

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

D.M., Appellant)
and) Docket No. 08-773
DEPARTMENT OF HOMELAND SECURITY,) Issued: October 8, 2008
TRANSPORTATION SECURITY)
ADMINISTRATION, Romulus, MI, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 18, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 9, 2008 denying his request for wage-loss compensation on and after March 21, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he was disabled for work on and after March 21, 2005 due to his accepted emotional condition.

FACTUAL HISTORY

This case has been before the Board on prior appeal.¹ By decision dated March 12, 2007, the Board found appellant had not established a compensable factor with respect to his

¹ Docket Number 06-1983 (issued March 12, 2007).

allegations of harassment and discrimination. However, the Board found that appellant had established a compensable factor with respect to the June 3, 2004 altercation. Thus, the Board affirmed in part and set aside in part the July 31, 2006 Office's decision, which denied appellant's request for modification of a July 28, 2005 decision denying his emotional condition claim. As a compensable factor had been established with regard to the June 3, 2004 altercation, the Board remanded the case to the Office for further development of the medical evidence. The findings of law and fact as set forth in the prior opinion are hereby incorporated by reference.² The relevant facts are set forth below.

On remand, the Office accepted appellant's claim for temporary aggravation of acute stress disorder on July 24, 2007.³

Appellant filed a claim for wage loss on July 27, 2007 for the period February 15, 2005 through July 27, 2007.⁴

In a letter dated August 28, 2007, the Office informed appellant that he would be paid for 195.5 hours of leave without pay for the period November 24, 2004 through March 4, 2005.⁵ It noted that appellant was terminated effective March 17, 2005. Appellant was informed that, if he was requesting additional compensation beyond the compensation authorized in the letter, he should submit medical and factual evidence regarding his claimed disability for the additional time.

On August 28, 2007 appellant filed a claim for wage-loss compensation for the period March 5, 2005 through August 19, 2006.

In response to the Office's request for additional evidence, appellant submitted reports from Dr. Surendra Kelwala, a treating Board-certified psychiatrist, dated March 17, 2005, April 23 and June 26, 2007 and an October 24, 2007 note by Dr. Kelwala. On March 17, 2005 Dr. Kelwala released appellant to work with no restrictions and noted that appellant no longer felt depressed effective March 21, 2005.

On April 23, 2007 Dr. Kelwala responded to the Office's March 28 and June 12, 2007 requests for information. He detailed appellant's medical history, circumstances and treatment

² On November 26, 2004 appellant filed an occupational disease claim alleging that on or about June 3, 2004 he first realized his depression was employment related. He stopped work on November 24, 2004, returned on January 9, 2005 and stopped again on February 14, 2005. On March 17, 2005 appellant was terminated from employment based on his "inability to perform essential functions -- working in a stressful environment."

³ On August 28 and October 22, 2007 the Office paid appellant wage-loss compensation for the period November 24, 2004 to March 20, 2005. An October 17, 2007 pay rate memorandum noted appellant had been paid for 195.5 hours for the period November 24, 2004 to March 5, 2005 and was subsequently paid for total disability for the period March 6 to 20, 2005.

⁴ On a Form CA-1032 dated September 16, 2007, appellant stated that he had been employed for the period August 21, 2006 through April 2, 2007 earning \$10.00 per hour and May 22 through June 20, 2007 earning \$9.00 per hour.

⁵ The Office mistakenly noted the year as "2007."

received since 1998. Dr. Kelwala opined that appellant was totally disabled from November 2004 through January 2005, partially disabled from January 2005 until his employment was terminated in March 2005. Appellant stopped seeing Dr. Kelwala for treatment in 2006 even though he remained angry and bitter over his treatment by the employing establishment. Dr. Kelwala opined that appellant was partially disabled and that he was unable to determine how much the harassment at the employing establishment contributed to the disability.

Dr. Kelwala, in a June 26, 2007 report, diagnosed moderately severe acute psychological stress reaction as a result of the accepted compensable factor. He noted the reaction lasted approximately nine months and that appellant was “still mulling over the incident” when seen in February 2006. Dr. Kelwala noted that it appeared the condition had resolved when appellant was seen in August 2006 as “he was working again.” He stated that appellant was seen “very infrequently from March 2005 onwards” and thus he was unable to provide “exact dates of when he was over with his problems.” In conclusion, Dr. Kelwala noted that appellant looks no different than he did prior to working at the employing establishment so he guessed appellant’s injury was not permanent, but temporary.

In an October 24, 2007 note, Dr. Kelwala stated that appellant continued to suffer from residuals of the June 2004 incident in February 2006 and that he assumed appellant “was back to his baseline by August 2006” as he was working at another job. He noted appellant had an incomplete resolution over the injury as he is angry, resentful and depressed over the treatment by the Office.

By decision dated January 9, 2008, the Office denied appellant’s claim for wage loss on or after March 21, 2005. It found the medical evidence insufficient to support appellant’s claim that his disability was employment related. The Office noted that appellant had been fired from the employing establishment for cause and there was evidence in the record that he worked intermittently in the private sector since August 2006.

LEGAL PRECEDENT

Under the Federal Employees’ Compensation Act the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁸ When, however, the medical evidence establishes that the residuals of

⁶ *S.M.*, 58 ECAB ____ (Docket No. 06-536, issued November 24, 2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197, 201 (2001).

an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.⁹

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).¹⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

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. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹²

ANALYSIS

The Office found that appellant sustained a temporary aggravation of acute stress disorder and paid wage-loss compensation for the period November 24, 2004 through March 20, 2005. Appellant filed claims for wage-loss disability for the period February 15, 2005 through July 27, 2007 and March 5, 2005 through August 19, 2006. The issue to be resolved is whether he has established that his claimed disability for the period commencing March 21, 2005 was caused by the accepted emotional condition. The Board finds that appellant has not met his burden.

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³ None of Dr. Kelwala's reports are sufficient to support appellant's claim that his disability was causally related to the accepted employment factor. He released appellant to work with no restrictions effective March 21, 2005 and noted that appellant was no longer depressed. In an April 23, 2007 report, Dr. Kelwala opined that appellant was partially disabled, but was unable to determine how much the harassment at the employing establishment contributed to the disability. In a June 26, 2007 report, he opined that appellant's condition appeared to have resolved when he was seen in August 2006. Dr. Kelwala indicated that appellant had been seen "very infrequently

⁹ *Id.* at 201-02.

¹⁰ A.D., 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹² See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹³ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

from March 2005 onwards” and as a result of the infrequent treatment was unable to provide “exact dates of when [appellant] was over with his problems.” The Board finds Dr. Kelwala’s opinions on disability are speculative in that the psychiatrist has stated that he was unable to determine the contribution of appellant’s harassment contributed to his disability, he was unsure of the dates of disability and that appellant’s condition appeared to have resolved.¹⁴ Moreover, the only compensable factor accepted by the Office was the June 3, 2004 altercation and Dr. Kelwala attributed appellant’s condition to harassment by the employing establishment in his April 23, 2007 report. The Office did not find a compensable factor with respect to appellant’s allegations of harassment. As noted above, the Board will not require the Office to pay compensation for disability in the absence of probative medical evidence directly addressing the cause of the disability or the dates of disability for which compensation is claimed. Consequently, Dr. Kelwala’s reports are insufficient to establish employment-related disability for the claimed period.

In addition, Dr. Kelwala’s reports are devoid of any supporting rationale. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁵ None of the reports submitted by Dr. Kelwala contain an opinion supported by rationale explaining how appellant’s disability was employment related. As appellant submitted no such evidence in this case, the Board finds that he has not met his burden of proof to substantiate that he had an employment-related disability beginning March 21, 2005.¹⁶

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to wage-loss compensation on or after March 21, 2005.

¹⁴ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *D.D.*, 57 ECAB 734 (2006) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

¹⁵ *S.D.*, 58 ECAB ____ (Docket No. 07-1120, issued September 24, 2007); *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

¹⁶ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2008 is affirmed.

Issued: October 8, 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