United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 07-2360**
	)	**Issued: June 16, 2008**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 18, 2007 appellant filed an appeal to the Board. The record contains merit decisions from the Office of Workers' Compensation Programs dated November 14, 2006 and July 5 and 16, 2007. The record also contains a September 7, 2007 decision denying further merit review. 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 determined that the accepted asthma episode had resolved as of September 15, 2006; (2) whether appellant established intermittent disability after April 16, 2007; and (3) whether the Office properly determined the application for reconsideration was insufficient to warrant merit review of the claim pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On September 26, 2006 appellant, then a 49-year-old management assistant, filed a traumatic injury claim alleging that on September 12, 2006 she sustained an injury when she was exposed to dust and fiberglass insulation while in the performance of duty. She alleged a conference room was being renovated and dust and insulation was stacked in the area.

Appellant submitted a report from Dr. Marvin Taylor, an employing establishment physician, who indicated that she had been treated in a hospital emergency room on September 12, 2006 with symptoms such as shortness of breath and chest tightness. Dr. Taylor indicated there had been a diagnosis of asthma attack. He stated that appellant "[s]till feels wheezy and sl[ight] cough otherwise ok." Dr. Taylor provided results on examination, noting a normal examination and diagnosed asthma. He indicated that appellant could return to full duty.

The record indicates appellant was treated for nasal congestion on September 18, 2006. In a report dated October 18, 2006, Dr. Hatem Asad, a pulmonary specialist, noted appellant had reported being exposed to dust and fiberglass material, and since then had reported increased wheezing and shortness of breath.[1] He stated that appellant's condition was consistent with hyperreactive airway disease, severe rhinosinusitits with post nasal drip and vocal cord dysfunction. Dr. Asad recommended appellant avoid exposure to dust.

In a decision dated November 14, 2006, the Office accepted an asthma attack, single episode. It stated that the case was administratively closed as medical notes from September 15, 2006 indicated the asthma attack had resolved and appellant was returned to full duty. Appellant was advised she was eligible for continuation of pay during the period September 12 to 14, 2006.

By report dated April 16, 2007, Dr. Alvaro Velasquez, a pulmonary specialist, provided results on examination and stated that appellant's chronic cough was markedly improved. He indicated the likely cause of the cough was acid reflux.

On June 18, 2007 appellant filed a claim for compensation (Form CA-7) for the period May 27 to June 9, 2007, checking a box "yes" the dates were intermittent. Time analysis forms (Form CA-7a) indicated she used six hours of leave without pay for physicians visit on April 16 and June 4, 2007.

By decision dated July 5, 2007, the Office denied compensation for April 16 and June 4, 2007. Appellant submitted a Form CA-7 for intermittent dates from May 28 to June 8, 2007, and a CA-7 for intermittent dates from June 10 to 23, 2007. The time analysis form indicated only a physicians appointment on June 12, 2007. Appellant submitted a note from Dr. Anilkumar Pillai, an internist, stating that she needed to be excused from work on June 12, 2007.

In a decision dated July 16, 2007, the Office denied compensation for the period May 27 to June 23, 2007. On July 20, 2007 appellant requested reconsideration. She did not identify the

[1] The record also contains a July 10, 2006 report from Dr. Asad, prior to the employment incident, diagnosing acute rhinitis, sinusitis, post nasal drip and chronic cough/bronchitis.

date of the Office decision. By decision dated September 7, 2007, the Office denied the request for reconsideration without merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.[3]

It is well established that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[4] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.[5] If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the claimant may be entitled to continuing compensation;[6] a medical restriction that is based on a fear of future aggravation due to employment exposure is not employment related.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an asthma attack on September 12, 2006, but found that the medical evidence established that the condition had resolved by September 15, 2006. The report from Dr. Taylor dated September 15, 2006 did show a normal examination and he released appellant to return to regular duty. Appellant had been treated for respiratory symptoms prior to September 12, 2006, and the evidence from Dr. Taylor indicated the aggravation from employment exposure on September 12, 2006 had resolved. As noted, when an employment-related aggravation ceases, a claimant is no longer entitled to compensation unless the employment exposure caused a permanent condition.

Based on the evidence before the Office at the time of the November 14, 2006 decision, the Office met its burden of proof in finding that the accepted condition had resolved by September 15, 2006. Appellant continued to receive treatment from Dr. Asad, but his

[2] *Patricia A. Keller*, 45 ECAB 278 (1993).

[3] *Furman G. Peake*, 41 ECAB 361 (1990).

[4] *Mary A. Moultry*, 48 ECAB 566 (1997).

[5] *Id.*

[6] *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

[7] *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

October 18, 2006 report did not establish a permanent heightened sensitivity caused by the September 12, 2006 employment exposure. He referred to appellant reporting symptoms of increased wheezing and coughing since the incident, but he did not provide a complete history or a medical opinion sufficient to establish a continuing employment-related condition or period of disability after September 15, 2006.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act[8] has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[9] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[10]

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.[11] 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.[12] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly 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.[13]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[14] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed

[8] 5 U.S.C. §§ 8101-8193.

[9] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

[11] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[12] *Id*.

[13] *Id*.

[14] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

condition and the specific employment factors identified by the claimant.[15] Neither the 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.[16]

ANALYSIS -- ISSUE 2

Appellant submitted several claims for compensation in 2007; however, it is not clear what specific dates of compensation for wage loss were claimed. The June 18, 2007 CA-7, referred to a period from May 27 to June 9, 2007, but the time analysis form referred only to six hours for physician visits on April 16 and June 4, 2007. With respect to any specific date claimed, the medical evidence must establish that treatment or disability was causally related to an employment-related condition. In this case, the evidence must show the September 12, 2006 employment exposure caused more than a temporary condition that resulted in the need for treatment for the dates claimed in 2007. Appellant did not submit any probative evidence on this issue. Dr. Velasquez treated appellant on April 16, 2007, without providing a rationalized medical opinion on causal relationship with employment. He found appellant's cough had improved but related the condition to acid reflux. There is no medical evidence establishing an employment-related condition or disability on any date for the period May 27 to June 23, 2007. The Office properly denied the claim for compensation.

LEGAL PRECEDENT -- ISSUE 3

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[17] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[18]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and 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 evidence not previously considered by the Office.[19]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that met at least one of these standards. If

[15] *Leslie C. Moore*, 52 ECAB 132 (2000).

[16] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[17] 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.605 (1999).

[19] *Id*. at § 10.606(b)(2).

reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[20]

ANALYSIS -- ISSUE 3

Appellant filed an application for reconsideration without identifying the Office decision. She did not submit any evidence or argument. To require the Office to reopen her claim for merit review, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(2). In this case, she did not 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 relevant and pertinent evidence not previously considered by the Office. Since appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2), the Office properly declined to reopen her claim for merit review.

CONCLUSION

The Office met its burden of proof in finding that appellant's accepted asthma attack had resolved by September 15, 2006. Appellant did not submit probative medical evidence to establish an employment-related disability after April 16, 2007. The Office properly denied her application for reconsideration without merit review of the claim.

[20] *Id*. at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 7 and July 16, 2007 and November 14, 2006 are affirmed.

Issued: June 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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