United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 08-198**
	)	**Issued: April 24, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Georgetown, CO, Employer	)	

Appearances:
Appellant, pro se
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 October 30, 2007 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated January 10 and May 14, 2007 that terminated her compensation benefits and a September 6, 2007 decision that denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits on January 10, 2007 on the grounds that her disability was no longer employment related; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 21, 2005 appellant, then a 55-year-old part-time distribution clerk sales associate, filed a Form CA-2, occupational disease claim, alleging that factors of her federal

employment caused stress. She stopped work on December 24, 2004. In support of her claim, appellant submitted reports dated March 7 to October 5, 2005 from Dr. Katherine L. Drapeau, a Board-certified osteopath specializing in family medicine, who noted that appellant had been her patient since October 2001 and was having trouble with her supervisor at work who was verbally aggressive and acting in a bizarre manner. This caused anxiety, insomnia, irritability and depression. Dr. Drapeau advised that appellant could not work for an undetermined period.[1] Appellant retired effective October 24, 2005. After an initial decision by the Office denying her claim on December 19, 2005, by decision dated April 25, 2006, an Office hearing representative found that appellant established two compensable factors of employment and remanded the case to the Office.[2]

On April 28, 2006 the Office referred appellant to Dr. Kenneth D. Krause, a Board-certified psychiatrist. In a May 25, 2006 report, Dr. Krause noted his review of the statement of accepted facts, the medical record, and history as presented by appellant. He provided psychometric testing results and diagnosed anxiety disorder, not otherwise specified, and dependent traits. Dr. Krause advised that appellant's anxiety disorder was precipitated and contributed to by the accepted employment factors but that these could not cause a chronic condition such as she had. By the time appellant retired, any emotional reaction related to work events would have ended such that her employment-related condition had resolved. In an attached work capacity evaluation, Dr. Krause opined that appellant could work only four hours a day because she was anxious and fearful but that after three months she could work full time. He advised that she not work at the employing establishment and should avoid conflicts and could not deal with new tasks or changes.

The Office accepted that appellant sustained a temporary aggravation of generalized anxiety disorder for the period September 4, 2004 through December 24, 2005. Appellant received wage-loss compensation for the period September 3 to October 24, 2005. She requested a review of the written record on July 3, 2006, and by decision dated October 25, 2006, an Office hearing representative remanded the case to the Office to advise appellant of the defects in her claim and allow her 30 days to submit supportive evidence.

By letter dated November 29, 2006, the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Krause, who provided a second opinion evaluation for the Office, advised that her employment-related disability had resolved. The Office informed appellant that to be entitled to continuing medical and compensation benefits, the medical evidence must establish that her condition or disability was still related to her accepted work injury. She was given 30 days to respond. Appellant disagreed with the proposed

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[1] Appellant also submitted a March 3, 2005 report in which Mara Kormylo, a licensed social worker, noted treating her with individual psychotherapy for diagnoses of anxiety and panic attacks which, she opined were work related. The Board notes that the reports of a social worker do not constitute competent medical evidence, as a social worker is not a "physician" as defined by 5 U.S.C. § 8101(2); *see Phillip L. Barnes*, 55 ECAB 426 (2004).

[2] The following were found to be compensable factors of employment: Following appellant's inquiry to the union about breaks, her supervisor questioned her and a coworker as to who made the call and stated "there are evil forces at work in this office"; and that, when appellant turned in her workers' compensation claim, her supervisor commented to a coworker that appellant would not be back to work because she was mentally ill.

termination, arguing that Dr. Krause's opinion should not represent the weight of medical opinion.

In a decision dated January 10, 2007, the Office finalized the proposed termination. On January 20, 2007 appellant requested a review of the written record. By decision dated May 14, 2007, an Office hearing representative affirmed the January 10, 2007 decision.

On August 25, 2007 appellant requested reconsideration, again alleging that Dr. Krause's opinion should not be credited. In a nonmerit decision dated September 6, 2007, the Office denied her reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on January 10, 2007. The Office referred appellant to Dr. Krause, Board-certified in psychiatry, for a second opinion evaluation. In a comprehensive report dated May 25, 2006, Dr. Krause noted his review of the statement of accepted facts, medical record and history and diagnosed anxiety disorder which was precipitated and contributed to by the accepted employment factors. He advised that the accepted factors would not cause a chronic condition such as appellant had and by the time she retired, any emotional reaction related to work events would have resolved. Appellant submitted no medical evidence subsequent to Dr. Krause's May 25, 2006 report.

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *Id.*

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

[6] *Id.*

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Krause who provided a comprehensive, well-rationalized evaluation in which he clearly advised that any residuals of appellant's employment-related emotional condition had resolved. The Office therefore met its burden of proof to terminate appellant's wage-loss and medical benefits on January 10, 2007.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act 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.[7] 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).[8] 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.[9] 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.[10]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant merely reiterated that Dr. Krause's opinion should not be credited. She therefore did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[11]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no additional evidence. She therefore did not submit relevant and pertinent new evidence not previously considered by the Office, and the Office properly denied her reconsideration request by its September 6, 2007 decision.

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[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.608(a).

[9] 20 C.F.R. § 10.608(b)(1) and (2).

[10] 20 C.F.R. § 10.608(b).

[11] 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on January 10, 2007 and properly denied appellant's request for a merit review pursuant to section 8128(a) of the Act.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 6, May 14 and January 10, 2007 be affirmed.

Issued: April 24, 2008
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