



termination of benefits was based on an inadequate factual basis, the termination was based on a flawed second opinion, and OWCP engaged in doctor shopping.

### **FACTUAL HISTORY**

On October 22, 2013 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained occupational stress as a result of her federal duties. She submitted a statement discussing an accident that occurred when her vehicle was hit by two young girls on bicycles on September 22, 2012. Appellant noted that she had been suspended from work since the September 22, 2012 accident, won arbitration with regard to her suspension and was scheduled return to work on February 16, 2013, but that she had an anxiety attack when she attempted to return to work.

OWCP developed this case subsequent to appellant's claim in OWCP File No. xxxxxx496.<sup>3</sup> The facts alleged in both claims are intertwined. The Board addressed appellant's appeal in OWCP File No. xxxxxx496 by decision dated October 21, 2014.<sup>4</sup> Briefly, the relevant facts as presented in the prior appeal are as follows: on April 30, 2013 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition in the performance of her federal duties. Appellant indicated that on September 22, 2012 she was in an employment-related automobile accident. Two young girls were riding their bicycles on the wrong side of the street and, when appellant turned the corner, one girl's bicycle struck appellant's vehicle. As a direct result of this accident, the employing establishment suspended appellant the day after the accident. However, an arbitrator subsequently found that the employing establishment erred in suspending appellant and noted that, if the employing establishment had conducted an impartial investigation, the notice of removal would never have been issued. The arbitrator directed that the emergency suspension and notice of removal be expunged from appellant's record and that she be reinstated to her position and made whole.

Appellant noted stress and panic attacks in the prior case with regard to being wrongfully suspended, and further noted that, when she attempted to return to work on February 16, 2013 after the favorable arbitration ruling, she experienced panic attacks and had difficulty going out in public. Although OWCP initially denied her claim on October 3, 2013 finding that she had failed to establish a compensable factor of federal employment, the Board determined that the administrative actions by appellant's manager were not reasonable, and that the arbitrator's decision constituted persuasive evidence that the employing establishment erred in suspending appellant. The Board found a compensable factor of employment, and remanded the case for a determination as to whether the evidence established a medical condition causally related to the

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<sup>3</sup> In OWCP File No. xxxxxx496 on April 30, 2013 appellant filed a claim (Form CA-2) for an emotional condition due to factors of her federal employment including a previous dog mauling, (OWCP File No. xxxxxx020) and continued exposure to barking dogs. In supplemental statements, appellant also alleged stress following a motor vehicle accident on September 22, 2012. On October 2, 2013 appellant's counsel advised OWCP that appellant's September 22, 2012 accident should clearly have been filed as a new claim. By decision dated October 3, 2013, OWCP denied appellant's April 30, 2013 claim. It noted that the denial of claim did not preclude appellant from filing a new claim for traumatic injury pertaining to the September 22, 2012 incident.

<sup>4</sup> Docket No. 14-0016 (issued October 21, 2014).

compensable factor of employment.<sup>5</sup> OWCP did not further develop the present claim, OWCP File No. xxxxxx496 following the Board's decision, but rather continued to develop OWCP File No. xxxxxx413. The facts as set forth in the Board's prior decision are hereby incorporated by reference.

While the appeal was pending before the Board in OWCP File No. xxxxxx496, OWCP prepared a March 19, 2014 SOAF and listed the accepted facts in the instant case as follows: that on September 22, 2012 appellant was driving her route when she hit a child riding a bike; that appellant was placed in an off-duty status as a result of this accident; that on October 5, 2012 a 30-day notice of removal was issued; and that on February 11, 2013 the emergency placement and notice of removal were expunged *via* arbitration and all benefits were restored. The SOAF indicated that the following alleged incident did not occur: appellant being shunned by management after the accident.

On March 18, 2014 OWCP accepted appellant's claim for post-traumatic stress disorder (PTSD) under File No. xxxxxx413.

In a March 25, 2014 work capacity evaluation, Dr. Christopher Jenkins, a Board-certified psychiatrist, indicated that appellant still experienced severe symptoms of post-traumatic stress disorder and was unable to work at that time.

On June 24, 2014 OWCP referred appellant to Dr. Robert Scott Benson, a Board-certified psychiatrist, for a second opinion. In a July 17, 2014 opinion, Dr. Benson listed appellant's diagnoses as adjustment disorder with anxiety and anger; and PTSD by history. He noted that she did not currently have a pattern of symptoms that would meet the criteria for a diagnosis of PTSD. Dr. Benson did note that appellant had intense anger and feelings of betrayal from the handling of her situation at work. He opined that she did not have a pattern of psychiatric symptoms that would translate to restriction or limitations on her employment. Dr. Benson noted that appellant's concerns about work issues were addressed through her union and that she was successful in her arbitration. He noted that there were unknown factors that occurred on the day that she was scheduled to return to work. Dr. Benson opined that appellant was able to participate in vocational rehabilitation and reemployment.

On October 17, 2014 OWCP issued a notice of proposed termination of appellant's compensation and medical benefits as appellant's accepted condition had ceased. It found that the weight of the medical opinion evidence rested with Dr. Benson, the second opinion physician.

On November 12, 2014 appellant, through counsel, responded to the notice of proposed termination. Counsel argued that the Board addressed the same exact case, and that the Board did not indicate that all work issues were addressed through arbitration, but rather the Board found that the emotional harm flowing from managerial errors was a compensable factor and not a trivial matter that was administratively resolved long ago. He argued that the proposed termination decision was fatally flawed in that its underlying premise ran directly contrary to the Board's decision in this case. Counsel also contended that Dr. Benson acknowledged that

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<sup>5</sup> *Id.*

appellant experienced continuing feelings of intense anger and feelings of betrayal from the handling of the situation at work. He argued that Dr. Benson gave no reason for his conclusion that appellant was no longer incapacitated from the accepted condition.

In a November 24, 2014 work capacity evaluation form, Dr. Jenkins indicated that appellant continued to experience severe symptoms of PTSD. He stated that appellant was not able to work eight hours a day.

On December 23, 2014 OWCP sent a letter to appellant advising that her medical condition had not improved sufficiently to allow a return to any type of limited-duty work, and that when appellant was medically ready to return to work, OWCP would develop a rehabilitation plan.

By decision dated February 27, 2015, OWCP finalized the termination of wage-loss compensation and medical benefits effective March 7, 2015.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>6</sup> Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>8</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>9</sup>

### **ANALYSIS**

The Board finds that OWCP accepted appellant's claim for PTSD. OWCP terminated appellant's medical benefits and wage-loss compensation effective March 7, 2015 based on the opinion of Dr. Benson, the second opinion physician. The Board finds that OWCP did not meet its burden of proof.

Dr. Jenkins, appellant's treating psychiatrist, opined in work capacity evaluations dated March 25 and November 24, 2014, that appellant still had severe symptoms of PTSD. Dr. Benson disagreed, concluding that appellant no longer had symptoms that would meet the criteria for PTSD. He also noted that despite remaining angry and bitter about the treatment she

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<sup>6</sup> *Mohamed Yuns*, 42 ECAB 325, 334 (1991); *see also J.P.*, Docket No. 13-1049 (issued August 16, 2013).

<sup>7</sup> *John F. Glynn*, 53 ECAB 155 (2001).

<sup>8</sup> *See T.P.*, 58 ECAB 524 (2007).

<sup>9</sup> *See I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

received from her previous employer, she was able to work. Dr. Benson also noted that the issues with regard to management had been addressed in her successful arbitration.

The Board finds that OWCP's February 27, 2015 decision did not address its December 23, 2014 letter to appellant in which it advised that appellant's medical condition had not improved sufficiently to allow a return to work. OWCP is required by its statute and regulations to make findings of fact. 5 U.S.C. § 8124(a) provides: [OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation. Its regulations provide that a decision shall contain findings of fact and a statement of reasons.<sup>10</sup> As OWCP has inconsistently terminated appellant's compensation and medical benefits on one hand, yet on December 23, 2014 advised appellant that she was not medically ready to return to work, and that a rehabilitation plan would be prepared when she was able to do so. OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective March 7, 2015.

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<sup>10</sup> See *M.O.*, Docket No. 11-259 (issued August 19, 2016); 20 C.F.R. § 10.126.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 27, 2015 is reversed.

Issued: December 21, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board