United States Department of Labor
Employees' Compensation Appeals Board

N.L., Appellant	)	
and	)	**Docket No. 11-2114**
	)	**Issued: May 7, 2012**
PEACE CORPS, ENROLLEES DEPARTMENT, Washington, DC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 21, 2011 appellant, through his attorney, filed a timely appeal from the July 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) regarding the termination of his compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 wage-loss compensation and medical benefits effective April 27, 2010.

FACTUAL HISTORY

On November 11, 1974 appellant, then 25 years old, was struck on his head with a rock during an apparent robbery while assigned to Miami, Florida, for his initial training session with

[1] 5 U.S.C. §§ 8101-8193.

the employing establishment. OWCP accepted that, as a result of this incident, he sustained unspecified nonpsychotic mental disorders following organic brain damage, open wound of his scalp without complications and residual-type schizophrenia. Appellant received OWCP compensation for total disability beginning in 1975.[2]

In a March 9, 1990 report, Dr. Dennis Weldon, a Board-certified psychiatrist for the U.S. Army, discussed appellant's personal and medical history. He did not provide any medical diagnosis.

In a June 30, 1994 report, Dr. Lee Beecher, an attending Board-certified psychiatrist, stated that, on the basis of the examination on that date, he found insufficient evidence of active psychosis or severe or significant depression or anxiety disorders. The mental status examination did not show substantial impairment in memory, judgment or simple calculations. Dr. Beecher stated that, in the absence of psychological testing and past medical records, it was difficult to say with certainty that appellant's function had significantly deteriorated as a consequence of the 1974 work injury. He stated, "On the other hand, it seems very unlikely that there is not a causal relationship, *i.e.*, [appellant] had been in college and was in the employing establishment apparently functioning fairly well. His current function suggests a head injury of some type with residual impairment." Dr. Beecher posited that it was unlikely that appellant could work.[3]

In early 2009, OWCP requested that Dr. Kelly Jon Loomis, an attending Board-certified psychiatrist, provide a current examination report and opinion regarding whether appellant continued to have residuals of his accepted work injuries.

In a March 16, 2009 report, Dr. Loomis discussed appellant's factual and medical history, including his work injuries and the treatment he received for them. Appellant reported that he had not taken medications for his injuries since 1975 and that he had only been seen by mental health providers on two or three occasions since that time. Dr. Loomis reported findings of appellant's mental status examination and diagnosed anxiety disorder, not otherwise specified, characterized by what appeared to be mild baseline anxiety and worry about integrating into the workforce; attention deficit hyperactivity disorder, not otherwise specified, rule out diagnosis, as characterized by his self-reported difficulties with attention, distractibility and poor concentration; and personality disorder traits, specifically schizoid, schizotypal and narcissistic-type features. He stated that appellant presented with minimal symptoms and had been quite active in a variety of activities including world travel, extensive independent bicycle trips (for which he developed an internet blog) and regular social interactions with strangers, friends and relatives. Appellant did not give any symptoms suggesting a mood disorder, a more severe anxiety spectrum disorder, a thought disorder or a psychotic disorder and had not been involved in psychotropic medication management since the mid 1970s. Dr. Loomis stated that appellant appeared to be more activated and anxious when questioned why he had not returned to work.

[2] After the November 1974 incident, appellant reported to his assignment in Costa Rica and worked for a few months. It does not appear that he has worked in a formal job since that time.

[3] The record contains very few medical records from the 1980s and 1990s.

Dr. Loomis stated that OWCP had accepted several conditions and the question remained as to the duration of appellant's disability status due to these conditions. He noted that appellant was very direct in stating that he did not feel as though he was suffering from psychiatric symptoms and was quite divulging in the extent of his daily function, which actually was quite complicated and demanding at times (including independent travel and travel planning). Dr. Loomis felt that appellant's anticipatory anxiety, in conjunction with his personality construct (schizoid, schizotypal and narcissistic) might pose a significant barrier to him returning to the work setting. He stated:

> "[Appellant] is not appropriate for psychotropic management at this time. There are no target symptoms identified that would assist in his overall function unless, of course, he develops more severe anxiety spectrum symptoms if he were so challenged in the industrial setting. [Appellant] states that he does not need medication, does not want medication and does not feel as though he needs any supportive counseling either. He is active and making plans for the future.... [Appellant's] condition appears to be static. There is no evidence that he is suffering from an overt cognitive impairment, no evidence that he is suffering from schizophrenia and no obvious information indicating that he is suffering from any other type of psychotic illness."[4]

In a March 18, 2010 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits on the grounds that he no longer had residuals of his accepted work injuries. It informed him that the proposed termination was based on the opinion of Dr. Loomis and provided him 30 days to submit evidence or argument challenging the proposed action. Appellant responded that he was going to see a physician, but he did not submit any additional medical evidence within the allotted time.

In an April 27, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective April 27, 2010 based on the opinion of Dr. Loomis.

Appellant requested a hearing before an OWCP hearing representative. After testifying at the hearing held on October 12, 2010 he submitted an undated report from Dr. Daniel Blaess, an attending clinical psychologist, who reported findings based on October 31 and November 3, 2010 evaluations.[5] Dr. Blaess diagnosed schizophrenia, paranoid type, pursuant to history and vague psychotic symptoms currently reported and distress with support network, occupational difficulty, relationship difficulty and problems with access to health coverage. He stated that appellant had not reported the presence of physical maladies that normally accompany organic brain syndrome and did not have a history of such maladies. Dr. Blaess stated that, because appellant had a history of chronic schizophrenia which preceded his 1974 head injury, there was no way of knowing whether or not his head injury was causally related to his cognitive

[4] In an October 22, 2009 form report, Dr. Loomis indicated that appellant could work for eight hours per day without limitations.

[5] The report was also signed by Lucas Klein, a mental health counselor. OWCP later suggested that Dr. Blaess was not a physician, but the evidence of record shows that he was a physician under FECA in that he was a licensed clinical psychologist.

functioning. He indicated that appellant displayed an impaired functional capacity at a time of testing and it would be very difficult to employ him given his psychological instability. Dr. Blaess stated, "After reviewing the cumulative test data [it] is the examiner's opinion that [appellant's] functional capacity is impaired greatly and that the predominant cause of this impairment is based in his psychological disorder rather than his report of a head injury."

In a December 27, 2010 decision, the hearing representative affirmed the April 27, 2010 termination decision. It was determined that appellant had not adequately substantiated Dr. Blaess' qualifications.

Appellant submitted documents which he felt showed that Dr. Blaess was in fact a physician under FECA. In a July 14, 2011 decision, OWCP affirmed its July 14, 2011 decision. It discussed the submitted credentials of Dr. Blaess but noted that his opinion did not outweigh the opinion of Dr. Loomis.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[6] It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[7] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.[8]

ANALYSIS

OWCP accepted that, as a result of being struck on the head with a rock on November 11, 1974, appellant sustained unspecified nonpsychotic mental disorders following organic brain damage, open wound of his scalp without complications and residual-type schizophrenia. It terminated his wage-loss compensation and medical benefits effective April 27, 2010 based on the March 16, 2006 report of Dr. Loomis, an attending Board-certified psychiatrist.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 27, 2010 based on the March 16, 2006 report of Dr. Loomis. The weight of the medical opinion evidence with respect to this matter is represented by the thorough, well-rationalized opinion of the attending physician. The March 16, 2006 report of Dr. Loomis establishes that appellant had no disability due to his accepted employment injuries after April 27, 2010.

Dr. Loomis concluded that appellant no longer suffered from his accepted work injuries, noting that he had no overt cognitive impairment, no evidence that he was suffering from

[6] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[7] *Id.*

[8] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

schizophrenia and no obvious information indicating that he was suffering from any other type of psychotic illness. He indicated that appellant presented with minimal symptoms and had been quite active in a variety of activities including world travel, extensive independent bicycle trips (for which he developed an internet blog) and regular social interactions with strangers, friends and relatives. Appellant did not give any symptoms suggesting a mood disorder, a more severe anxiety spectrum disorder, a thought disorder or a psychotic disorder and had not been involved in psychotropic medication management since the mid 1970s.[9]

The Board has carefully reviewed the opinion of Dr. Loomis and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Loomis' opinion is based on a proper factual and medical history and he reached conclusions regarding appellant's medical condition which comported with his examination findings.[10] He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective signs or symptoms of the accepted work injuries. Rather, appellant displayed a high level of functioning and did not have any limitations due to a psychiatric condition.[11]

After OWCP's April 27, 2010 decision terminating appellant's compensation effective April 27, 2010, he submitted a medical report to establish residuals of his employment injuries. Given that the Board has found that OWCP properly relied on the opinion of Dr. Loomis in terminating appellant's compensation effective April 27, 2010, the burden shifts to him to establish that he is entitled to compensation after that date.

Appellant submitted an undated report of Dr. Blaess, an attending clinical psychologist, who reported findings of October 31 and November 3, 2010 evaluations.[12] The Board has reviewed this report and notes that it is not of sufficient probative value to establish that he had residuals of his employment injuries after April 27, 2010.

Dr. Blaess diagnosed schizophrenia, paranoid type, pursuant to history and vague psychotic symptoms currently reported and distress with support network, occupational difficulty, relationship difficulty and problems with access to health coverage. Although he noted that appellant appeared to have continuing deficits and psychological problems, he explicitly stated that he could not say whether they were related to the November 10, 1974 work incident. In fact, Dr. Blaess stated, "After reviewing the cumulative test data [it] is the examiner's opinion that [appellant's] functional capacity is impaired greatly and that the predominant cause of this impairment is based in his psychological disorder rather than his report

[9] Dr. Loomis did not provide any indication that appellant continued to have any physical manifestations of the accepted conditions arising from the November 10, 1974 work incident.

[10] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[11] Dr. Loomis indicated that appellant had schizoid, schizotypal and narcissistic personality features but noted that these were not related to work factors.

[12] OWCP suggested that Dr. Blaess was not a physician, but the evidence of record shows that he was a physician under FECA in that he was a licensed clinical psychologist.

of a head injury." Appellant has not submitted a rationalized medical report showing that he had work-related residuals after April 27, 2010.

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 wage-loss compensation and medical benefits effective April 27, 2010.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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