

This is the second appeal in this case. The Board issued a decision on September 29, 1993 reversing the Office's October 23, 1991 decision, which terminated benefits for an aggravation of depression. The Board also set aside the Office's October 23, 1991 decision with respect to appellant's orthopedic condition, sleep apnea with attendant surgery and a July 1988

recurrence. The case was remanded for further proceedings to be followed by a *de novo* decision.¹ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

With regard to appellant's psychiatric condition, she was treated by Dr. Jane Lauchland, a Board-certified psychiatrist. In an October 6, 2003 letter, the Office requested, but did not receive, a current medical report regarding her psychiatric condition.

In a November 12, 2003 letter, appellant's medical provider requested that the claim be expanded to include bipolar affective disorder and bipolar effective disorder in partial or unspecified remission. By letter dated March 26, 2004, the Office advised her that the accepted conditions in her case include aggravation of depression and cerebral injury with mild impairment of cognitive functioning. It noted that bipolar affective disorder and bipolar effective disorder in partial remission were not accepted conditions. The Office requested additional evidence if appellant wished to expand her claim to include those diagnoses.

By letter dated June 17, 2004, the Office wrote Dr. Lauchland and requested a current medical report discussing the work-related psychiatric condition. It noted the last medical report of file was dated July 28, 2000. On June 28, 2004 Dr. Lauchland's office advised a current authorization from appellant was needed to release the requested medical report. On July 6, 2004 the Office forwarded the necessary paperwork to appellant so current medical information could be obtained. It did not receive a response.

On February 16, 2006 the Office referred appellant, together with the medical record, a statement of accepted facts, and a list of questions, to Dr. Sanford Pomerantz, a Board-certified psychiatrist, for a second opinion evaluation.

In a March 10, 2006 report, Dr. Pomerantz reviewed the statement of accepted facts and the medical record, including psychiatric and medical treatment and the questions provided. He diagnosed major depressive disorder, recurrent (possible bipolar II). Dr. Pomerantz stated it was difficult to determine whether the accepted condition of aggravation of preexisting depression remained active and was causing residual systems. He noted that appellant had recurrent depression both before and after the claimed injury and there were no clear patterns to her depressions. Dr. Pomerantz also stated it was very difficult to see any cause and effect between her recurrent depressions and the work injuries 1986 and 1987. He stated "I do n[o]t think there is a direct correlation between [appellant's] recurrent depressions and the type of accidents she had." Dr. Pomerantz could not detect any evidence of brain damage and that appellant's recurrent depressions seemed to be independent of any head injury. He also advised that appellant was unable to perform her date-of-injury position of veterinary medical officer without restrictions. Dr. Pomerantz explained that appellant lacked the motivation or stamina to do so and she has been out of the workforce for so long she would not be knowledgeable of current

¹ Docket No. 92-680 (issued September 29, 1993). Appellant's injury of December 19, 1986 was accepted for left shoulder girdle strain, lumbosacral strain and cerebral injury and expanded to include a temporary aggravation of preexisting depression. The work injury of June 23, 1987 was accepted for paraspinous muscle spasm of the neck and low back and tendinitis of the left and right shoulders.

procedures. He recommended appellant continue with cognitive psychotherapy and her medications.

In a decision dated October 16, 2006, the Office denied appellant's claim for consequential sleep apnea and resultant surgery on July 18, 1988. It found the weight of the medical evidence established that the temporary aggravation caused by the work injuries had ceased.

On October 16, 2006 the Office issued a notice proposing to terminate appellant's entitlement to medical benefits for the condition of temporary aggravation of preexisting depression. It found that Dr. Pomerantz' March 10, 2006 medical report represented the weight of the medical evidence and established that the temporary aggravation caused by the work injuries had ceased. Moreover, appellant's bipolar condition was not related to the work injuries.

In response to the October 16, 2006 notice of proposed termination, appellant submitted two statements dated October 16, 2006.

In an October 25, 2006 report, Dr. Lauchland reviewed appellant's medical treatment since October 6, 2003. She stated that appellant had bipolar disorder and experienced vacillations in mood, which were either precipitated by situational distress or aware of an endogenous etiology. Dr. Lauchland advised that appellant's current diagnoses were bipolar disorder with moderate depressed mood and cognitive disorder. She noted that appellant had depressive swings, which were often disabling and that she continued to remain variably dysfunctional, often without warning. Dr. Lauchland found that appellant's mood symptoms precluded any ongoing gainful employment and that her cognitive difficulties remained static on clinical examination.

By decision dated December 14, 2006, the Office terminated appellant's medical benefits effective that day on the grounds that the weight of the medical evidence established that her injury-related psychiatric condition ceased and that the bipolar disorder was not related to her work injuries of December 19, 1986 and January 21, 1987. It based the termination on the opinion of Dr. Pomerantz.

On January 8, 2007 appellant disagreed with the Office's December 14, 2006 decision and requested a review of the written record. In a January 4, 2007 report, Dr. Lauchland stated that appellant's ability to cope with her ongoing depression was currently compromised by her cognitive deficits suffered as a result of the car accident. Prior to her accident, appellant was able to use cognitive and behavioral strategies to manage her mood, but currently (and since the accident) her head injury made that more difficult. She found that appellant's current aggravation of preexisting depression remained a result of her head injury sustained when she was employed by the Federal Government.

By decision dated November 2, 2007, an Office hearing representative affirmed the December 14, 2007 decision terminating appellant's entitlement to medical benefits. The hearing representative noted confusion in the record regarding whether appellant had depression or a bipolar disorder and found that Dr. Lauchland determined that appellant's condition was most appropriately diagnosed as bipolar disorder. The hearing representative found that

Dr. Lauchland's January 4, 2007 report, submitted subsequent to the Office's termination of benefits, was sufficient to create a conflict in medical opinion with the report of Dr. Pomerantz. The hearing representative directed referral to a Board-certified psychiatrist for an impartial medical evaluation to determine if appellant continued to have an aggravation of her preexisting emotional condition due to her work injuries.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition which require further medical treatment.⁵

ANALYSIS

The Office accepted that appellant sustained temporary aggravation of preexisting depression. It terminated her entitlement to medical benefits effective December 14, 2006 on the grounds that the condition had ceased. The Office accorded determinative weight to the second opinion evaluation of Dr. Pomerantz, a Board-certified psychiatrist.

The Board finds Dr. Pomerantz' report is sufficiently well rationalized to establish that appellant's employment-related emotional condition had resolved. In a comprehensive report dated March 10, 2006, he reviewed the statement of accepted facts and the medical record. Dr. Pomerantz addressed appellant's psychiatric and medical treatment and the questions submitted by the Office. He noted that she experienced recurrent depression both before and after the work injuries with no clear pattern. Dr. Pomerantz did not find a direct correlation between appellant's recurrent depression and the work injuries. He found no cause and effect relationship between the work injuries and the preexisting bipolar disorder. Dr. Pomerantz found no basis on which to attribute any continuing depression to her federal employment.

In her October 25, 2006 report, Dr. Lauchland advised that appellant had bipolar disorder and experienced vacillations in mood sometimes precipitated by situational distress and sometimes appearing to be of endogenous etiology. She concluded that appellant's mood

² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

³ *J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *T.P.*, *supra* note 4; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

symptoms preclude any ongoing gainful employment and that her cognitive difficulties remain static on examination. Dr. Lauchland, however, did not provide an explanation as to how appellant's work-related condition of temporary aggravation of preexisting depression remained active or disabling. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ The medical evidence of record, at the time the Office terminated benefits for the accepted aggravation of depression condition, did not support any ongoing residuals of the accepted depression.

Dr. Pomerantz' March 10, 2006 report is based on an accurate factual background and provides sufficient medical rationale for his conclusion.⁷ The Office, therefore, met its burden of proof to terminate appellant's medical benefits as the weight of the medical evidence indicates that the condition of temporary aggravation of preexisting depression had ceased effective December 14, 2006.⁸

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's medical compensation benefits for the condition of temporary aggravation of preexisting depression effective December 14, 2006.

⁶ *Willie M. Miller*, 53 ECAB 697 (2002).

⁷ *Michael S. Mina*, 57 ECAB 379 (2006) (In accessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

⁸ The Board notes that the Office hearing representative remanded the case for further development on the issue of whether appellant has any work-related emotional condition after December 14, 2006. This aspect of the case remains in an interlocutory posture as no decision was issued, pursuant to the hearing representative's instructions, at the time the present appeal was docketed on January 14, 2008. Thus, the Board has no jurisdiction over whether appellant has any continuing employment-related residuals after December 14, 2006. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 2, 2007 is affirmed.

Issued: June 8, 2009
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