United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant **and** **DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, CA, Employer**	)	**Docket No. 10-1840** **Issued: June 21, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2010 appellant filed a timely appeal from the March 15, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] 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 met his burden of proof to establish that he had disability, beginning October 30, 1979, causally related to his employment-related conditions.

FACTUAL HISTORY

On October 18, 1979 appellant, then a 43-year-old air industrial suggestion specialist, sustained a traumatic injury to his left eye when he was struck by an opening door in the performance of his duties. He stopped work on October 19, 1979. The Office accepted appellant's claim for contusion to the left eye and later expanded the claim to include

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[1] 5 U.S.C. § 8101 *et seq.*

psychogenic pain disorder.[2] Appellant received continuation of pay from October 19 to 29, 1979.[3]

In a report dated October 22, 1979, Dr. Richard Rosenberg, a Board-certified ophthalmologist, noted appellant's history and examined appellant. He diagnosed a left eye contusion and possible concussion syndrome. Dr. Rosenberg indicated that appellant could return to regular duties on October 30, 1979. In an October 30, 1979 report, he advised that appellant could return to light work that date. Dr. Rosenberg discharged appellant from treatment as of October 29, 1979 and stated that subjective complaints were in excess of the objective findings related to the injury.

In a report dated October 29, 1979, Dr. Joseph G. Hubbard, a Board-certified neurologist, noted that appellant may have suffered a possible cerebral concussion; however, he noted that there was no history suggestive of serious injury or any neurological signs to suggest a disturbance of the central nervous system. He advised that no permanent residuals were anticipated. In a January 23, 1980 report, Dr. Raymond S. Mullen, a Board-certified ophthalmologist, noted the history of injury and diagnosed minimal post-traumatic neuralgia on the left side of the face, with no objective evidence of ocular pathology and minimal hyperopia and presbyopia consistent with appellant's age. He advised appellant of the "minimal nature of his problems."

In a January 5, 1980 letter, Andrew Thompson, an employing establishment compensation specialist, noted that Dr. Rosenberg released appellant to light duty on October 30, 1979 but that appellant did not return to work. He stated that on November 28, 1979 he spoke with appellant and requested medical documentation to support on going disability for work after October 29, 1979. Appellant advised him that he had a fall and injured his back while on disability. Mr. Thompson informed appellant that the fall would not be considered work related unless he could establish that it was due to the injury.

The Office received medical evidence. In a September 1, 1983 report, Dr. Calvin Kam, a Board-certified neurosurgeon, saw appellant for complaints of left eye pain and reported the history of injury. He noted examination findings and stated that he could find no significant problem with appellant's left eye. In an October 15, 1983 report, Dr. Michael M. Okihiro, a Board-certified neurologist, noted the history of injury and appellant's complaints of chronic left eye pain. He advised that a computed tomography scan was normal. Dr. Okihiro advised appellant that he could not find "anything" from a neurological standpoint. In a January 18, 1984 report, Dr. Wayne Wilson, a Board-certified ophthalmologist, diagnosed eye pain in the left, with an undetermined cause, hyperopia, presbyopia and reduced accommodation. In a February 10, 1984 report, Dr. Dennis I. Maehara, a Board-certified ophthalmologist, noted

[2] This case was previously appealed to the Board. On August 18, 2004 the Board remanded the case for further medical development with regard to whether appellant had more than a 10 percent permanent impairment of his left eye. The facts and history contained in the prior appeal are incorporated by reference. Docket No. 04-8266 (issued August 18, 2004). The record also reflects that appellant has a prior claim, not before the Board on the present appeal, that the Office accepted for duodenal ulcer disease, mixed anxiety and depressive neurosis.

[3] On February 11, 1980 the Office denied appellant's claim for continuation of pay from October 30 to December 2, 1979 as the medical evidence did not support disability past October 29, 1979.

appellant's October 18, 1979 injury and listed a period of disability as "approximately 55 days." He provided no diagnosis and advised that appellant could return to regular work. In a report dated March 21, 1984, Dr. James Pierce, a Board-certified neurologist, opined that he could find nothing objectively wrong with appellant. He advised that appellant's description of his symptoms was dramatic and did not fit into any organic syndrome. Dr. Pierce explained that he performed a complete neurological work up and found nothing abnormal. He recommended that appellant return to work and learn to deal with his "perceived discomfort."

In a May 23, 1984 report, Dr. James M. Denny, a clinical psychologist, noted appellant's history and conducted a mental examination. He explained that appellant showed no mental disorder and was neither psychotic nor neurotic. Dr. Denny noted that, despite a sizeable medical record, repeated examinations by various specialists did not identify any objective findings in regard to appellant's accident. He acknowledged that two physician's diagnosed "minimal post-traumatic neuralgia, left face." Dr. Denny also noted that, while nothing was found wrong with appellant's left eye, appellant believed that the "pain is real as real as are his headaches. He believes these prevent him from returning to work or that no one would hire him in his present condition." He stated that psychological evaluation revealed that appellant had a somatoform or psychophysiological disorder. Dr. Denny diagnosed psychogenic pain disorder since appellant's complaints centered about the eye, facial pain and headaches. He explained that a "true conversion disorder of a hysterical nature is contraindicated since the patient has no objective loss or alteration in physical functioning suggesting a physical disorder." Dr. Denny noted that the predominant feature of a psychogenic pain disorder was "a complaint of pain, in the absence of adequate physical findings and in association with evidence of the etiological role of psychological factors. The disturbance is not due to any other mental disorder." Appellant believed that he was "unable to be gainfully employed." Dr. Denny recommended vocational rehabilitation and personal counseling.

In a June 27, 1984 report, Dr. Pierce reviewed Dr. Denny's evaluation and opined that appellant had a psychogenic pain disorder. He explained that psychogenic disorders were often precipitated by an event such as a blow to the left frontal orbital region appellant sustained in October 1979. Dr. Pierce opined that there was a causal relationship. He added that his "personal impression" was that appellant was "making the most of the situation in terms of pressing his claim. I am not sure that his disability reflects only the severity of the pain which he is actually experiencing."

In a September 13, 1986 report, Dr. William H. Fleming, a Board-certified psychiatrist and a second opinion physician examined appellant and determined that his injury was not enough to cause any additional stress leading to further impairment or disability. He further explained that appellant "sees himself as unable to do the job and seems to have no desire to do so. Appellant sees himself as a victim of bureaucratic bungling and he is convinced of his disability." Dr. Fleming opined that appellant should be capable of performing his last job.

The Office received a November 12, 1996 attending physician's report from Dr. Jose Rios Orlandi, a general practitioner, whose diagnoses included chronic pain symptoms. Dr. Orlandi checked a box "yes" that he believed the condition found was caused or aggravated by an employment activity. He filled in that appellant was partially disabled from 1985 to November 12, 1996 and noted that appellant had not been advised to return to work. Portions of

the report are illegible. In a December 11, 1997 report, Dr. Luis Cruz, a Board-certified ophthalmologist, noted that his testing did not include an extensive evaluation of chronic pain; however, his findings did not reveal any physical causes for his pain. In an April 4, 1998 report, Dr. Orlandi noted treating appellant for arthritis, contusion of the left eye associated with psychogenic pain disorder, erosive gastritis, reflux esophagitis, hiatal hernia, duodenal ulcer and hepatitis C virus. He stated that appellant's gall bladder was removed on November 21, 1997. Dr. Orlandi opined that there was a relationship between appellant's "past disability condition and present condition to warrant a full permanent disability change."[4]

In a May 3, 1999 report, Dr. Ellen Kroop-Martin, a Board-certified internist, diagnosed chronic left eye pain due to trauma, chronic gastroesophageal reflux and anxiety disorder. She advised that appellant was incapacitated secondary to chronic left eye pain and anxiety disorder. Dr. Kroop-Martin advised that it was permanent. Appellant continued submitting reports from his ophthalmologist regarding his eye condition. The reports did not specifically address how disability since 1979 may have been due to the accepted conditions. Other medical reports of record pertained to his schedule award claim.

Appellant filed several Form CA-7 claims for disability for the period beginning October 18, 1979. The employing establishment noted that he left federal service in March 1980.

In a July 16, 2009 decision, the Office denied the claim for compensation beginning October 30, 1979 as the claimed disability was not shown to be due to the accepted work injury.

On August 14, 2009 appellant requested a hearing, which was held on December 8, 2009. Appellant's representative alleged that he should be entitled to compensation benefits as he was unable to work due to the accepted work injury. Appellant described his October 18, 1979 incident and the injuries he sustained as a result. He alleged that he continues to suffer from the effects of that injury. In a December 13, 2009 statement, appellant indicated that he had submitted medical evidence which supported his claim for disability.[5] He referred to the reports of numerous physicians in the record. Appellant also submitted articles on accidental injuries and vertigo.

By decision dated March 15, 2010, the Office hearing representative affirmed the Office's July 16, 2009 decision. The Office found that the medical evidence was insufficient to establish that appellant was totally disabled for work on or after October 30, 1979 causally related to his accepted employment injuries.

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[4] Dr. Orlandi also provided an October 3, 1996 work restriction evaluation that diagnosed depression and chronic pain syndrome. It did not specify how many hours per day that appellant was able to work.

[5] Appellant also referred to medical evidence dating from October and December 2009; however, those records were not in the file.

LEGAL PRECEDENT

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,[6] 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.[7]

As used in the Act, the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[8] 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 his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[9]

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.[10] 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 he 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.[11] 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 employees to self-certify their disability and entitlement to compensation.[12]

ANALYSIS

The Office accepted appellant's claim for contusion to the left eye and psychogenic pain disorder. Appellant subsequently requested disability compensation commencing on October 30, 1979. In a letter dated January 5, 1980, Mr. Thompson of the employing establishment advised that he had spoken with appellant and requested medical documentation to support total disability for work since October 29, 1979.

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

[7] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *Richard T. DeVito*, 39 ECAB 668 (1988); *Elden H. Tietze*, 2 ECAB 38 (1948); *Frazier V. Nichol*, 37 ECAB 528 (1986); 20 C.F.R. § 10.5(f).

[9] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[10] *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

[11] *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal,* 1 ECAB 180, 182 (1948).

[12] *G.T., id.*; *Fereidoon Kharabi,* 52 ECAB 291, 293 (2001).

Although the Office received numerous medical reports, this evidence submitted does not offer a rationalized opinion regarding how any disability beginning October 30, 1979 was a result of appellant's work-related injuries. This is important in light of the fact that the most contemporaneous medical evidence, October 22 and 30, 1979 reports from Dr. Rosenberg released him to return to work on October 30, 1979. Dr. Rosenberg's October 30, 1979 report observed that appellant's subjective complaints were in excess of objective findings related to the injury. Likewise, on October 29, 1979 Dr. Hubbard found no history of serious injury or any neurological signs of any disturbance of the central nervous system. Similarly, on January 23, 1980 Dr. Mullen diagnosed minimal post-traumatic neuralgia on the left side of the face, with no objective evidence of ocular pathology and noted advising appellant of the "minimal nature of his problems." There is no contemporaneous medical evidence supporting that the work injury caused the claimed disability. The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.[13]

Subsequent medical evidence either did not provide support that the claimed disability was due to the work injury or it provided no medical reasoning or rationale, to explain how disability beginning October 30, 1979 was due to the October 18, 1979 injury. For example, the 1983 reports of Drs. Kam and Okihiro found no significant abnormalities. Dr. Wilson, on January 18, 1984, noted diagnoses but offered no opinion that appellant was disabled.

A November 12, 1996 attending physician's report, Dr. Orlandi diagnosed chronic pain symptoms and checked the box "yes" in response to whether he believed the condition found was caused or aggravated by an employment activity. He did not discuss the reasons why he felt that appellant had work-related disability and it does not appear that he was aware of the contemporaneous medical reports that found no basis for disability.[14] The Board has held that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[15] Dr. Orlandi's April 4, 1998 report noted various diagnoses of conditions that were not accepted by the Office in the present claim.[16] He opined that there was a relationship between appellant's "past disability condition and present condition to warrant a full permanent disability change." This opinion is also insufficient to establish the claim as Dr. Orlandi did not explain how he arrived at any opinion on disability. A medical opinion not fortified by medical rationale is of little probative value.[17]

Likewise, the February 10, 1984 report from Dr. Maehara who noted appellant's October 18, 1979 injury and advised that appellant could not return to regular work and was claiming approximately 55 days of disability, is insufficient. This report does not contain a

[13] *S.S.*, 59 ECAB 315 (2008).

[14] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[15] *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

[16] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *G.A.*, Docket No. 09-2153 (issued June 10, 2010).

[17] *Caroline Thomas*, 51 ECAB 451 (2000).

diagnosis or any opinion as to why appellant was disabled for 55 days and unable to work.[18] It is of limited probative value. The May 3, 1999 report from Dr. Kroop-Martin is equally deficient in that she merely provided a diagnosis without further reasoning to support her opinion that appellant was permanently incapacitated secondary to chronic left eye pain and anxiety disorder.

In a May 23, 1984 report, Dr. Denny noted that repeated examinations by various medical specialists failed to produce objective findings in regard to his accident. Although he diagnosed psychogenic pain disorder and explained that appellant believed that he was "unable to be gainfully employed," Dr. Denny did not provide his own opinion supporting employment-related disability on or after October 30, 1979.

No other medical reports specifically address how appellant's disability beginning October 30, 1979 was caused or aggravated by his accepted conditions. The Board finds that he has failed to submit rationalized medical evidence establishing that his disability commencing October 30, 1979 was causally related to his accepted employment injury and thus, he has not met his burden of proof.

On appeal, appellant indicated that he had a psychogenic pain disorder, which was causally related. The Board notes that this condition has been accepted. Appellant also noted that one of Dr. Rosenberg's reports indicated return to regular duty and the other indicated light duty on October 30, 1979. The Board notes that the issue is whether he was disabled and unable to work on or after October 30, 1979. In this case, both reports indicate that appellant was able to work as of that time and there is no evidence that the employer did not have appropriate work available. As noted above, appellant has not submitted sufficient medical evidence to establish that his disability beginning October 30, 1979 was causally related to his accepted work injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he had disability, beginning October 30, 1979, causally related to his employment-related conditions.

[18] Medical evidence which does not offer any opinion regarding causal relationship is of limited probative value. *See Michael Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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