconsideration. 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 the Office properly terminated appellant's compensation effective March 15, 2009 on the grounds that he had no further disability due to his accepted work injury; (2) whether it properly terminated his authorization for medical benefits; and (3) whether the Office properly denied appellant's request for further review of the merits of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

The Office accepted that on May 24, 1983 appellant, then a 37-year-old warehouse worker, sustained low back strain with sciatica and a bulging disc at L4-5 after he injured his back lifting a box at work. It further accepted post-traumatic stress disorder (PTSD) as a result of his work injury. Appellant received compensation for total disability from 1986 onward.

In a report dated January 21, 2008, Dr. Richard W. Cohen, an attending Board-certified orthopedic surgeon, diagnosed chronic cervical and lumbar degenerative disc disease with intermittent radiculopathy and chronic disability.[1] He found that appellant was disabled from work.

On January 28, 2008 Dr. Shel Sharpe, a psychiatrist, diagnosed psychotic depression, paranoia, possible schizoaffective disorder and PTSD due to the accepted back injury "and to the continuation of intrusive memories and low self-worth, as well as flashbacks from the service…." He found that appellant was permanently and totally disabled from work due to PTSD and psychotic depression arising from the work injury.

On April 9, 2008 the Office referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Alexander evaluated appellant on April 30, 2008. After reviewing the history of injury and listing findings on physical examination, he stated:

> "It is my opinion that [appellant] does have significant pain in his lower back from degenerative disc disease, but how much of this is from his injury and how much is from normal aging process is difficult to say. I would say that [the] predominance of his back pain is from aging process with degenerative arthritis."

Dr. Alexander found no evidence of a herniated disc and asserted that appellant's back pain was "somewhat exaggerated compared to the objective findings, but because of his obesity and degenerative changes I do feel that he has significant back pain." He opined that appellant was disabled from his regular employment but could perform part-time sedentary work from an orthopedic standpoint. Dr. Alexander attributed "most of the limitations" to aging.

On May 19, 2008 the Office referred appellant to Dr. Brian Teliho, a Board-certified psychiatrist, for a second opinion examination. On June 5, 2008 Dr. Teliho reviewed the history of injury and provided findings on clinical evaluation. He noted that appellant denied any current symptoms of PTSD but did have symptoms of depression and psychosis. Dr. Teliho diagnosed schizoaffective disorder and depression. He found that appellant did not meet the criteria for PTSD at the present time because he denied any "signs or symptoms of [PTSD]." Dr. Teliho related:

> "I cannot connect a diagnosis of schizoaffective disorder with the reported injury sustained in 1983. Assuming the claimant had a diagnosis of [PTSD] in relation

[1] Dr. Cohen electronically signed the report on February 11, 2008. On April 21, 2008 he diagnosed right shoulder bursitis, tendinitis and partial adhesive capsulitis and chronic cervical and lumbar disc disease.

to this injury, I cannot determine the date or approximate date the condition resolved. The claimant appears to have ongoing struggles with schizoaffective disorder and is in a depressive state, which requires continued psychiatric medication management by a psychiatrist. However, I believe a diagnosis of schizoaffective disorder is likely wholly unrelated to the 1983 injury."

Dr. Teliho opined that appellant could not adequately function at work given his depression and reported hallucinations but could possibly perform limited-duty employment. He recommended further treatment for his paranoia, hallucinations and depression.

On January 16, 2009 the Office advised appellant of its proposed termination of his compensation and authorization for medical treatment.

On February 5, 2009 Dr. Cohen diagnosed early degenerative arthritis of the cervical spine and advanced degenerative disc disease at L5-S1. He reviewed Dr. Alexander's report and related that he generally agreed with Dr. Alexander's finding that appellant could work four hours per day with restrictions.

By decision dated February 27, 2009, the Office terminated appellant's compensation and authorization for medical benefits effective March 15, 2009. It found that the opinions of Dr. Alexander and Dr. Teliho constituted the weight of the evidence and established that he had no further employment-related residuals of his accepted work injury.

In a report dated March 12, 2009, Dr. Sharpe diagnosed PTSD due to appellant's back injury, psychotic depression, paranoia and possible schizoaffective disorder. He disagreed with Dr. Teliho's finding that appellant did not currently have PTSD. Dr. Sharpe indicated that appellant's PTSD developed from stress in life and explained, "This whole experience of loss of benefits has restimulated the nightmares, flashbacks, anxiety, paranoia and related to his back injury and compounded by childhood issues and military service." He found that appellant was totally disabled from work due to paranoia and depression.

On March 30, 2009 appellant requested a review of the written record. By decision dated September 29, 2009, the hearing representative affirmed the February 27, 2009 decision.

On October 13, 2009 appellant requested reconsideration. By decision dated October 27, 2009, the Office found that he had not submitted evidence or argument sufficient to warrant reopening his case for further merit review under section 8128.

On appeal, appellant questions why the Office accepted the opinion of Dr. Teliho rather than the opinion of Dr. Sharpe, his attending physician. He notes that Dr. Alexander found that he was unable to work and that the Social Security Administration found that he was disabled due to his PTSD and depression/anxiety.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation

without establishing that the disability ceased or that it was no longer related to the employment.[2] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for low back strain with sciatica, a bulging disc at L4-5 and PTSD due to a May 24, 1983 work injury. It paid him compensation for total disability from 1986 onward.

Appellant received treatment for his PTSD from Dr. Sharpe. On January 28, 2008 Dr. Sharpe diagnosed psychotic depression, paranoia, possible schizoaffective disorder and PTSD. He attributed the diagnosed conditions to the back injury, diminished self-worth and flashbacks from military service. Dr. Sharpe found that appellant was disabled due to PTSD and psychotic depression resulting from his employment injury. He did not, however, provide any rationale for his opinion. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[4]

On May 19, 2008 the Office referred appellant to Dr. Teliho to determine whether appellant had any further disability or residuals of his accepted PTSD. On June 5, 2008 Dr. Teliho discussed appellant's current symptoms of psychosis and depression and noted that he denied symptoms of PTSD. He found that appellant had no present diagnosis of PTSD and provided rationale for his opinion by explaining that it was based on appellant's description of his current symptoms. Dr. Teliho diagnosed schizoaffective disorder and a depressive state. He found that the schizoaffective disorder was unrelated to the accepted 1983 employment injury. Dr. Teliho determined that appellant could possible perform limited-duty work. The Board finds that Dr. Teliho's opinion is detailed and well rationalized and thus represents the weight of the medical evidence on the issue of whether appellant has any further disability due to his PTSD.

On March 12, 2009 Dr. Sharpe diagnosed PTSD from appellant's back injury, psychotic depression, paranoia and a possible schizoaffective disorder. He disagreed with Dr. Teliho's finding that appellant did not have PTSD. Dr. Sharpe noted that appellant had PTSD reactions to stress experienced in daily life and provided as a rationale that the stress of losing his benefits caused flashbacks, anxiety and paranoia due to his back injury, military service and other issues. Stress from a claimant's pursuit of a claim before the Office, however, does not constitute a compensable employment factor.[5] Dr. Sharpe did not provide a rationalized opinion regarding whether appellant continued to experience PTSD due to back injury and thus his opinion is of diminished probative value.[6]

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[2] *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[3] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[4] *J.M.*, 58 ECAB 303 (2007); *Richard A. Neidert*, 57 ECAB 474 (2006).

[5] *John D. Jackson*, 55 ECAB 465 (2004).

[6] *See supra* note 4.

The Board finds, however, that the Office improperly terminated compensation, as the evidence is insufficient to establish that appellant had no further disability due to his accepted low back strain with sciatic and a bulging disc at L4-5. On April 9, 2008 the Office referred him to Dr. Alexander for a second opinion examination to determine whether he continued to have disability due to his employment-related back condition. On April 30, 2008 Dr. Alexander advised that appellant had low back pain from degenerative disc disease but that it was hard to tell "how much of this is from his injury and how much is from [the] normal aging process…." He found that most of appellant's back pain resulted from aging. Dr. Alexander determined that appellant did not have a herniated disc and that his subjective complaints outweighed the objective findings. He opined that appellant could perform part-time sedentary work and reiterated that "most of the limitations" were due to aging. Dr. Alexander's finding that the majority of appellant's disability and pain resulted from aging is insufficient to show that he had no further disability due to his work injury. The Board has held that if a work factor contributes in any way to the employee's condition such condition is employment related for purposes of compensation under the Federal Employees' Compensation Act.[7] Consequently, the Office has not met its burden of proof to terminate appellant's compensation for his low back strain with sciatica and bulging disc at L4-5.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[9]

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical treatment of appellant's PTSD based on the opinion of Dr. Teliho, who provided a second opinion examination. Dr. Teliho found that appellant did not currently have PTSD and required treatment for nonemployment-related schizoaffective disorder with a depressive state. He provided rationale for his opinion by explaining that appellant reported no current symptoms of PTSD.

The Board finds, however, that the Office failed to meet its burden of proof to terminate medical benefits for the accepted conditions of low back strain with sciatica and a bulging L4-5 disc as Dr. Alexander's report is insufficient to establish that these conditions had fully resolved.

[7] *Rudy C. Sixta, Jr.*, 44 ECAB 727 (1993); *Arnold Gustafson*, 41 ECAB 131 (1989).

[8] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[9] *Id*.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[14] The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[15] While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.[16]

ANALYSIS -- ISSUE 3

On October 13, 2009 appellant requested reconsideration of the Office's termination of his benefits. He did not, however, show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit new and relevant evidence not previously considered. As appellant did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.

CONCLUSION

The Board finds that the Office properly determined that appellant had no further disability or residuals from the accepted condition of PTSD. The Board finds, however, that the Office improperly terminated his compensation and medical benefits as it did not meet its burden of proof to show that he had no disability or residuals of the accepted conditions of low back

[10] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[11] 20 C.F.R. § 10.606(b)(2).

[12] *Id*. at § 10.607(a).

[13] *Id*. at § 10.608(b).

[14] *F.R.*, 58 ECAB 607 (2007); *Arlesa Gibbs*, 53 ECAB 204 (2001).

[15] *P.C.*, 58 ECAB 405 (2007); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[16] *Vincent Holmes*, 53 ECAB 468 (2002); *Robert P. Mitchell*, 52 ECAB 116 (2000).

strain with sciatica and a bulging disc at L4-5. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits under section 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2009 is affirmed and the decision dated September 29, 2009 is affirmed in part and reversed in part.

Issued: December 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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