United States Department of Labor
Employees' Compensation Appeals Board

P.V., Appellant	)	
	)	
and	)	**Docket No. 10-1977**
	)	**Issued: June 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2010 appellant filed a timely appeal from March 11 and July 2, 2010 decisions of the Office of Workers' Compensation Programs denying continuation of pay. 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.

ISSUES

The issues are: (1) whether appellant is entitled to continuation of pay from October 10 to November 9, 2007 for an accepted traumatic injury; and (2) whether the Office properly denied his request for reconsideration.

On appeal, appellant contends that the Office wrongly discounted the opinion of an emergency room physician and an attending chiropractor regarding the period of claimed disability.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on September 25, 2007 appellant, then a 32-year-old letter carrier, sustained cervical and lumbar strains in a work-related motor vehicle accident.[2] Appellant claimed continuation of pay for continuous work absence from October 10 to November 9, 2007.

Immediately after the accident, appellant was transported to a hospital emergency department for treatment. Dr. David L. Sincavage, an attending physician Board-certified in emergency medicine, diagnosed back pain and held appellant off work from September 25 to 30, 2007. Dr. Michael L. Puckett, a Board-certified radiologist, opined that x-rays taken at the hospital on September 25, 2007 showed normal contour and alignment of the cervical and lumbar spine.

Dr. Lynn A. Liston Owens, an attending chiropractor, who first treated appellant on September 28, 2007, held appellant off work from September 25 to November 24, 2007. She provided chiropractic manual manipulation three times a week. In October 12 and 15, 2007 form reports, Dr. Owens diagnosed a cervical and lumbar sprain/strain due to the September 25, 2007 motor vehicle accident. In a November 26, 2007 attending physician's report, she diagnosed "[c]ervical [and] lumbar subluxation on x-ray taken [September 25, 2007]." Dr. Owens released appellant to full duty as of February 1, 2008. Appellant returned to light duty in early 2008, then to full duty in July 2008.

In a June 10, 2008 report, Dr. Thomas J. Sabourin, a Board-certified orthopedic surgeon and second opinion physician, provided a history of injury and treatment. He related appellant's symptoms of neck pain with paresthesias into the right arm, lumbar pain and spasm. On examination, Dr. Sabourin observed tenderness to palpation in the right trapezius. He obtained x-rays showing mild facet changes at L5-S1 and C5-6 but otherwise within normal limits. Dr. Sabourin diagnosed cervical and lumbar spine strains. He found appellant able to work eight hours a day with restrictions.

Dr. Edward A. Venn-Watson, attending Board-certified orthopedic surgeon, submitted reports from July 16 to August 1, 2008 diagnosing a hyperflexion injury of the cervical and lumbar spine due to the September 25, 2007 car accident. He noted work restrictions.

By decision dated August 8, 2008 and reissued August 12, 2008, the Office denied continuation of pay from October 10 to November 9, 2007 on the grounds that the medical evidence did not establish total disability for the claimed period. It found that Dr. Owens was not a physician for the purposes of appellant's case as she did not diagnose a spinal subluxation from her own x-rays.

[2] The Office had denied the claim by November 16, 2007 and March 21, 2008 decisions on the grounds that fact of injury was not established due to a lack of medical evidence. Following additional development, it accepted the claim on July 2, 2008.

In a November 8, 2008 letter, appellant requested reconsideration. He submitted reports from Dr. Venn-Watson dated from August 20 to November 19, 2008 addressing his condition for that period.

By decision dated February 11, 2009 and reissued February 26, 2009, the Office denied modification on the grounds that the evidence submitted was insufficient to establish the claimed period of total disability.

In December 19 and 30, 2009 letters, appellant requested reconsideration. He submitted new reports from Dr. Venn-Watson. In a July 22, 2009 report, Dr. Venn-Watson related appellant's account of a flare-up of lumbar symptoms. In a December 9, 2009 report, he stated that appellant "would have been temporarily totally disabled from working from [September 25] to November 9, 2007 based on Dr. Owens' reports."

By decision dated March 11, 2010, the Office denied modification on the grounds that the new evidence submitted did not support that appellant was totally disabled for work from October 10 to November 9, 2007 due to the accepted cervical and lumbar strains. It found that Dr. Venn-Watson merely expressed agreement with Dr. Owens, who was not a physician for the purposes of the case.

In a May 25, 2010 letter, appellant requested reconsideration. He asserted that Dr. Venn-Watson's December 9, 2009 report was sufficient to establish that he was disabled from work from October 10 to November 9, 2007. Appellant also submitted an unsigned duty status report Form CA-17 dated April 8, 2010.

By decision dated July 2, 2010, the Office denied reconsideration, finding that the evidence submitted in support of the May 25, 2010 request for reconsideration was irrelevant to the medical issue in the case.

LEGAL PRECEDENT -- ISSUE 1

The Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.[3] Continuation of pay requires the employing establishment to continue the employee's regular pay during any periods of disability, up to a maximum of 45-calendar days. This is paid by the employing establishment, not the Office. However, the ultimate decision as to whether appellant is eligible for continuation of pay rests with the Office.[4]

Continuation of pay is payable only for time lost from work due to an initial traumatic injury.[5] To be eligible for continuation of pay, an employee must: "(1) have a traumatic injury which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the

[3] 5 U.S.C. § 8118(a).

[4] 20 C.F.R. § 10.200.

[5] *Id*. at § 10.205(a)(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

injury."[6] Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.[7]

Services rendered by chiropractors are generally not reimbursable by the Office except "to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist…."[8] A chiropractor may interpret his or her own x-rays to the same extent as any other physician.[9] However, a chiropractor may not interpret the x-rays of other physicians where the x-ray was not obtained for or performed on behalf of the chiropractor.[10] To be given any weight, the medical report must state that x-rays support the finding of a spinal subluxation.[11] The Office's regulations further provide: "A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician."[12]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained cervical and lumbar sprains in a September 25, 2007 motor vehicle accident. Appellant thus established a traumatic injury. He was off work through November 9, 2007, the end of the 45-day period commencing September 26, 2007. Appellant must then submit sufficient medical evidence to establish that he was disabled for work for the claimed period due to the accepted traumatic injury.[13]

In support of his claim for continuation of pay from October 10 to November 9, 2007, appellant submitted reports from Dr. Owens, an attending chiropractor. To qualify as a physician under the Act, Dr. Owens must diagnose a spinal subluxation by x-rays she took or ordered.[14] Instead, she diagnosed spinal subluxations by hospital x-rays taken on September 25, 2007, three days before she began treating appellant on September 28, 2007. Therefore, Dr. Owens does not qualify as a physician for the purposes of this case and her opinion carries no medical weight.[15]

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[6] *Id*. at § 10.205(a)(1-3). *See also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

[7] *Carol A. Lyles, supra* note 5.

[8] *See* 5 U.S.C. § 8101(2).

[9] *Sean O'Connell*, 56 ECAB 195 (2004).

[10] *Id.; Constance J. Perez*, Docket No. 04-1182 (issued March 4, 2005); *Brenda J. Core*, Docket No. 04-1741 (issued February 9, 2005).

[11] 20 C.F.R. § 10.311(c). *See also George E. Williams*, 44 ECAB 530 (1993).

[12] *Id.* at § 10.311(d).

[13] *Carol A. Lyles, supra* note 5.

[14] *Supra* note 10.

[15] *George E. Williams, supra* note 11.

Appellant also submitted a December 9, 2009 report from Dr. Venn-Watson, an attending Board-certified orthopedic surgeon, agreeing with Dr. Owens that appellant was totally disabled for work from September 25 to November 9, 2007. However, Dr. Venn-Watson did not support this opinion with any medical evidence or reasoning. The Board notes that he did not begin treating appellant until July 16, 2008, after the claimed period of October 10 to November 9, 2007. Therefore, Dr. Venn-Watson's opinion is insufficient to establish total disability for the claimed period.[16]

As appellant did not submit sufficient medical evidence to establish the claimed period of total disability, the Office properly denied his claim for continuation of pay.

On appeal, counsel contends that the Office wrongly discounted the opinion of an emergency room physician and an attending chiropractor regarding the period of claimed disability. As stated, Dr. Owens is not a physician for the purposes of this case. Dr. Sincavage, the physician who treated appellant in the emergency room, did not opine that appellant was disabled for work after September 30, 2007.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[17] section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[18] Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[19]

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.[20] He or she need only submit relevant, pertinent evidence not previously considered by the Office.[21] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[22]

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[16] *Carol A. Lyles, supra* note 5.

[17] 5 U.S.C. § 8128(a).

[18] 20 C.F.R. § 10.606(b)(2).

[19] *Id.* at § 10.608(b). *See also D.K.*, 59 ECAB 141 (2007).

[20] *Helen E. Tschantz*, 39 ECAB 1382 (1988).

[21] *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

[22] *Annette Louise*, 54 ECAB 783 (2003).

ANALYSIS -- ISSUE 2

The Office denied appellant's claim for continuation of pay by merit decisions dated August 12, 2008, February 26, 2009 and March 11, 2010. In a May 25, 2010 letter, appellant requested reconsideration of the March 11, 2010 decision.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring the Office to reopen the case for review of the merits of the claim. In his May 25, 2010 application for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. His argument was that Dr. Venn-Watson's December 9, 2009 report was sufficient to establish his claim for continuation of pay. As the Office explained in its March 11, 2010 merit decision, Dr. Venn-Watson's December 9, 2009 report was insufficient to meet appellant's burden of proof. The unsigned April 8, 2010 duty status report does not qualify as medical evidence as its author cannot be identified.[23] A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, the Office properly denied merit review.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay. The Board further finds that it did not abuse its discretion by denying appellant's request for reconsideration.

[23] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills* , 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 2 and March 11, 2010 are affirmed.

Issued: June 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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