

**United States Department of Labor
Employees' Compensation Appeals Board**

G.P., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Oberlin, OH, Employer)

**Docket No. 11-363
Issued: September 8, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 30, 2010 appellant filed a timely appeal from the June 6, 2010 decision of the Office of Workers' Compensation Programs (OWCP) terminating his compensation. Pursuant to the Federal Employees' Compensation Act (FECA)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 OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective June 6, 2010 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 10, 1992 appellant, then a 46-year-old engineering technician, filed a traumatic injury claim alleging that on November 19, 1991 he sustained an injury in the performance of duty. He also filed an occupational disease claim on March 20, 1992 alleging that he first became aware of his emotional condition breakdown on November 19, 1991 but it was not until December 15, 1991 that he realized his breakdown was employment related. OWCP accepted the claim for post-traumatic stress disorder and placed appellant on the periodic rolls for temporary total disability by letter dated December 17, 1992.

In a May 11, 2009 report, Dr. Farid Sabet, a Board-certified psychiatrist, conducted a second opinion examination. Based upon a review of medical records, statement of accepted facts and findings on examination, he diagnosed generalized anxiety disorder, avoidant personality traits and social isolation. Dr. Sabet reported that appellant was genetically predisposed to depression and seemed “to have had a history of proclivity to anxiety and panic symptoms.” He opined that to the extent work stressors caused a manifestation of appellant’s symptoms that his condition would have resolved within six to eight months when those work stressors were removed. He concluded that appellant was not totally disabled from working.

In a July 1, 2009 report, Dr. Byong J. Ahn, appellant’s treating physician specializing in psychiatry, diagnosed anxiety, depression and some post-traumatic stress disorder symptoms which, although symptomatic, waxed and waned. He opined that appellant’s condition has not resolved as he “is very fearful of going back to work and then not be able to work and then would break down again.” Dr. Ahn concluded that appellant’s illness and residual symptoms were due to his accepted employment injury, even though he did have some nonwork-related stressors. Although it had been a long time since the injury, appellant’s “problem has not been solved completely” and some mental conditions were very chronic. Dr. Ahn disagreed that appellant would be a good candidate for vocational rehabilitation.

The Office found a conflict in medical opinion between Drs. Ahn and Sabet on the issue of whether appellant had continuing residuals and disability due to the accepted post-traumatic stress disorder. On August 31, 2009 OWCP referred appellant to Dr. Mark J. Woysville, a Board-certified psychiatrist, selected as the impartial medical specialist.

In a December 11, 2009 report, Dr. Woysville, reviewed the statement of accepted facts, medical treatment records and listed findings on examination. He diagnosed recurrent severe major depressive disorder without psychotic features and a personality disorder with prominent obsessive-compulsive and avoidant-dependent traits. Dr. Woysville noted that while it was clear that appellant suffered from agitated depression that “it is not and has not been, *per se*, work prohibitive.” He noted that appellant had a history of nonrelated mental illness and there currently was no diagnosis attributable to the accepted compensable work factor. Mental status examination revealed good insight but episodically poor judgment due to hostility and impulsivity. There was no evidence for obsessions or compulsions but were some avoidant-dependent personality traits. Dr. Woysville related that, while the compensable work factor “may have precipitated an exacerbation of [appellant]’s preexisting condition of agitated depression,” the aggravation or exacerbation ceased upon appellant’s removal from the work environment. He opined that there was no present psychiatric condition attributable to the

accepted work factors or any residuals. Dr. Woysville found that appellant could perform his usual job as an electronics technician.

On April 23, 2010 OWCP issued a notice proposing to terminate appellant's compensation benefits on the grounds that he no longer had any residuals or disability due to his accepted post-traumatic stress disorder. It found the weight of the medical evidence rested with the opinion of the impartial medical examiner, Dr. Woysville, who found his employment-related emotional condition had resolved. OWCP allotted appellant 30 days within which to submit medical evidence supporting continuing employment-related disability. Appellant did not respond.

By decision dated June 6, 2010, OWCP finalized the termination of appellant's compensation effective that day.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ OWCP'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 for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁷ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁸

² *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *Kathryn E. Demarsh*, *supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003).

⁷ 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 382 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁸ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

ANALYSIS

OWCP accepted appellant's claim for post-traumatic stress disorder and placed him on the periodic rolls. The burden is on OWCP to support the termination of his compensation. The question is whether OWCP has met its burden to establish that appellant's accepted condition had resolved.

Appellant's attending physician specializing in psychiatry, Dr. Ahn, found that appellant continued to have residuals of his accepted post-traumatic stress disorder and was totally disabled due to his employment-related emotional condition. Dr. Sabet, a second opinion Board-certified psychiatrist, concluded that appellant's accepted condition had resolved and that he was not totally disabled from work. OWCP properly determined that there was a conflict in medical opinion as to whether he had any continuing residuals or disability as a result of his accepted post-traumatic stress disorder. It properly referred appellant to Dr. Woysville, a Board-certified psychiatrist, selected as the impartial medical examiner, pursuant to 5 U.S.C. § 8123(a).

On December 11, 2009 Dr. Woysville provided a review of the statement of accepted facts and medical records, including appellant's psychiatric interview. He noted the results of a mental status evaluation and diagnosed recurrent severe major depressive disorder without psychotic features and personality disorder with prominent obsessive-compulsive and avoidant-dependent traits. Dr. Woysville found that appellant's post-traumatic stress disorder had resolved based on his examination. He concluded that there was no disability or residuals due to appellant's accepted employment injury and that he had no work-related disability from the accepted condition of post-traumatic stress disorder. Dr. Woysville pointed out that the employment factors caused a temporary aggravation of a preexisting agitated depression which had resolved without ongoing disability once appellant was no longer exposed to work environment.

The Board finds that Dr. Woysville's December 11, 2009 report is based on a proper factual and medical background and he provided a well-rationalized explanation for concluding that appellant no longer had residuals of his accepted emotional condition. As the impartial medical examiner, his report is entitled to special weight. Based on Dr. Woysville's review of the case record, statement of accepted facts and psychological examination, he found that appellant did not have any residuals or disability as a result of the accepted condition. He concluded that appellant sustained a temporary aggravation as a result of the employment injury and that there was no permanent aggravation.

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.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective June 6, 2010 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2010 is affirmed.

Issued: September 8, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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