United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 09-969**
	)	**Issued: January 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Dean Albrecht, for the appellant
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 March 3, 2009 appellant timely appealed a January 9, 2009 nonmerit decision of the Office of Workers' Compensation Programs denying her reconsideration request and a December 3, 2008 merit decision affirming the termination of her compensation benefits. 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 the Office properly terminated appellant's compensation benefits effective November 23, 2008; and (2) whether the Office properly refused to reopen her claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.[1] In a November 7, 2005 decision, the Board found that appellant established a compensable factor with regard to the employing

[1] Docket No. 05-1079 (issued November 7, 2005).

establishment's March 14, 2003 letter notifying her that she would be removed from her duties due to improper conduct. However, the medical evidence of record was insufficient to support that she sustained an emotional condition in the performance of duty. The facts of the case as set forth in the prior decision are incorporated by reference.

Appellant subsequently requested reconsideration before the Office and submitted additional evidence to support her emotional condition claim. On September 5, 2007 the Office accepted the claim for acute stress disorder. The record reflects that appellant retired on disability on November 17, 2005. She received wage-loss compensation.

In a February 7, 2008 letter, the Office requested appellant's attending physician Dr. Walter E. Afield, a Board-certified psychiatrist, to provide an updated report regarding appellant's medical status and disability. No response was received.

The Office referred appellant and the case record to Dr. James R. Edgar, a Board-certified psychiatrist, for a second opinion evaluation regarding whether she continued to be disabled due to her accepted condition. In an August 13, 2008 report, Dr. Edgar reviewed the statement of accepted facts and medical records. He noted that appellant had preexisting history of bipolar disorder, and that she did not follow up for treatment by Dr. Afield or continue her medications. Dr. Edgar provided a comprehensive examination, including psychological testing and a detailed mental status examination. Appellant's speech, mood and thought processes were described as normal with logical associations. He also attached a copy of the psychological testing that was performed on his behalf on August 13, 2008. Dr. Edgar diagnosed bipolar disorder by history not related to work stress. In response to the Office's questions, he opined that appellant no longer had a medical condition or disability as a result of her accepted employment injury, noting that there were no longer residuals of the accepted acute stress disorder. Dr. Edgar noted that appellant felt her disability retirement was due to carpal tunnel syndrome. He noted that the medication she was taking was for her preexisting bipolar disorder and not for the condition accepted by the Office as work related. Dr. Edgar also noted that appellant had not sought treatment from Dr. Afield for over a year until she saw him the previous week. He found that from a psychiatric perspective appellant was able to return to her former work and no further treatment was needed for the acute stress disorder as it had resolved without residual disability.

On September 26, 2008 the Office issued a notice of proposed termination of compensation, finding that the weight of the medical evidence was represented by Dr. Edgar. It noted that appellant no longer had any disability or residuals due to her accepted acute stress reaction condition. The Office advised that there was no medical evidence to establish that she was currently under the care of a qualified psychiatrist. Appellant was provided 30 days to respond.

In a September 29, 2008 letter, appellant's representative indicated that he received the Office's September 26, 2008 notice and had partially responded to this in a prior September 23, 2008 letter.[2] He indicated that both Dr. Afield and Dr. Masood Z. Rehmani, a Board-certified

[2] The September 23, 2008 letter, received by the Office September 26, 2008, advised it was in response to the Office's letter of September 11, 2008 requesting additional information about the current claim and claim number xxxxxx578, for carpal tunnel syndrome.

psychiatrist, treated appellant for her emotional condition and were in contact regarding her care. Appellant's representative requested additional time to submit evidence.

On October 28, 2008 the Office received copies of treatment notes from Dr. Afield dated 2003 through 2008 and Dr. Rehmani dated 2003 through 2008. On September 5, 2008 Dr. Afield noted that appellant had been seen by Dr. Edgar and that she was still trying to handle her situation holistically. He stated that she was still upset and incapable of working. Dr. Afield opined that this was a permanent impairment and was related to the injury at the employing establishment. Dr. Afield advised that appellant needed continued treatment. On October 28, 2008 the Office received an October 20, 2008 letter from appellant's representative.

By decision dated October 29, 2008, the Office terminated appellant's termination compensation benefits effective November 23, 2008. The weight of medical opinion was accorded to Dr. Edgar's finding that appellant no longer had an acute stress reaction.

In a November 12, 2008 letter, appellant's representative requested reconsideration of the October 29, 2008 decision based on new medical reports and arguments previously submitted but not considered.

By decision dated December 3, 2008, the Office denied modification of the October 29, 2008 decision. It reviewed the medical evidence from Drs. Afield and Rehmani.

On December 15, 2008 appellant's representative requested reconsideration. He contended that new medical evidence had previously been submitted but not reviewed. No new evidence was submitted.

By decision dated January 9, 2009, the Office denied appellant's request for further review of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[4] The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that requires further medical treatment.[5]

[3] *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

[4] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[5] *Frederick Justiniano*, 45 ECAB 491 (1994).

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the opinion offered.[6]

After termination or modification of benefits are clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an acute stress disorder as a result of a March 14, 2003 letter from the employing establishment notifying her that she would be removed from her duties due to improper conduct. It terminated her compensation benefits effective November 23, 2008 based on the opinion of Dr. Edgar, a Board-certified psychiatrist, who served as an Office referral physician. The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Edgar, who determined that appellant ceased to have employment-related residuals of her accepted condition.

In an August 13, 2008 report, Dr. Edgar described appellant's preexisting medical history, and her accepted employment condition. He noted that appellant had a long history of bipolar disorder for which she took medication and provided a detailed mental status examination, including comprehensive diagnostic testing. Dr. Edgar opined that appellant no longer had a medical condition or disability from the accepted acute stress disorder, opining that residuals of the acute stress disorder had resolved. He explained that the medication appellant took was for depression and not the condition accepted by the Office as work related. Dr. Edgar addressed findings on mental status examination and psychological testing obtained by his Office. Dr. Edgar noted that her memory and thought processes were intact and that she had the ability to manage daily living activities. The Board has carefully reviewed the opinion of Dr. Edgar and notes that it has reliability, probative value and convincing quality with respect to the physician's stated conclusions regarding appellant's condition. Dr. Edgar provided medical rationale in support of his opinion noting, for example, that appellant had not seen her psychiatrist in over a year before recently seeing Dr. Afield, that she was not taking medication for her accepted condition and that her disability retirement was due to carpal tunnel syndrome.[8] He provided no basis on which to support any continuing residuals or disability for work attributable to the accepted acute stress disorder.

The Board finds that the Office properly terminated appellant's compensation benefits effective November 23, 2008. Thereafter, the burden of proof for reinstating compensation benefits shifted to appellant.[9]

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[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[7] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *See supra* note 7.

Appellant submitted copies of treatment records dated 2003 through 2008 from Dr. Afield and Dr. Rehmani.

Dr. Afield advised in a September 5, 2008 treatment record that appellant was still disabled and that she had permanent impairment related to the accepted work injury. However, he did not provide any medical rationale explaining how her disability was attributable to the compensable condition of acute stress disorder rather than her preexisting condition. Moreover, he noted that appellant was on medication and was trying to handle her condition in a holistic manner. Dr. Afield did not report the results of any recent examination or any diagnostic evaluation, just noting that he would be interested in reviewing the report of Dr. Edgar. Medical reports not containing rationale on causal relation are entitled to little probative value.[10] The need for rationale is especially important as appellant has a preexisting bipolar disorder that has not been accepted as being employment related. Dr. Afield's treatment records are insufficient to overcome or to create a conflict with Dr. Edgar's opinion that the employment-related condition had resolved.

None of the other evidence submitted discusses or provides a contrary medical opinion regarding appellant's disability and medical status as it relates to the accepted condition. The additional reports from Dr. Afield and Dr. Rehmani do not support that appellant continues to have residuals from her acute stress disorder.

Appellant's representative contends that certain medical information had not been considered. However, the issue in the case is medical in nature and no other medical evidence addresses with probative medical rationale, based on a thorough examination, how appellant continued to have residuals of the employment-related acute stress disorder. The Office properly terminated appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act[11] vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[12] Section 10.608(a) of the Code of Federal Regulations provides that 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 the standards described in section 10.606(b)(2).[13] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

[10] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002). *See supra* note 7.

[11] 5 U.S.C. §§ 8101-8193.

[12] *Id.* at § 8128(a).

[13] 20 C.F.R. § 10.608(a).

[14] *Id.* at § 10.608(b)(1) and (2).

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[15]

ANALYSIS -- ISSUE 2

In support of her December 15, 2008 reconsideration request, appellant's representative referred to documents which had previously been submitted but which he contends had not been reviewed. The medical evidence of record was reviewed by the Office in its merit decisions. This argument does not constitute a basis for reopening her case. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[16] Appellant has not submitted any new medical evidence which addresses the relevant issue of whether appellant's conditions and disability after November 23, 2008 are causally related to her compensable work injury. Her reconsideration request failed to show that the Office erroneously applied or interpreted a specific point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

On appeal appellant's representative reiterated that new medical evidence was submitted and the Office refused to review such evidence. As noted, however, the record reflects that evidence submitted by appellant was reviewed by the Office, which found that the treatment records of her attending physicians were not adequate to overcome the opinion of Dr. Edgar.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective November 23, 2008. The Board further finds that the Office properly denied appellant's request for reconsideration without reviewing the merits of her claim.

[15] *Id.* at § 10.608(b).

[16] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated January 9, 2009 and December 3, 2008 are affirmed.

Issued: January 8, 2010
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