

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

L.M., Appellant)	
)	
and)	
)	Docket No. 10-120
)	Issued: September 15, 2010
DEPARTMENT OF JUSTICE,)	
U.S. PENITENTIARY, Atlanta, GA, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2009 appellant filed a timely appeal from October 6 and 7, 2009 merit decisions of the Office of Workers' Compensation Programs, which, respectively, denied authorization for a particular medication and denied his claim that diabetes mellitus was consequential to the treatment for his 1987 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether appellant's diabetes mellitus is a consequence of the prescription drug Seroquel, used to treat his accepted post-traumatic stress disorder and (2) whether the Office abused its discretion in denying authorization for the prescription drug Prazosin to treat post-traumatic stress disorder.

FACTUAL HISTORY -- ISSUE 2

Beginning November 23, 1987 appellant, then a 34-year-old correctional officer, sustained an injury in the performance of duty when he was held hostage by rioting detainees at

the penitentiary. The Office accepted his claim for stress reaction. It later expanded its acceptance to include post-traumatic stress disorder and depression; necrotizing fasciitis, cellulitis and a sensory neuropathy of the peroneal nerve on the right and esophageal reflux disease, heartburn and dyspepsia.

In October 2008 appellant notified the Office that he was claiming compensation for diabetes mellitus as a consequence of Seroquel, a drug prescribed for his accepted post-traumatic stress disorder. On November 3, 2008 the Office advised that appellant's physician must explain how the work injury and treatment caused or affected the diabetes condition and the objective findings supporting that conclusion. "Specifically, if your doctor feels that treatment with the Seroquel medication contributed to your diabetes condition, an explanation of how such exposure contributed should be provided." It asked appellant to submit the requested information within 30 days.

On January 15, 2009 the Office denied appellant's consequential injury claim. It found that he provided no medical evidence connecting his diabetes condition to the Seroquel prescribed for his accepted employment injury.

Appellant requested reconsideration. On September 22, 2009 the Office medical adviser reported that Seroquel would not and could not cause diabetes mellitus, which is usually a genetic condition often brought forth by aging and obesity and other factors. "What is clear medically though is that the underlying diabetes mellitus was not caused, aggravated, accelerated or precipitated by the treatment that the claimant had with Seroquel."

In a decision dated October 7, 2009, the Office reviewed the merits of appellant's case and denied modification of its January 15, 2009 decision. It found no well-reasoned medical opinion connecting his diabetes mellitus to the use of Seroquel for post-traumatic stress disorder.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of

¹ 5 U.S.C. § 8102(a).

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁴

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁵

ANALYSIS -- ISSUE 1

When appellant notified the Office that he was claiming compensation for diabetes mellitus as a consequence of Seroquel, a drug prescribed for his accepted post-traumatic stress disorder, the Office correctly informed him on November 3, 2008 that his physician had to explain how the treatment for his work injury caused or affected his diabetes and what objective findings supporting that conclusion. The Office gave appellant a reasonable amount of time to submit this evidence.

Appellant never submitted the evidence requested. The Board has reviewed his case record through the Office's final decision on October 7, 2009 and can find no report from any physician who draws a connection between Seroquel and appellant's diabetes, much less a report that soundly explains how the drug affects diabetes and what objective findings demonstrated that causal relationship in his case. However, there is no medical opinion evidence to support appellant's claim, the Board finds that he has not met his burden of proof. The Board will affirm the Office's October 7, 2009 decision denying his consequential injury claim.

Appellant argues on appeal that the Office improperly relied on the opinion of its medical adviser, who noted that Seroquel "would not and could not" cause or aggravate diabetes mellitus. Even without the medical adviser's opinion, the Office and the Board would still reach the same result because appellant submitted no reports from his physician addressing the issue and explaining whether his consequential injury claim has any merit. The burden is on appellant to support such contentions with evidence.

FACTUAL HISTORY -- ISSUE 2

On May 28, 2009 appellant informed the Office that his doctor was prescribing Prazosin for his post-traumatic stress disorder. On May 29, 2009 the Office advised that there were no treatment notes prescribing the medication for his accepted emotional condition.

On August 13, 2009 Dr. Darko Zdilar, appellant's psychiatrist, wrote: "I want [appellant] to be put on medications called Prazosin to help with the nightmare and flashbacks. Hopefully, with this medication on board, we will be able to eliminate some of the other medications that he has been on."

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁵ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

On September 1, 2009 the Office medical adviser wrote: “The drug Prazosin is used to treat hypertension. Since Prazosin is an antihypertensive, the Office cannot authorize the medication for the management of the accepted condition of post-traumatic stress disorder.”

In a decision dated September 3, 2009, the Office denied authorization of Prazosin for the treatment of appellant’s accepted medical conditions. It found that the evidence was not sufficient to show how the medication related to accepted medical conditions or how hypertension was a consequence of the November 23, 1987 work injury.

Appellant requested reconsideration. On September 22, 2009 the Office medical adviser noted that it might be appropriate to treat hypertension with Prazosin, but it did not accept appellant’s hypertension to be work related. So the Office must not authorize payment for the medication.

On October 6, 2009 the Office reviewed the merits of appellant’s case and denied modification of its September 3, 2009 decision. It found the record devoid of any well-reasoned medical opinion connecting Prazosin to the treatment of any of the accepted medical conditions.

On appeal appellant argues that the Office erroneously based its decisions on the opinion of its medical adviser. He argues that a second opinion is required to determine the issues.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.⁶ The Office must, therefore, exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.⁷ The only limitation on the Office’s authority is that of reasonableness.⁸

ANALYSIS -- ISSUE 2

Appellant informed the Office that his doctor was prescribing Prazosin for his post-traumatic stress disorder. On August 13, 2009 Dr. Zdilar, his psychiatrist, confirmed that he wanted to put appellant on Prazosin “to help with the nightmare and flashbacks” and to possibly reduce some of his other medications. So there is at least some medical evidence to support appellant’s request for authorization.

⁶ 5 U.S.C. § 8103(a).

⁷ See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

⁸ *Daniel J. Perea*, 42 ECAB 214 (1990).

The issue is that Prazosin appears to be a medication for hypertension and hypertension is not accepted as a medical condition causally related to appellant's 1987 employment injury. It is not apparent how this type of medication would help treat nightmares or flashbacks or otherwise give relief for appellant's post-traumatic stress disorder. Dr. Zdilar has given no indication that the drug has any "off-label" use that would benefit appellant's accepted psychiatric condition. He would have to explain this to the Office. In the absence of any further explanation for the prescription, the Board finds that it was reasonable for the Office not to approve the treatment. As the Office did not abuse its discretion in the matter, the Board will affirm the Office's October 6, 2009 decision to deny authorization for the prescription.

Appellant again argues that the Office relied on the opinion of its medical adviser, but as he points out, the Office medical adviser may advise whether a treatment is useful or necessary. The medical adviser rightly noted the nature of the medication, which in turn raises a fundamental question whether it can be useful in the treatment of post-traumatic stress disorder. So in both issues -- whether Seroquel has a medical connection to appellant's diabetes and whether Prazosin is an appropriate treatment for a psychiatric condition -- the deficiency in appellant's case is a lack of medical explanation from his doctors. If he wants the Office to accept a consequential diabetes injury or approve an antihypertensive drug to treat post-traumatic stress syndrome, his doctors must give the Office good reasons.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his diabetes mellitus is a consequence of the prescription drug Seroquel, used to treat his post-traumatic stress disorder. The Board also finds that the Office did not abuse its discretion in denying authorization for the prescription drug Prazosin to treat appellant's post-traumatic stress disorder.

ORDER

IT IS HEREBY ORDERED THAT the October 7 and 6, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 15, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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