

FACTUAL HISTORY

On December 1, 2007 appellant, then a 47-year-old criminal investigator, filed an occupational disease claim alleging that he developed post-traumatic stress disorder due to processing multiple child fatalities. On May 27, 2009 Dr. Thomas Best, a Board-certified psychiatrist, examined appellant and diagnosed post-traumatic stress disorder, chronic and severe, major depressive disorder, alcohol dependence in partial remission and severe occupational stress. He noted that appellant reported that he was a social drinker prior to the death of a young girl in October 2007. Appellant then began to escalate his alcohol use due to flashbacks and insomnia. He drank up to a fifth of liquor nightly, but eventually sought treatment at the Betty Ford Clinic receiving a diagnosis of alcohol dependence and post-traumatic stress disorder.

Dr. William Firth, a Board-certified internist, examined appellant on May 28, 2009 and diagnosed depression, post-traumatic stress disorder, obesity and mild hypertension. He noted that appellant's chief complaint was self-medication with alcohol for post-traumatic stress disorder symptoms. Dr. Firth stated that appellant began drinking in October 2007 due to the death of a child at work. He stated that appellant sought treatment for alcohol abuse on October 9, 2008 at the Betty Ford Clinic and stayed for one month. Appellant drank on six occasions since his discharge.

Appellant was admitted to The Meadows from May 23 through June 19, 2009 due to alcohol dependency, post-traumatic stress disorder, major depressive disorder and psychosocial stressors with regard to occupational exposures and was discharged against medical advice. He returned to work from July 2 through 6, 2009.

By decision dated December 23, 2009, OWCP accepted appellant's claim for post-traumatic stress disorder and major depression recurrent. On October 1, 2009 appellant received psychiatric emergency services due to alcohol use and suicidal ideation.

Appellant filed claims for compensation on July 14, 2010 from September 28, 2008 through August 15, 2009, and on October 4, 2010 for August 16, 2009 through January 2, 2010 and January 3 through October 8, 2010. On August 26, 2009 the employing establishment terminated his availability pay. On December 30, 2009 appellant was removed from the employing establishment due to failure to meet conditions of his employment.

The employing establishment provided a memorandum stating that on November 22, 2008 appellant was arrested for driving under the influence. On May 13, 2009 appellant was arrested for driving under the influence and extreme driving under the influence. His supervisor suspended his law enforcement commission following the second arrest. A Board of Inquiry at the employing establishment permanently revoked appellant's law enforcement commission on October 1, 2009. Scott Hinson requested permanent revocation of appellant's law enforcement authority and law enforcement duties which would require his removal from a designated law enforcement position.

By decision dated May 11, 2011, OWCP denied appellant's claim for compensation on the grounds that his monetary entitlement to law enforcement availability pay and wages was as

a result of his conduct unbecoming of a law enforcement officer. It stated that his employment was terminated for cause effective December 27, 2009 due to his personal actions unrelated to his employment as a criminal investigator. Appellant requested an oral hearing before an OWCP hearing representative.

Appellant submitted a Merit Systems Protection Board negotiated settlement agreement dated March 2, 2010. The employing establishment was to remove his SF-50 of his termination and related paperwork from his official personnel file and accepted appellant's voluntary retirement effective January 1, 2010. Appellant was to receive administrative leave pay from December 21 through 31, 2009. The employing establishment was to cooperate with appellant on completion of forms related to his OWCP claim.

At the oral hearing on September 28, 2011, appellant described his citation for driving under the influence on November 22, 2008 stating that he was in his car in his drive way with the motor running listening to music when he received the citation. He was not convicted of driving under the influence. Appellant stated that the second arrest on May 13, 2009 was as he drank beer following the death of an officer in Flagstaff, Arizona.

By decision dated November 7, 2011, the hearing representative denied appellant's claim on the grounds that there was no medical documentation discussing appellant's disability for work during the periods claimed.

Appellant submitted a report dated November 1, 2011 from Dr. Stephen B. Cook, a psychologist, diagnosing post-traumatic stress disorder and stating that appellant could not return to his work at the employing establishment. Dr. Cook further stated, "While the etiology of [appellant's] alcohol abuse/dependency is complex (*i.e.*, family history and/or predisposition; marital conflict/divorce, *etc.*), it is my judgment that the [post-traumatic stress disorder] symptoms were the proximate cause of his alcohol abuse/dependency."

The employing establishment responded to OWCP's initial request for information on December 21, 2011 and clarified events as well as appellant's involvement. It also submitted an SF-50 indicating that appellant resigned due to personal reasons effective January 1, 2010.

By decision dated March 8, 2012, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that he had not established that he was disabled due to his accepted employment injury and entitled to compensation benefits for the periods claimed based on Dr. Cook's report.

Counsel requested reconsideration and stated that OWCP did not consider Dr. Cook's opinion that appellant's accepted condition of post-traumatic stress disorder prevented him from working during the periods claimed. By decision dated June 29, 2012, OWCP declined to reopen appellant's claim for consideration of the merits. It found that appellant did not submit any relevant new argument in support of his request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

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.⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶ The Board will not require OWCP 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 employees to self-certify their disability and entitlement to compensation.⁷

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for post-traumatic stress disorder and major depression recurrent on December 23, 2009. Appellant filed claims for compensation from September 28, 2008 through August 15, 2009, August 16, 2009 through January 2, 2010 and January 3 through October 8, 2010. He voluntarily resigned from the employing establishment on January 1, 2010.

The medical evidence establishes that appellant sought treatment at the Betty Ford Clinic for alcohol dependence on October 9, 2008 and continued with that treatment for one month. OWCP has not accepted alcohol dependency as an accepted or consequential condition. The medical evidence addressing the causal relationship between alcohol dependency and appellant's accepted post-traumatic stress disorder consists of the November 1, 2011 report from Dr. Cook, who stated that appellant's accepted condition of post-traumatic stress disorder was the "proximate cause" of his alcohol dependency. While Dr. Cook opined that appellant's alcoholism was due to his accepted condition, he did not offer any medical reasoning in support

² *Id.*

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ *Id.*

of his opinion. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁸ As appellant has not established alcoholism as due to his employment or to his accepted post-traumatic stress disorder, OWCP properly denied compensation for hospitalizations due to this condition.

Appellant also sought in-house treatment from The Meadows from May 23 through June 19, 2009 and was discharged against medical advice and again from July 2 through 6, 2009. He received diagnoses including post-traumatic stress disorder, alcohol dependency and major depression. The medical records from this facility do not specifically address the reasons for appellant's hospitalization or his disability for work. As appellant's alcohol dependency has not been accepted, there must be some documentation that appellant's treatment was due to his accepted conditions and rendered him disabled for work. The record does not contain this evidence.

Appellant was also briefly treated on October 1, 2010 due to alcohol use and suicidal ideation. These medical records do not provide the necessary medical evidence addressing whether appellant was disabled for work due to his accepted employment injuries.

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he was totally disabled during the periods claimed due to his accepted emotional conditions.

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.

LEGAL PRECEDENT -- ISSUE 2

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.⁹ Section 10.606(b)(3) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.¹⁰ Section 10.608 of OWCP's regulations provide that when a request for reconsideration is timely,

⁸ S.S., 59 ECAB 315 (2008).

⁹ 5 U.S.C. §§ 8101-8193, 8128(a).

¹⁰ 20 C.F.R. § 10.606.

but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, counsel did not submit any pertinent new and relevant evidence. He also did not show that OWCP erroneously applied or interpreted a specific point of law.

Appellant argued that OWCP failed to consider Dr. Cook's opinion that appellant's accepted condition of post-traumatic stress disorder prevented him from working during the periods claimed. The Board finds that this argument was considered by OWCP in its March 8, 2012 decision. OWCP specifically noted that Dr. Cook diagnosed post-traumatic stress disorder and stated that appellant could not return to work at the employing establishment. The Board finds that appellant did not submit a new legal argument and thus OWCP properly declined to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish that he was disabled due to his accepted emotional conditions during the periods for which compensation is claimed. The Board further finds that OWCP properly declined to reopen appellant's claim for consideration of the merits.

¹¹ 20 C.F.R. § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the June 29 and March 8, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 20, 2013
Washington, DC

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

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

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