

FACTUAL HISTORY

On May 23, 1985 appellant, then a 34-year-old letter carrier, sustained an employment-related low back strain when lifting trays of mail. He received intermittent compensation up to March 6, 1986 and stopped work on November 3, 1986. Appellant was removed from employment on April 14, 1987. On November 18, 1992 OWCP accepted that he sustained a consequential dysthymic disorder with depression and paranoid features.² Appellant received compensation from 1986 and was placed on the periodic compensation rolls.

By decision dated March 13, 1998, OWCP terminated appellant's medical benefits for the accepted low back strain. Appellant continued to receive wage-loss compensation and medical benefits based on the accepted emotional condition. The March 13, 1998 termination of the orthopedic condition was affirmed by an OWCP hearing representative in a December 22, 1999 decision. A March 30, 2000 OWCP decision denied modification of this determination. No appeal was made from this aspect of the claim.

In an October 14, 2008 treatment note, Dr. William C. Wilkerson, a Board-certified psychiatrist, advised that appellant was referred for treatment following the death of his attending physician.³ He obtained a history that appellant injured his back in 1985 and began to have psychiatric problems in 1986. Dr. Wilkerson stated that appellant's psychiatric symptoms included paranoid delusions, depression, and occasional temper outbursts; he denied any hallucinations or thoughts of suicide. Appellant also reported no manic episodes and no anxiety. Dr. Wilkerson listed an impression of major depression with psychotic features and chronic pain syndrome. He prescribed medications and noted that appellant would follow up on a monthly basis. The additional treatment notes from Dr. Wilkerson list the diagnostic impression and prescribed medications. In a September 17, 2010 report, he advised OWCP: "As noted last year, [appellant] continues to suffer from a chronic depression and psychosis. In my professional opinion he continues to be disabled and unable to work. To the best of my knowledge, appellant's psychiatric problems with depression and psychosis are not an aggravation of a preexisting condition."

In December 2010, OWCP referred appellant, together with a statement of accepted facts, to Dr. Robert Scott Benson, a Board-certified psychiatrist, for a second opinion evaluation. In a January 6, 2011 report, Dr. Benson reviewed the statement of accepted facts, history of injury and prior medical treatment records. He noted that appellant last worked in 1986 following an injury to his back. Dr. Benson underwent multiple psychiatric evaluations, most of which suggested depression. Dr. Amyx had mentioned the diagnosis of post-traumatic stress disorder, but did not identify the trauma that would be required to establish such diagnosis. Dr. Wilkerson diagnosed major depressive disorder with psychotic features, for which appellant was followed

² In a February 26, 1991 report, Dr. Claude L. Brown, a second opinion referral psychiatrist, diagnosed dysthymic disorder with depression and paranoid features. He noted that appellant was found competent to manage his affairs but was potentially dangerous to himself and others. Dr. Brown examined appellant again on March 4, 1993 at the request of OWCP, at which time he noted that appellant had not undergone any psychiatric treatment.

³ Appellant received treatment from a Dr. Barry C. Amyx until the physician's death when he came under Dr. Wilkerson's care. All physicians supported continued work-related disability.

monthly and received medication. Appellant was treated in 1994 for lymphoma and was currently under treatment for diabetes and hypertension. He was hospitalized in May 2010 for congestive heart failure.

Dr. Benson conducted a mental status examination, noting that appellant exhibited no peculiarities and was aware of his current circumstances. There was no evidence of memory deficit and he demonstrated an average intellect. Appellant reported his history in a logical and coherent manner and focused his comments on feelings of being mistreated during the time he worked at the post office. There was no indication of unusual anxiety or of delusional thinking. Dr. Benson obtained a depression inventory which indicated severe symptoms of depression. He diagnosed major depressive disorder, dysthymic disorder. Dr. Benson advised that appellant's initial psychiatric treatment was directed towards depression following the back injury; but there were no consistent findings related to the back and he was returned to work. He found that the symptoms of appellant's accepted emotional condition that related to the accepted back strain had resolved with resolution of the back strain. Dr. Benson opined that the majority of appellant's current depression symptoms and sense of mistreatment related to his feeling of bitterness and his sense of betrayal by management to his back injury and to the financial consequences of losing his job. He advised that appellant continued to have medical findings related to dysthymic disorder and depression, including depressed mood, crying spells, loss of interest in usual activities, lack of pleasure in usual activities, guilt feelings, loss of confidence, loss of energy, and feelings of exhaustion; but there was no indication that these were related to the May 23, 1985 work injury. Dr. Benson advised that appellant's symptoms remained severe and had persisted, despite the aggressive treatment with medication; which suggested little benefit from the medication and that reevaluation of the current medication regimen was in order. In an attached psychiatric work capacity evaluation, he advised that appellant could not work due to his current emotional condition.

Dr. Wilkerson provided a psychiatric work capacity evaluation on March 10, 2011. He advised that appellant continued to have significant symptoms of depression as well as chronic pain in his neck and back and was totally disabled. Dr. Wilkerson also stated that appellant had significant physical problems stemming from his employment injury, hypertension, congestive heart failure and insulin-dependent diabetes mellitus.

On April 29, 2011 OWCP proposed to terminate appellant's compensation benefits due to his psychiatric condition. It found that the weight of medical opinion was represented by Dr. Benson, who found that appellant's employment-related emotional condition had resolved.

Appellant disagreed with the proposed termination and submitted a May 20, 2011 report from Dr. Wilkerson, who noted his disagreement with Dr. Benson. Dr. Wilkerson stated that he had treated appellant since October 2008, and that his clinical impression since that time was that appellant's severe psychotic depression was caused by his on-the-job injury. He stated: "During the entire time I have seen [appellant] he has stated that he continues to suffer pain and disability from his original injury." Dr. Wilkerson provided additional treatment notes describing appellant's condition and treatment.

By decision dated October 14, 2011, OWCP terminated appellant's wage-loss and medical benefits effective October 23, 2011. It found that the weight of medical opinion was represented by Dr. Benson.

On October 26, 2011 appellant requested a hearing and submitted an October 13, 2011 treatment note from Dr. Wilkerson who noted that appellant had an exacerbation of chronic pain and diagnosed major depression with psychotic features and a history of Hodgkin's lymphoma.

At the February 13, 2012 hearing, appellant's representative contended that a conflict in medical opinion arose between Dr. Wilkerson and Dr. Benson. Appellant testified that he became very depressed in the period when his claim was not accepted and that he continued to see Dr. Wilkerson. In a March 6, 2012 note, Dr. Wilkerson reiterated that appellant's psychiatric problems arose subsequent to the May 23, 1985 work injury and that, while his condition had improved, he continued to have depressive symptoms and required treatment.

By decision dated April 30, 2012, an OWCP hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Benson and affirmed the October 14, 2011 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality.⁶ The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of examination, the accuracy or 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 conclusions. Medical opinion regarding causal relationship must be based on a complete factual history and medical background, one of reasonable medical certainty and supported by rationale explaining the nature of the relationship between the diagnosed condition and employment factors.⁷

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *Id.*

⁶ *See Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

⁷ *See M.D.*, 59 ECAB 211 (2007).

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits based on his accepted dysthymic disorder with depression and paranoid features. Appellant sustained a low back strain on May 23, 1985 while lifting mail trays. His claim was accepted and he returned to work. Appellant stopped work on November 3, 1986. On November 18, 1992 OWCP accepted that he sustained a consequential dysthymic disorder with depression and paranoid features. Appellant was placed on the periodic compensation rolls. On March 13, 1998 OWCP terminated his medical benefits due to the low back strain, finding that the orthopedic condition had resolved. Appellant continued to receive wage-loss compensation and medical benefits based on the accepted emotional condition.

Appellant commenced treatment with Dr. Wilkerson on October 14, 2008. Dr. Wilkerson submitted a one-page note advising of appellant's symptoms and his mental status examination. He listed an impression of major depression with psychotic features and chronic pain syndrome. Dr. Wilkerson prescribed medications and noted monthly follow up. The subsequent progress notes from him consist of brief treatment records listing that appellant underwent psychotherapy with medical management, repeated the diagnostic impression and listed prescribed medications. Dr. Wilkerson found that appellant remained totally disabled due to his psychiatric condition.

OWCP referred appellant to Dr. Benson who provided a January 6, 2011 report. Dr. Benson set forth the history of appellant's accepted back condition, reviewed the medical treatment records related to appellant's psychiatric condition and reviewed the statement of accepted facts. He addressed the multiple prior psychiatric evaluations, addressing the diagnosis of depression, with the diagnosis of major depression disorder with psychotic features continued by Dr. Wilkerson. Dr. Benson provided a review of appellant's medical history, family history mental status examination and conducted diagnostic testing. He diagnosed major depressive disorder and dysthymic disorder but determined that appellant's psychiatric condition, accepted as consequential to the back injury, had resolved. Dr. Benson advised that appellant's present depressive symptoms and sense of mistreatment related to his sense of betrayal by postal management to his initial injury and to the financial consequences of losing his job. He stated that appellant had been unable to resolve the disruption of his personal life goals. Dr. Benson noted that appellant's ongoing symptoms were not attributable to the past physical injury of May 23, 1985; but remained severe and were persistent in spite of the aggressive treatment with medications. This suggested that there was little benefit from the medication and Dr. Benson recommended reevaluation of the current medicine regimen. While appellant continued to be disabled due to his emotional condition, the condition and disability were no longer caused by the 1985 employment injury. The Board finds that the weight of medical opinion is represented by the report of Dr. Benson.

With regard to appellant's contention of a conflict in medical opinion; for a conflict to arise, the opposing physician's viewpoints must be of virtually equal weight and rationale.⁸ The Board finds that the report of Dr. Benson was based on a full and accurate history, a review of the medical treatment of records addressing the accepted psychiatric condition and 1985 back

⁸ *Darlene R. Kennedy*, 57 ECAB 414 (2006).

sprain injury and provided a rationalized medical opinion addressing the basis for his conclusion that appellant's ongoing disability was no longer related to the accepted orthopedic condition. In contrast, Dr. Wilkerson provided brief treatment records and notes addressing appellant's medication regimen, which was questioned by Dr. Benson. In a May 20, 2011 note, he advised that since 2008 he had relied upon appellant's statements of continuing to suffer pain and disability from the original injury. This opinion on causal relationship is not well explained in light of the accepted orthopedic condition, which was found resolved by 1998.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2013
Washington, DC

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

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

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