

In an October 28, 2004 attending physician's report, Dr. Eddie L. Whitehead, a Board-certified internist, diagnosed headaches and anxiety. He found that appellant's conditions were due to "increased stress with job relations." Dr. Whitehead placed her off work from August 26 to December 20, 2004.

On March 31, 2005 the Office referred appellant to Dr. Russell Prince, a Board-certified psychiatrist for a second opinion examination.¹ In a May 16, 2005 report, Dr. Prince diagnosed major depression in remission for months. He also diagnosed obesity and a history of headaches, which were in remission. Dr. Prince advised that the diagnosis of major depression, which was now in remission, was causally related to the increased stress experienced secondary to appellant's work duties which included a heavy workload, meeting deadlines, working without an assistant, as well as a demotion in June 2003 and to the multiple changes in her job assignments. He found that she could perform her full-time regular duties.

On May 23, 2005 the Office accepted appellant's claim for major depression. It advised her regarding how to claim wage-loss compensation for periods of disability.²

The Office subsequently received disability certificates dated January 4 and 30, 2006 from Faith Wright, a social worker, who noted treating appellant since October 11, 2004. Ms. Wright placed appellant off work from December 27, 2005 to January 27, 2006 and released her to work on January 28, 2006. On January 30, 2006 she advised that appellant was released to work on February 9, 2006.

In a March 6, 2006 report, Dr. Gregory W. Melieste, a Board-certified psychologist and neurologist, advised that appellant was referred by her therapist. He noted that appellant had been off work since December 27, 2005. While there were no specific new job-related incidents, there were minor stressors at work such as having her desk moved on four different occasions. Dr. Melieste noted that appellant saw these as part of her original job stressors. In a separate report of the same date, he diagnosed recurrent atypical depression and placed her off work from March 6 to June 6, 2006.³

In an April 5, 2006 report, Dr. Valeria Fullwood, a Board-certified obstetrician and gynecologist, noted seeing appellant on September 23, October 18, November 4, December 2, 2005 and February 22, 2006. She advised that appellant was treated for fibroids and dysfunctional uterine bleeding on these dates.

In a June 11, 2007 report, Dr. Melieste indicated that appellant was under his care from March 6 to December 5, 2006.

¹ The Office found as employment factors that appellant's job involved project deadlines, her workload involved varied duties, she had a heavy workload and that her workload increased when a subordinate employee was moved to another job in February 2004.

² The Office paid wage-loss compensation from September 7 to December 20, 2004.

³ Appellant filed claims for wage-loss compensation for the periods January 23 to February 17 and February 20 to April 15, 2006. In an April 28, 2006 decision, the Office denied the claim for the period January 23 to February 18, 2006 and, in a February 5, 2007 decision, it denied the claim for the period February 20 to April 15, 2006.

On March 9, 2009 appellant filed a Form Ca-2a, notice of recurrence of disability. She alleged that she was disabled beginning December 26, 2005. Appellant indicated that she returned to work on December 21, 2004 with no limitations but that she subsequently encountered difficulties which included being subjected to retaliation for filing a claim.

On June 17, 2009 appellant filed a Form CA-7 claim for compensation for the period January 8 to September 16, 2006.⁴

In a letter dated June 24, 2009, the employing establishment disputed the claim. It advised that appellant was not an employee since September 16, 2006, noting she was issued a removal letter on September 8, 2006. The employing establishment also noted that she was released to full duty without restrictions in December 2004 and had worked over 60 days in her current position without residuals. In a July 7, 2009 letter, it advised that appellant was absent without leave since June 6, 2006 and removed from the employing establishment on September 16, 2006.

In letters dated August 31 and September 10, 2009, the Office informed appellant of the evidence needed to support her claim of wage loss from January 8 to 22 and April 16 to September 16, 2006. It advised that it had previously denied compensation for the periods January 23 to February 17 and February 20 to April 15, 2006.

In a September 21, 2009 report, Dr. Melieste noted that appellant was followed for outpatient psychiatric treatment from March 6 to December 5, 2006. Appellant was off work for significant depression and related symptoms since December 2005. Dr. Melieste advised that appellant perceived that her ongoing symptoms and disability were directly related to her on-the-job incident occurring in November 2004, for which she had previously received time off and compensation. He stated that “[o]ccupational stress remained the obvious causal explanation for her relapse and subsequent disability.”

In an October 28, 2009 decision, the Office denied the claim for compensation from January 8 to 22 and April 16 to September 16, 2006. It found that the medical evidence did not establish disability for the periods claimed.

On November 23, 2009 appellant requested an examination of the written record. In a letter also dated November 23, 2009, she alleged that her disability from work was due to work-related stress. Appellant stated that her gynecological problems were also work related because of stress.

In a February 22, 2010 decision, an Office hearing representative affirmed the October 28, 2009 decision.

⁴ Appellant stated that she did not claim the period May 28 to June 10, 2006.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act⁵ means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.⁶ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁷ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁸ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

In support of her claim for disability for the period January 8 to 22 and April 16 to September 16, 2006, appellant provided several reports from her treating physician, Dr. Melieste. The Board finds that Dr. Melieste did not provide sufficient medical opinion to establish appellant's claim of work-related total disability.

On March 6, 2006 Dr. Melieste noted that appellant had been off work since December 27, 2005. He explained that, while there were no specific new job-related incidents, there were minor stressors at work such as having her desk moved on four different occasions. Appellant saw these incidents as part of her original job stressors. In a September 21, 2009 report, Dr. Melieste noted treating appellant from March 6 to December 5, 2006 and stated that she was off work for significant depression and related symptoms since December 2005. He advised that she perceived that her ongoing symptoms and disability were directly related to her on-the-job incident occurring in November 2004, for which she had previously received time off and compensation. Dr. Melieste also opined that "[o]ccupational stress remained the obvious causal explanation for her relapse and subsequent disability." The Board notes that Dr. Melieste supported causal relationship largely based on appellant's belief that her disability was due to her employment. However, the belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹⁰ Dr. Melieste did not provide sufficient medical reasoning to explain why appellant was unable to work for the specific periods

⁵ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

⁶ *Paul E. Thams*, 56 ECAB 503 (2005).

⁷ *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Paul E. Thams, id.*

⁸ *Id.*

⁹ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Robert A. Boyle*, 54 ECAB 381 (2003).

at issue due to her accepted emotional condition.¹¹ This is important as the second opinion physician, Dr. Prince, found that the accepted condition of depression was in remission. He cleared appellant to return to her regular duties on May 16, 2005. As Dr. Melieste did not provide adequate reasoning explaining how the periods of claimed disability were causally related to the accepted condition, his opinion is of diminished probative value. No other reports from him specifically attributed any period of disability to the accepted condition.

In an April 5, 2006 report, Dr. Valeria Fullwood, a Board-certified obstetrician and gynecologist, noted that appellant was seen on September 23, October 18, November 4, December 2, 2005 and February 22, 2006. Appellant was treated for fibroids and dysfunctional uterine bleeding. Although she asserted that her gynecological problems were work related because of stress, the Board notes that Dr. Fullwood did not offer any opinion addressing the issue of whether appellant was disabled for the claimed periods. Dr. Fullwood did not explain how any diagnosed condition was caused or aggravated by the accepted condition of major depression or stress from work. Her opinion is insufficient to establish appellant's claim.

The Office received evidence from Ms. Wright, a social worker; however, a social worker is not a physician as defined under the Act. Thus, her opinion is of no probative value.¹²

Appellant alleges on appeal that her claimed disability is employment related and that several things happened at work that caused her to slip back into depression. As noted the medical evidence of record does not establish that her claimed disability is related to her accepted emotional condition. The medical evidence provides insufficient reasoning to explain how the accepted depression caused disability for the claimed period. Appellant has not met her burden of proof to establish that her claim.

CONCLUSION

The Board finds that appellant failed to establish that she was totally disabled for the periods January 8 to 22 and April 16 to September 16, 2006 as a result of her employment-related conditions.

¹¹ 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).

¹² *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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