United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 11-1587**
	)	**Issued: February 6, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Rochester, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 17, 2011 appellant filed a timely appeal from a May 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 established a modification of the August 20, 1998 wage-earning capacity determination.

FACTUAL HISTORY

The case has been before the Board on prior appeals. By decision dated July 12, 2001, the Board affirmed an August 20, 1998 wage-earning capacity determination based on the

[1] 5 U.S.C. § 8101 *et seq.*

selected position of automobile salesperson.[2] The Board noted that OWCP had accepted bilateral mild distal peripheral neuropathy and left mild ulnar neuropathy.[3] In a decision dated May 31, 2007, the Board affirmed a July 12, 2006 OWCP decision, finding that appellant's reconsideration request was insufficient to warrant merit review of the claim.[4] By decision dated March 4, 2011, the Board set aside an October 1, 2009 OWCP decision that found that his application for reconsideration was untimely and failed to show clear evidence of error. The Board held that appellant was requesting modification of the wage-earning capacity and the case was remanded for an appropriate decision. The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

As the Board noted in its March 4, 2011 decision, appellant submitted a reconsideration request dated July 28, 2009. Appellant argued that a September 14, 2006 report from Dr. Clancey McKenzie, a psychiatrist, established error by OWCP. In the September 14, 2006 report, Dr. McKenzie reported that it was apparent that appellant had severe stress and anxiety. According to him "there have been outbursts of uncontrolled anger and emotional instability that began with the physical difficulty when [appellant's] workload was increased to beyond his capacity." Dr. McKenzie diagnosed post-traumatic stress disorder (PTSD). He noted that appellant had been offered a job as a car salesperson and Dr. McKenzie opined that working outside for long hours would not be appropriate as this would cause worsening of his "arthritic conditions." Dr. McKenzie also stated that with PTSD appellant could not work as a salesperson with the general public. He noted a February 22, 2005 report, finding that appellant was totally disabled at that time due to PTSD and "this condition was precipitated by the physical injuries on the job coupled with the stress and anger that caused the flashbacks to experiences in Viet Nam." Dr. McKenzie concluded that appellant was not able to work in any capacity at that time.

In the July 8, 2009 letter, appellant also stated that OWCP erred as it failed to consider the evidence from Dr. Lynn Storie regarding possible exposure to Agent Orange in Viet Nam. He stated that Dr. Storie reported that he "feared" his left leg condition was caused by exposure to Agent Orange and this showed how an emotional condition arose from the physical injuries and resulted in a material worsening of the accepted injuries. The record contains an August 12, 1992 report from Dr. Storie, who stated that appellant was questioning whether his left leg paresthesia could be related to Agent Orange exposure. She stated that he did not feel exposure to a chemical agent would cause such a localized condition and it was more likely related to his work duties.

Appellant also referred to reports from Dr. H. Branham, a psychiatrist, from 2005 regarding appellant's PTSD. In a report dated February 22, 2005, Dr. Branham stated that he had treated appellant since 2002 for PTSD. He stated that it was clear that February 3, 1995 was the "psychological impairment date and it rose to a level of severity, preventing him from engaging in his employment at the [employing establishment] or any other position dealing with

[2] Docket No. 99-1799 (issued July 12, 2001).

[3] Appellant filed an occupational claim dated November 23, 1992 and identified the job duties of carrying a mailbag since 1981.

[4] Docket No. 06-1928 (issued May 31, 2007).

the public because of his stress symptoms which result in major conflicts when he gets involved with other people."[5] In a report dated May 6, 2005, Dr. Branham stated that appellant had been experiencing symptomology of PTSD since the mid 1980s or perhaps longer. He stated that while employed appellant had an injury that caused pain and increased his stress manifestations. Dr. Branham stated, "In the interim there was a reorganization of duty assignments and job descriptions, which brought in to marked questions his ability to perform his functions and maintain his employability. [Appellant] had a great deal of fear and anxiety regarding his ability to carry out his obligations to the [employing establishment]. There was also a great deal of stress related to the financial situation due to his withheld wages." He diagnosed PTSD and concluded that the "stress symptoms have resulted in his inability to work and he is unemployable."

In a report dated November 3, 2009, Dr. Norins stated that appellant had a persistent and progressive peripheral neuropathy affecting the left leg and the left arm. He stated that appellant had a 10 percent loss of sensation in the left leg and 20 percent in the left arm.

By letter dated December 10, 2010, appellant stated that his current VA rating showed a material worsening of his condition, as he had received a greater award than the schedule award he received on March 5, 1996.[6]

In a decision dated May 10, 2011, OWCP denied modification of the August 20, 1998 wage-earning capacity determination. It found that appellant had not met any of the requirements for modification.

LEGAL PRECEDENT

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.[7] The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.[8]

[5] The record contains a February 3, 1995 treatment note from a Veterans Administration (VA) medical facility indicating that appellant wanted a letter supporting "not going back" to the employing establishment. The note appeared to be signed by a social worker. There is also a Form CA-20a report dated February 3, 1995 from Dr. Michael Norins, an internist, who diagnosed peripheral neuropathy and indicated that appellant was disabled for his date-of-injury position.

[6] Appellant received a schedule award dated March 5, 1996 for 10 percent impairment to the left arm and 5 percent impairment to the left leg.

[7] *Sue A. Sedgwick*, 45 ECAB 211 (1993).

[8] *Id.*

ANALYSIS

Appellant seeks modification of the August 20, 1998 wage-earning capacity determination. He has argued that the original determination was erroneous and that there was a material change in the nature and extent of the injury-related condition.

With respect to the issue of whether the August 20, 1998 determination was erroneous, the Board did review and affirm the wage-earning capacity decision in its July 12, 2001 decision. The question is whether appellant has submitted additional medical evidence that shows he could not perform the selected position of automobile salesman as of August 20, 1998. In this regard the Board notes that OWCP must consider both employment-related conditions as well as preexisting conditions in determining whether he could perform the selected position.[9]

Dr. Branham stated in the February 22, 2005 report that he felt appellant's "psychological impairment" date was February 3, 1995 and that it rose to a level of severity that prevented appellant from a position dealing with the public. But his statement is of diminished probative value without additional explanation. Dr. Branham does not provide a rationalized medical opinion based on a detailed factual and medical background to support his opinion.[10] He indicated that he did not begin treating appellant until 2002 and it is not clear what specific history he had been provided or what medical evidence he had reviewed. As to the date February 3, 1995, Dr. Branham does not explain why he felt a disability began on that date. The record indicates that appellant received treatment on that date from the VA, although the note appeared to be signed by a social worker, not a physician under FECA.[11] The note did not discuss the nature and extent of any disability due to a psychiatric condition. There is no evidence in the case record of a probative medical report supporting that appellant was disabled for the selected position from February 3, 1995. Dr. Branham does not provide a complete background or medical rationale to support an opinion that appellant was unable to perform the selected position as of August 28, 1998.

As to his September 14, 2006, Dr. McKenzie stated that he felt appellant was totally disabled at that time. He indicated that he concurred with Dr. Branham's February 22, 2005 report and the "Greensboro VA" that appellant was totally disabled as of February 3, 1995. Again, it is not clear what evidence Dr. McKenzie is referring to that would support disability for the selected position as of February 3, 1995.

The Board notes that Dr. Storie did not provide an opinion that appellant was disabled for the selected position nor did Dr. Norins. There is no probative evidence of record sufficient to establish that OWCP erred when it determined the selected position was medically suitable. The

[9] *See T.M.*, Docket No. 11-78 (issued October 7, 2011).

[10] Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[11] A social worker is not a physician under FECA and a report from a social worker is of no probative medical value. *Ernest St. Pierre*, 51 ECAB 623 (2000).

Board finds that appellant has not established that the wage-earning capacity determination should be modified because the original determination was erroneous.

The next issue is whether appellant has established a material change in the nature and extent of an employment-related condition. The accepted conditions were bilateral mild distal peripheral neuropathy and left mild ulnar neuropathy. For any additional conditions, appellant must first establish that a specific condition is causally related to employment and then establish a material change sometime after August 20, 1998.

In the September 14, 2006 report, Dr. McKenzie indicated that he did not feel appellant could work outside because this would aggravate his arthritic conditions. He did not provide further explanation with respect to arthritic conditions or discuss causal relationship with the employment injuries. Dr. McKenzie did not provide a specific diagnosis of an arthritis condition or conditions, discuss its relationship with employment or explain how there was a material change in the diagnosed conditions and when this occurred.

With respect to PTSD, this is not a diagnosis that has been accepted as employment related. Dr. McKenzie stated that appellant had emotional instability "with the physical difficulty when his workload was increased." He stated that appellant had pain that increased his stress manifestations. Neither physician provided a rationalized medical opinion on the issue. As noted above, they did not provide a complete factual and medical background to support their opinions. Dr. Branham briefly noted symptomology dating back to the 1980's or earlier. To the extent that he is opining that the PTSD was a consequence of the employment injury, he does not discuss whether he feels it is an aggravation of an existing condition and if so, explain the nature and extent of the aggravation. Moreover, Dr. Branham referred to factors such as reorganizations and the withholding of wages. The claim in this case concerns the job duties identified by appellant relating to carrying mail and the accepted physical conditions. A claim for an emotional condition resulting from other work factors is a separate issue, requiring detailed factual statements from appellant and findings of fact regarding compensability from OWCP.[12] With respect to the claim before the Board on this appeal, the evidence does not contain a rationalized medical opinion, based on a complete background, establishing PTSD as causally related to the identified job duties or as a consequence of the accepted employment injuries.

On appeal, appellant argues that OWCP erred with respect to his claim and failed to consider evidence. He states, for example, that there was a documented emotional condition of "fear" on August 12, 1992. To the extent appellant is referring to Dr. Storie's report dated August 12, 1992, she was treating him for left leg symptoms. Dr. Storie noted that he questioned whether his condition could be related to chemical exposure and she opined that it was more likely related to work duties. This report was written six years prior to the wage-earning capacity determination and does not establish that the August 20, 1998 decision was erroneous. Appellant also argues that evidence from the VA shows a worsening of his condition because he had received an increased award. Findings of an administrative agency with respect to

[12] *See, e.g., J.F.*, 59 ECAB 331 (2008).

entitlement to benefits under a specific statutory authority have no bearing on entitlement to compensation under FECA.[13]

The Board has considered all of the evidence of record and for the reasons noted above, finds that the evidence is insufficient to warrant modification of the August 20, 1998 wage-earning capacity determination. Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that a modification of the August 20, 1998 wage-earning capacity determination is warranted.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2011 is affirmed.

Issued: February 6, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *Burney L. Kent*, 6 ECAB 378 (1953) (findings by the VA had no bearing on proceedings under FECA); *see also Daniel Deparini*, 44 ECAB 657 (1993) (findings of the Social Security Administration are not determinative of disability under FECA).