

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Elk Grove Village, IL Employer)

Docket No. 07-1879

Issued: February 8, 2008

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 10, 2007 appellant timely filed an appeal from a December 21, 2006 merit decision of the Office of Workers' Compensation Programs, denying her claim for wage-loss compensation for an intermittent period from March 23 through November 21, 2004, and a May 15, 2007 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant established that she was disabled for an intermittent period between March 23 through November 21, 2004; and (2) whether the Office properly refused to reopen her case for further review of the merits.

FACTUAL HISTORY

On March 30, 2002 appellant, a postal clerk, filed an occupational disease claim alleging that she sustained anxiety and panic attacks in the performance of duty commencing

February 19, 2002. In a June 10, 2002 decision, the Office accepted her claim for neurotic depression.

On July 6, 2002 appellant submitted a claim for compensation for the period March 15 to June 29, 2002. In an October 11, 2002 letter, the Office requested medical reports from her for the claimed time period. On January 3, 2003 the Office noted that appellant was paid on December 28, 2002.

On December 30, 2002 appellant filed a claim for compensation for the period July 1 to December 31, 2002.

In a June 20, 2003 letter, the Office informed appellant that she was not paid for the period September 12 to 14, 2002 because there was no medical evidence to support her claim.

In a November 13, 2003 letter, Dr. William Hovsepian, a psychologist, stated that appellant was currently involved in weekly outpatient therapy due to the "severity of her pathology." Appellant required treatment to maintain her level of functioning as a full-time employee without the need for time off for disability or for reduced working hours.

In a July 12, 2004 letter to Dr. Hovsepian, the employing establishment requested clarification as to how appellant's work restriction of no heavy sweeping was related to her diagnosed condition. On February 2, 2005 appellant filed a claim for compensation for the period March 23 to December 31, 2004.

In an August 25, 2004 work excuse note, Dr. Hovsepian diagnosed major depression and generalized anxiety disorder with panic episodes. He stated that appellant was absent from work on August 24 and 25, 2004 and could return to work on August 26, 2004 with the restriction of no heavy sweeping. Identical notes were also submitted for April 23 and 24, September 21 and 22, October 26 and 27, 30 and 31 and November 1, 2, 20 and 21, 2004.

In a March 31, 2005 decision, the Office denied appellant's claim for compensation for 24 intermittent days between March 23 and November 21, 2004. The Office found that the notes from Dr. Hovsepian were back dated disability certifications and form notes. The Office found that Dr. Hovsepian did not adequately address appellant's disability on each of the claimed days.

In an April 5, 2005 letter, Dr. Hovsepian stated that "because of increased stress at work due to workload and/or duration and/or interpersonal issues, [appellant] has had an increase in her symptomatology ... that has increased her depression."

In a June 1, 2005 decision, the Office again denied appellant's claim for compensation for the intermittent period March 23 and November 21, 2004, finding that Dr. Hovsepian's report did not explain exactly what occurred to cause appellant's disability on the claimed dates.

On June 15, 2005 appellant requested review of the written record. In an undated certification, Dr. Hovsepian stated that she had generalized anxiety disorder and panic episodes

with major depression. He stated that it would be necessary for appellant to work on less than a full schedule for one to two days per episode with one to two episodes per month.

On November 14, 2005 the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that her disability was related to her accepted work condition. The Office also found that there was no evidence that Dr. Hovsepien was a licensed clinical psychologist and therefore his opinion was not probative on the issue of causally related disability.

On December 5, 2005 Dr. Hovsepien appealed appellant's denial on her behalf, contending that he was a clinical psychologist capable of rendering a medical opinion. He stated that appellant had to be absent from work because of severe anxiety and concomitant depression.

On January 26, 2006 the Office denied modification of the previous decisions on the grounds that Dr. Hovsepien's rationale for appellant's disability was based on vague descriptions of what she encountered at work, such as stress, workload and interpersonal relations, and therefore was not well rationalized.

In a June 7, 2006 nonmerit decision, the Office denied appellant's request for reconsideration.

On August 18, 2006 she requested reconsideration. Appellant submitted an August 17, 2006 letter from Dr. Timothy Cullinane, a Board-certified psychiatrist, who opined that work stressors were the cause of some of her symptoms and required time off from work.

On October 13, 2006 the Office denied modification of the prior decisions on the grounds that Dr. Cullinane's report did not reference the period of claimed disability and was insufficient to establish disability for the claimed time periods.

On November 10, 2006 appellant requested reconsideration. In an October 26, 2006 letter, Dr. Cullinane stated that his previous report regarding appellant covered the time period March 24 to November 21, 2004.

On December 21, 2006 the Office denied modification of the prior decisions on the grounds that Dr. Cullinane's letter did not provide a well-rationalized medical opinion supporting disability listed and did not mention any specific work factors that caused appellant's disability.

On April 23, 2007 appellant requested reconsideration. The Office received a May 2, 2007 letter from Dr. Cullinane who stated that appellant's symptoms were the same symptoms that caused her to be hospitalized in 2002. Dr. Cullinane also contended that the acceptance of appellant's Family and Medical Leave Act request demonstrated an agreement with the assertion that her symptoms were related to her ongoing illness.

On May 15, 2007 the Office denied appellant's request for reconsideration, without merit review.

LEGAL PRECEDENT -- ISSUE 1

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the 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 established, probative and substantial evidence.¹

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for an intermittent period during the period March 23 to November 21, 2004 and her accepted condition of depression.² The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.³ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁴

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim on March 30, 2002 and was accepted for neurotic depression. She returned to work full time with restrictions.

The medical evidence of record consists of reports from Dr. Hovsepien dated November 13, 2003, April 5, 23 and 24, August 25, 2004, September 21 and 22, October 26 and 27, 30 and 31, November 1 and 2, 20 and 21 and December 5, 2005. Appellant also submitted reports from Dr. Cullinane dated August 17, October 26, 2006 and May 2, 2007. Dr. Hovsepien's notes merely stated that appellant was absent from work on certain dates and that appellant needed time off when her symptoms worsened. He did not adequately address the causal relationship between appellant's accepted condition and her disability on those specific dates. 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.⁵

Dr. Cullinane opined that work stressors were the cause of some of appellant's symptoms. His opinion is not sufficient to establish that appellant was totally disabled on the dates claimed. It is not enough to state that work stressors caused symptoms, without identifying which stressors were involved. The Board notes that not all incidents occurring in the workplace would be compensable factors of employment in an emotional condition claim. Additionally,

¹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

² *Alfredo Rodriguez*, 47 ECAB 437 (1996).

³ *Id.*

⁴ *Fereidoon Kharabi*, *supra* note 1.

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

merely stating that appellant has symptoms does not establish that she was totally disabled from work on certain dates. Dr. Cullinane stated that his report covered the time period March 24 to November 21, 2004, but he did not explain what disabling symptoms appellant displayed during this time period.

None of the reports address the specific dates in question and the cause of appellant's disability on those specific dates. The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act⁷ (herein "Act") does not entitle a claimant to a review of an Office decision as a matter of right.⁸ The Act does not mandate that the Office review a final decision simply upon request by a claimant.⁹

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁰

ANALYSIS -- ISSUE 2

The Office is required to reopen a case for merit review if an application for reconsideration demonstrates that the Office erroneously applied a specific point of law, puts forth relevant and pertinent new evidence or presents a new relevant legal argument. Appellant did not argue that the Office erroneously applied a point of law. She submitted a May 2, 2007 report from Dr. Cullinane which was identical, except for the last paragraph, to his August 17, 2006 letter report, which was previously reviewed by the Office. The new paragraph in the May 2, 2007 letter did not address the issue at hand, whether appellant was totally disabled from work during the claimed time period due to her accepted disability. Therefore this letter was not pertinent new evidence. As appellant did not submit any relevant and pertinent new evidence she is not entitled to merit review by the Office.

⁶ *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, *supra* note 1.

⁷ 5 U.S.C. § 8128(a).

⁸ *Darletha Coleman*, 55 ECAB 143 (2003).

⁹ *Donna M. Campbell*, 55 ECAB 241 (2004).

¹⁰ 20 C.F.R. § 10.606(b)(2)(iii) (2004).

CONCLUSION

The Office properly denied appellant's claim for compensation for the intermittent time period from March 23 to November 21, 2004 and properly denied merit review.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2007 and December 21, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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