

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

C.M., Appellant)

and)

DEPARTMENT OF THE ARMY, ARMY)
HOSPITAL, Fort Jackson, SC, Employer)

**Docket No. 08-481
Issued: July 18, 2008**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 8, 2006. The record also contains a February 23, 2007 Office decision denying 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 appellant has established a period of disability from February 13 to March 3, 2006 and commencing September 4, 2006; and (2) whether the Office properly denied appellant's application for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On March 20, 2006 appellant, then a 45-year-old licensed practical nurse, filed a claim alleging that she sustained injuries causally related to a November 29, 2005 employment incident. She stated that a canister of bodily fluids exploded and she became afraid of working

with bodily fluids. Appellant described the nature of the injuries as stress, anxiousness, chest pain and insomnia.

In a report dated February 28, 2006, Dr. Bhavesh Amin, a family practitioner, stated that appellant was treated for symptoms of chest pain. He provided a history that in November 2005 a suction canister had exploded and appellant was anxious when she had to work in the lab. Dr. Bhavesh diagnosed chest pain and situational stress reaction. Appellant also submitted reports from Todd Hanson, a family therapist, diagnosing adjustment disorder and post-traumatic stress disorder (PTSD). On September 27, 2006 the Office accepted adjustment disorder and PTSD. Appellant was advised to claim periods of disability by filing appropriate CA-7s (claim for compensation).

On October 18, 2006 appellant filed a (Form CA-7) for the periods February 13 to 17 and February 21 to March 3, 2006. She also filed a Form CA-7 for a period commencing September 4, 2006. A memorandum of telephone call dated October 12, 2006 indicated that appellant had stopped working on September 1, 2006.

By decision dated December 8, 2006, the Office denied the claim for compensation from February 13 to March 13, 2006 and from September 4, 2006 to the present. The Office found that the medical evidence was insufficient to establish the claimed periods of disability.

In a letter dated January 4, 2007, appellant requested reconsideration. She stated that she resigned “because of harassment, mistreatment, abuse, denying of my right as an employee, threatened constantly.” Appellant submitted additional reports from the family therapist.

By decision dated February 23, 2007, the Office determined that appellant’s application for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.³ The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁴ *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained an emotional condition causally related to a November 29, 2005 incident involving a canister of fluids that exploded. The Office accepted the claim for adjustment disorder and PTSD. It is appellant's burden of proof to establish any claimed periods of disability for work. She claimed the periods February 13 to 17 and February 21 to March 3, 2006⁵ and a continuing disability as of September 4, 2006.

With respect to medical evidence, the record does not contain a rationalized medical opinion on disability for work during the periods claimed causally related to the employment injuries. Dr. Amin does not provide a complete history, discuss the accepted conditions of PTSD or adjustment disorder or offer a rationalized medical opinion on disability for work for the periods claimed. The evidence from Mr. Hanson, a family therapist, is not competent medical evidence as he is not a physician under the Act.⁶

Appellant did not submit probative evidence establishing an employment-related disability from February 13 to 17 and February 21 to March 3, 2006 or commencing September 4, 2006. The Board finds that she did not meet her burden of proof and the Office properly denied compensation for wage loss for the claimed periods.

LEGAL PRECEDENT -- ISSUE 2

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.⁷ 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."⁸

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.⁹

⁵ While the Office referred to the period February 13 to March 13, 2006, the actual period claimed was February 13 to 17 and February 21 to March 3, 2006.

⁶ See *Joe L. Wilkerson*, 47 ECAB 604 (1996). 5 U.S.C. § 8101(2) provides that a physician includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law."

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.605 (1999).

⁹ *Id.* at § 10.606(b)(2).

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and 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.¹⁰

ANALYSIS -- ISSUE 2

On reconsideration, appellant alleged that she was subject to harassment, abuse and threats. This is not relevant to her claim in this case, which was based on a specific employment incident involving a canister of bodily fluids. If appellant is alleging new employment factors then she must make an appropriate claim for compensation and submit relevant evidence. The underlying merit issue in this case is a medical issue regarding disability for specific periods casually related to the accepted employment injuries. Appellant did not submit any new and relevant medical evidence. As noted above, a family therapist is not a physician under the Act and therefore his reports are not competent medical evidence.

Appellant 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 she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), the Office properly refused to reopen the claim for review of the merits.

CONCLUSION

Appellant did not establish an employment-related disability from February 13 to 17, February 21 to March 3, 2006 or commencing September 4, 2006. The application for reconsideration did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly denied merit review of the claim.

¹⁰ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 23, 2007 and December 8, 2006 are affirmed.

Issued: July 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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