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ANTOINETTE FLORIAN, Appellant	)	
	)	
and	)	Docket No. 06-168
	)	Issued: February 15, 2006
U.S. POSTAL SERVICE, POST OFFICE,	)	
Harwood Heights, IL, Employer	)	
	)	

Case Submitted on the Record

This case has previously been on appeal before the Board. In a May 4, 2005 decision, the Board affirmed the Office's October 9, 2003 decision which terminated appellant's compensation effective October 8, 2003, on the grounds that she refused an offer of suitable work. The Board also affirmed a June 14, 2004 decision which denied modification of the October 9, 2003 decision. The Board found that the medical opinion of Dr. Severin G.

Wellinghoff, PhD, an Office referral physician, was well rationalized and based on an accurate factual medical background. He found that appellant could perform her regular duties as a letter carrier with certain restrictions, she should work in a different facility on a permanent basis, she did not need to use a service dog while performing duties such as sorting mail inside a facility and appellant should start work two days a week and then add a day per week until she was working full time.¹ The facts and the history relevant to the present issue are hereafter set forth.

On March 9, 2001 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that on that date she suffered from mental stress resulting from a telephone call which appellant was threatened with bodily harm. She stated that after she advised a customer that his check was not in the mail to be delivered he stated that he was going to harm her. By decision dated August 30, 2001, the Office found that appellant did not sustain an emotional condition while in the performance of duty. In a December 14, 2001 decision, the Office vacated the August 30, 2001 decision and accepted her claim for severe major depression without psychotic features and panic disorder without agoraphobia. On April 14, 2001 she stopped work and received appropriate compensation.

On July 1, 2003 the employing establishment offered appellant a modified letter carrier position effective July 12, 2003 based on Dr. Wellinghoff's opinion. The position required her to work from 7:00 a.m. until 3:30 p.m., to change her work location and work two days per week the first week and add a day per week until she returned to full-time work. Appellant was assigned indoor work only casing mail and performing other duties provided within the letter carrier craft. She rejected the employing establishment's job offer. By decision dated October 9, 2003, the Office terminated appellant's compensation effective October 8, 2003 on the grounds that she refused an offer of suitable work. The Office addressed her reasons for refusing the offered position and found them unacceptable. In a June 14, 2004 decision, the Office denied appellant's April 6, 2004 request for modification based on a merit review of the claim. The Office found that the evidence submitted was insufficient to establish that she was unable to perform the duties of the offered position.

Following the Board's May 4, 2005 decision, the Office received unsigned progress notes which covered intermittent dates from May 23 through September 19, 2005 on the letterhead of Dr. Ronald M. King, a Board-certified psychiatrist. His progress notes addressed appellant's psychotherapy treatment.

In an October 4, 2005 letter, appellant, through her attorney, requested reconsideration before the Office. She submitted a May 10, 2005 medical report of Dr. Robert W. Adams, a licensed clinical psychologist. He reported appellant's symptoms and provided a history of her emotional and medical background and his findings on psychological testing. He diagnosed delusional disorder and post-traumatic stress disorder on Axis 1, hypothyroidism and shoulder pain on Axis 3, occupational problems on Axis 4 and a global assessment of functioning (GAF) of 50 on Axis 5. Dr. Adams indicated that there was no diagnosis on Axis 2. He found that, although appellant's current therapy and response enabled her to leave her house and to perform simple household chores, she still entertained paranoid ideas which triggered panic attacks daily.

¹ Docket No. 04-2227 (issued May 4, 2005).

Dr. Adams stated that they were less intense than previously, but still involved tunnel vision and hearing problems. He indicated that appellant's panic attacks started in 1995 and became worse in 2001. Dr. Adams noted that she had trouble following simple instructions during his evaluation and was easily distracted. Appellant could not get along with her coworkers due to her delusions that someone was going to hurt her and her belief that they did not understand her and would persecute her. Dr. Adams concluded that she "is not able to tolerate the pressures of work" on a daily basis.

By decision dated October 17, 2005, the Office denied appellant's request for reconsideration because the evidence submitted was irrelevant and insufficient to warrant further merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees' Compensation Act,² 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) constitute relevant and pertinent new evidence not previously considered by the Office.³ 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.⁴ 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 of the merits.

ANALYSIS

In a May 4, 2005 decision, the Board affirmed the termination of appellant's compensation effective October 8, 2003 on the grounds that she refused an offer of suitable work. She subsequently requested reconsideration before the Office on October 4, 2005. Thus, the relevant underlying issue in this case is whether appellant can perform the duties of a modified letter carrier position offered by the employing establishment.

Appellant submitted unsigned progress notes on the letterhead of Dr. King regarding her psychotherapy treatment on intermittent dates from May 23 through September 19, 2005. This evidence is insufficient to establish that she could not perform the duties of the offered modified letter carrier position because they were not signed by the physician.⁵ Therefore, this material is not probative medical evidence sufficient to establish her inability to perform the offered modified position.

² 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[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." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(1)-(2).

⁴ *Id.* at § 10.607(a).

⁵ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988). (Reports not signed by a physician lack probative value).

In a May 10, 2005 report, Dr. Adams diagnosed delusional disorder and post-traumatic stress disorder on Axis 1, hypothyroidism and shoulder pain on Axis 3, occupational problems on Axis 4 and a GAF of 50 on Axis 5. No diagnosis was found on Axis 2. Dr. Adams found that she still entertained paranoid ideas, which triggered panic attacks daily. He stated that they were less intense than previously, but still involved tunnel vision and hearing problems. Dr. Adams indicated that appellant's panic attacks started in 1995 and became worse in 2001. She had trouble following simple instructions during his evaluation, was easily distracted and could not get along with her coworkers due to her delusions that someone was going to hurt her. The Board finds that Dr. Adams' report does not constitute a basis for reopening the case for further merit review, as it does not address the relevant issue of whether appellant could perform the duties of the offered modified letter carrier position. He did not indicate that he reviewed a description of the offered position. Moreover, Dr. Adams did not attribute the diagnosed conditions to the March 9, 2001 employment injury or addressed whether they prevented appellant from performing the duties of the offered position. .

Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Further, she did not submit any relevant and pertinent new evidence not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that she was not entitled to a merit review.⁶

CONCLUSION

The Board finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁶ See *James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2006
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