

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

A.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
MEMPHIS VETERANS AFFAIRS MEDICAL)
CENTER, Memphis, TN, Employer)

Docket No. 08-1093
Issued: September 23, 2008

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2008 appellant filed a timely appeal from July 31 and September 18, 2007 merit decisions of the Office of Workers' Compensation Programs that denied his claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he was entitled to compensation from July 5 to 18, 2006.

FACTUAL HISTORY

On September 19, 2005 appellant, then a 52-year-old psychiatric nursing assistant, filed a traumatic injury claim stating that he discovered the body of a patient who had committed suicide by hanging. Since the incident, he had been unable to eat or sleep and experienced

recurring nightmares and visions of the incident. The record does not indicate that appellant stopped work. He began working limited duty in a nonpatient care area on October 13, 2005.

In a September 30, 2005 note, Dr. Tejinder Saini, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD). In an October 7, 2005 work capacity evaluation, he advised that appellant could work in a position where he is comfortable. On October 29, 2005 Dr. Saini again diagnosed PTSD and advised that appellant was in a state of shock after discovering the body of a suicide victim. He explained that appellant experienced nightmares and flashbacks. Dr. Saini noted that the employing establishment had transferred appellant to the laundry room, but he found the new work assignment depressing. On January 13, 2006 Dr. Saini reported that appellant was capable of working but could not work in a clinical area or perform patient care. The Office accepted appellant's claim for PTSD.

In an April 28, 2006 note, Christine Wade, a licensed professional counselor, noted that appellant was unable to work from May 1 through 5, 2006 but could return to work on May 6, 2006 pursuant to Dr. Saini's recommended restrictions.

In a June 30, 2006 note, Ms. Wade discussed appellant's feelings of anger and resentment at work and recommended that he terminate his employment. On July 1, 2006 Elaine Heroux, a licensed clinical social worker, stated that appellant related his high stress level to work experiences. On July 7, 2006 Ms. Wade explained that appellant had taken time off work due to physical illness and also reported "intrusive thoughts" of his coworkers. On July 14, 2006 she noted that appellant presented in a depressed mood and discussed his coworkers. On July 15, 2006 Ms. Heroux noted that appellant reported feeling more peaceful since stopping work. He informed her that he had been sleeping more but that he only had one week of vacation left. In an August 1, 2006 progress note, Ms. Wade reported that appellant returned to work that day and would be performing restricted duties.

On July 21, 2006 Ms. Wade noted that although appellant remained concerned about work stress triggering his PTSD symptoms they discussed the recommendation that he continue working within his limitations. In a July 25, 2006 note, Dr. Saini advised that appellant was disabled from July 5 through August 1, 2006 due to his psychiatric condition. He noted that appellant's diagnosis was PTSD. In an August 11, 2006 note, Dr. Saini recommended that appellant continue limited work and stated that he should not consider total disability. On August 12, 2006 Ms. Heroux noted that appellant reported feeling more peaceful about his situation although he continued to experience symptoms of stress and paranoia that his coworkers wanted something bad to happen to him.

On February 5, 2007 appellant filed a notice of recurrence claiming that he continued to experience flashbacks and symptoms of his PTSD. By correspondence dated February 21, 2007 the Office advised appellant that his claim remained open for medical treatment.

On May 29, 2007 appellant requested compensation for leave buyback from July 5 to 11, 2006. The employing establishment controverted the request. In a May 25, 2007 time analysis form, appellant reported taking eight hours of sick leave each day on July 5, 6, 7, 10 and 11, 2007 explaining that the time off was for therapy due to symptoms of his diagnosed condition.

In a June 22, 2007 work capacity evaluation Dr. Saini explained that appellant was able to work for eight hours per day in a clerical assignment but remained incapable of performing his regular-duty job.

On July 19, 2007 appellant requested leave buyback for intermittent leave taken between July 5 and August 1, 2006. The employing establishment controverted the request. Appellant provided a time analysis form indicating that he had taken eight hours of sick leave each day on July 12, 13, 14, 17 and 18, 2006 due to therapy related to symptoms of his PTSD.

By decision dated July 31, 2006, the Office denied appellant's claim for compensation for eight hours of leave on July 5, 2006 eight hours of leave on July 6, 2006 four hours of leave on July 7, 2006 eight hours of leave on July 10, 2006 and eight hours of leave on July 11, 2006. It found that the record lacked a rationalized opinion from a physician relating appellant's disability to his PTSD. On August 16, 2007 appellant requested an oral hearing.¹

By decision dated September 18, 2007, the Office denied appellant's claim for compensation for leave taken between July 12 and 18, 2006. It noted that appellant's claim was denied for 36 hours of leave. The Office found that the record lacked a physician's rationalized medical opinion relating appellant's need for leave to his diagnosed PTSD. On September 24, 2007 appellant again requested an oral hearing.²

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.³ As used in the 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.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages.⁵ 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.⁶ The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which

¹ On September 3, 2008 the Office hearing representative issued a decision pursuant to appellant's hearing request. As appellant requested an appeal before the Board on March 4, 2008, any decision issued by the Office on the same issue that is pending before the Board on appeal, is null and void since the Office and the Board may not have concurrent jurisdiction over the same issue. *See Russell E. Lerman*, 43 ECAB 770 (1992).

² *See id.* The Board also notes that on January 31, 2008 appellant claimed a schedule award. In an informational letter dated February 15, 2008 the Office advised appellant that schedule awards were not available for emotional condition claims pursuant to the Federal Employees' Compensation Act. As the Office has not issued a final decision on the schedule award matter, the Board may not consider it on this appeal. *See* 20 C.F.R. § 501.2(c).

³ *William A. Archer*, 55 ECAB 674 (2004).

⁴ *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.5(f).

⁵ *See Fred Foster*, 1 ECAB 21 (1947).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also Edward H. Horton*, 41 ECAB 301 (1989).

compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

ANALYSIS

In support of his claim for compensation for intermittent leave taken from July 5 to 11, 2006, appellant submitted progress notes from Ms. Wade, a counselor, and Ms. Heroux, a social worker. However, neither Ms. Wade nor Ms. Heroux is a physician as defined under the Act. A claimant must provide rationalized medical opinion, with explanation, relating his incapacity for work during the claimed period to his accepted condition. Ms. Wade's and Ms. Heroux's opinions do not constitute competent medical evidence as they are not physicians within the meaning of the Act.⁸

Appellant also provided a July 25, 2006 form note from Dr. Saini, stating that he was unable to work from July 5 through August 1, 2006 due to psychiatric disability. The psychiatrist noted that appellant had PTSD. However, Dr. Saini did not provide any findings pertaining to a contemporaneous examination of appellant on any of the above dates of claimed disability. Furthermore, he did not provide an unequivocal opinion, with explanation and rationale, that appellant's disability was related to his accepted work injury.⁹ Accordingly, the Board finds that appellant has not met his burden of proof in establishing that he was entitled to compensation for intermittent leave taken between July 5 and 11, 2006, because the medical evidence of record does not establish his claimed disability is causally related due to his accepted condition.

In support of his claim for compensation for intermittent leave taken between July 12 and 18, 2006, appellant submitted additional notes from Ms. Wade and Ms. Heroux. As noted, however, Ms. Wade and Ms. Heroux are not physicians and therefore their notes do not constitute competent medical evidence on the relevant issue of appellant's claimed inability to work due to his work-related condition.¹⁰ Although, they note that appellant sought treatment for mental health concerns on July 14 and 15, 2006, the evidence is insufficient to establish that appellant was incapable of working on the claimed dates between July 12 and 18, 2006 due to his accepted condition. Dr. Saini's July 25, 2006 form note generally indicated that appellant was disabled from July 5 to August 1, 2006 due to his PTSD. This is insufficient to establish appellant's disability for work on the claimed dates because it does not contain a detailed explanation, with rationale, describing precisely why appellant was unable to work and how his incapacity related to his accepted PTSD. Therefore, the Board finds that appellant has not met his burden of proof in establishing that he was disabled for work on intermittent dates between July 12 and 18, 2006, due to his accepted condition.

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *William A. Archer*, *supra* note 3; *Fereidoon Kharabi*, *supra* note 6.

⁸ See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinions, in general, can only be given by a qualified physician).

⁹ See *Fereidoon Kharabi*, *supra* note 6.

¹⁰ *Supra* note 8.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he was totally disabled from July 5 to 18, 2006, due to his accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the July 31 and September 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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