

FACTUAL HISTORY

Appellant, a 54-year-old safety and occupational health specialist, has several claims for employment-related emotional conditions. Her accepted conditions include post-traumatic stress disorder (PTSD), generalized anxiety disorder, aggravation of PTSD and aggravation of generalized anxiety disorder. Appellant's initial injury arose on or about April 24, 2006 (File No. xxxxxx409), with subsequent injuries occurring on October 10, 2006 (File No. xxxxxx857), July 11, 2008 (File No. xxxxxx113) and September 16, 2008 (File No. xxxxxx112). OWCP combined the four above-noted emotional condition claims and designated claim File No. xxxxxx409 as the master file. Appellant last worked on October 1, 2008. OWCP paid appropriate wage-loss compensation beginning November 17, 2008, and subsequently placed her on the periodic compensation rolls.

Since September 16, 2006, appellant has been under the care of Paul M. Bernstein, Ph.D., a psychologist, who initially diagnosed adjustment disorder with mixed anxiety and depressed mood, then generalized anxiety disorder and ultimately PTSD. Dr. Bernstein found that she was disabled beginning in July 2008 and supported her October 1, 2008 work stoppage. He has continued to treat appellant on a regular basis for her symptoms of PTSD and generalized anxiety disorder.

Dr. Christine A. Martone, a Board-certified psychiatrist and OWCP referral physician, examined appellant on August 3, 2010. She diagnosed PTSD and generalized anxiety disorder, with mood disturbance. Dr. Martone also noted an Axis 2 diagnosis of personality traits and histrionics. She indicated that there was some symptom magnification or histrionic mechanism preventing the resolution of appellant's symptoms. Dr. Martone noted it was impossible to determine when appellant's symptoms had resolved given her dramatic presentation. She believed there had been some improvement despite appellant's statements to the contrary. Dr. Martone indicated that appellant had returned to her April 2006 baseline and she had received maximum medical improvement from her therapy. Although appellant could not resume her regular duties because of the likely exacerbation of anxiety and PTSD, Dr. Martone believed appellant could return to some other form of gainful, full-time employment or modified work.

OWCP declared a conflict in medical opinion and referred appellant to an impartial medical examiner.³ Dr. Stuart S. Burstein, a Board-certified psychiatrist and impartial medical examiner, examined her on March 10, 2011. In his March 12, 2011 report, he indicated that appellant's PTSD had resolved, but her anger towards the employing establishment fueled her continuing complaints. Dr. Burstein also noted that her physical health had taken a downward turn. He indicated that the 29 months since appellant's October 1, 2008 work stoppage, provided ample opportunity for appellant to come to terms with her anxiety, which she had done. Dr. Burstein explained that she was an overly excitable individual who found fault wherever she

³ OWCP initially referred appellant to Dr. Robert M. Wettstein, a Board-certified psychiatrist. It later learned that Dr. Wettstein interviewed appellant's psychologist, Dr. Bernstein, *via* telephone on October 12, 2010. Because of the impartial medical examiner's unauthorized direct contact with appellant's psychologist, OWCP excluded Dr. Wettstein's October 28, 2010 report from the record and referred appellant to another impartial medical examiner.

turned with respect to her employer, and she was angry about purported deficiencies in their operations and in particular, their response to her personal complaints and attention to her mental health needs. While appellant showed no signs of wanting to return to work with the employing establishment or any other employing establishment, Dr. Burstein believed from a psychiatric standpoint, she could promptly return to full-time employment as a compliance safety and health officer. Dr. Burstein stated that as of his March 10, 2011 examination, her generalized anxiety disorder and PTSD ceased. He also noted that appellant reached an endpoint to her need for psychotherapy. According to Dr. Burstein, appellant magnified symptoms and complaints in an effort to maintain her current off-work status. There was no indication of mental impairment, and from a psychiatric standpoint, she was capable of fully carrying out her former duties, albeit reluctantly. In an April 19, 2011 supplemental report, Dr. Burstein clarified that his opinion regarding the resolution of appellant's accepted emotional condition as of March 10, 2011 pertained to all four combined claims (File No. xxxxxx409, File No. xxxxxx857, File No. xxxxxx113 and File No. xxxxxx112).

In a decision dated January 3, 2012, OWCP terminated appellant's wage-loss compensation and medical benefits based on the impartial medical examiner's March 12, 2011 findings.⁴ After conducting an oral hearing on October 12, 2011, the Branch of Hearings & Review affirmed OWCP's termination of benefits by decision dated January 3, 2012.⁵

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁹ Once OWCP has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.¹⁰

⁴ OWCP issued an April 28, 2011 notice of proposed termination of FECA benefits and afforded appellant 30 days to submit additional evidence or argument. On May 25, 2011 counsel at the time responded challenging OWCP's exclusion of Dr. Wettstein's October 28, 2010 report. OWCP did not receive any additional medical evidence.

⁵ At the hearing and in his post hearing brief, appellant's then-counsel continued to challenge OWCP's exclusion of Dr. Wettstein's October 28, 2010 report.

⁶ *Curtis Hall*, 45 ECAB 316 (1994).

⁷ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁹ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹⁰ *Joseph A. Brown Jr.*, 55 ECAB 542, 544 n.5 (2004).

FECA provides that if there is disagreement between an OWCP-designated examining physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹¹ For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."¹² Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³

ANALYSIS

OWCP declared a conflict in medical opinion between appellant's psychologist, Dr. Bernstein, and OWCP's referral physician, Dr. Martone. Because of this conflict, OWCP referred appellant to an impartial medical examiner.¹⁴ Dr. Burstein, the impartial medical examiner, found that the accepted conditions of generalized anxiety disorder and PTSD had ceased as of his March 10, 2011 examination, and appellant was capable, from a psychiatric standpoint, of resuming her former duties and was fully capable of getting along without any further psychotherapy. He opined that she had been out of work for over 29 months and that was ample opportunity to come to terms with her anxiety and could promptly return to work 8 hours a day in her job as a Compliance Safety and Health Officer. Further, Dr. Burstein stated that his belief that appellant engages in symptom magnification to maintain her off-work status. In a supplemental report dated April 19, 2011 and requested by OWCP, he stated that he took in all four accepted compensable work factors in arriving at his medical conclusion.

As noted, when a case is referred to an impartial medical examiner to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵

The Board finds that OWCP properly deferred to Dr. Burstein's March 12 and April 19, 2011 opinions regarding the resolution of appellant's accepted emotional conditions and the necessity of continued medical treatment. Dr. Burstein, the impartial medical examiner, provided a well-reasoned report based on a proper factual and medical history. He accurately summarized the relevant medical evidence, and relied on the latest statement of accepted facts dated August 23, 2010, which included the various employment incidents considered compensable. Dr. Burstein also examined appellant, administered additional testing and provided a thorough review of her relevant medical records. His report included detailed findings and medical rationale supporting his opinion. As the impartial medical examiner,

¹¹ 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹² *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹³ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁴ OWCP properly excluded Dr. Wettstein's October 28, 2010 report because of "improper contact" with Dr. Bernstein, who represented one side of the medical conflict. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.12 (September 2010).

¹⁵ *Gary R. Sieber*, *supra* note 13.

Dr. Burstein's opinion was entitled to determinative weight.¹⁶ Accordingly, the Board finds that OWCP satisfied its burden in terminating appellant's wage-loss compensation and medical benefits.

CONCLUSION

OWCP properly terminated appellant's wage-loss compensation and medical benefits effective June 4, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2012
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁶ *Id.*