

FACTUAL HISTORY

On July 13, 1983 appellant, then a 25-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury on May 6, 1983 when his supervisor punched him in his right eye. His claim was accepted for a concussion, a cervical strain, a right eyebrow laceration, postconcussion syndrome, depression, and consequential migraine headaches. Appellant stopped work on May 6, 1983 and has not returned to work since that date. He received total disability compensation on the periodic rolls.

On May 16, 2008 Dr. Aubrey Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, found that the residuals of appellant's work-related injury had ceased and that he was no longer disabled due to the physical effects of the accepted work-related injuries. On June 4, 2008 Dr. Bernard Grosser, a Board-certified psychiatrist and OWCP referral physician, found that appellant continued to suffer residual psychiatric effects of his work-related injury that continued to disable him. On July 31, 2008 he began treatment with Dr. Boyd K. Southwick, an attending osteopath and Board-certified in family medicine.

On December 19, 2012 appellant attended second opinion examinations per OWCP's referral with Dr. Lewis B. Almarez, a Board-certified neurologist; Dr. Alfred I. Blue, a Board-certified orthopedic surgeon; and Dr. Douglas Robinson, a Board-certified psychiatrist.

In a December 19, 2012 report, Dr. Almarez discussed appellant's factual and medical history and reported that appellant had normal reflexes and a normal motor examination.³ He observed a nonphysiologic "global weakness" in appellant's right upper extremity, but found 5/5 strength in all muscle groups. Dr. Almarez found no spasm on cervical palpation, and no tenderness to minimal pressure in the supraclavicular area. He stated that appellant's neurological examination did not reveal any objective findings that would indicate a lateralizing or focal neurological condition. Based upon the absence of objective findings, Dr. Almarez concluded that appellant's concussion and migraine headaches had long since resolved.

In a December 19, 2012 report, Dr. Blue discussed appellant's factual and medical history and found no correlation between appellant's accepted orthopedic conditions and his present medical situation. He determined that appellant's cervical strain has long since dissipated and that he did not have any residuals of this condition. Dr. Blue stated that "there are no objective musculoskeletal findings today that would follow an injury of a cervical strain some 20 plus years ago."⁴

In a December 19, 2012 report, Dr. Robinson discussed appellant's factual and medical history, including the accepted depression condition, and stated that appellant's overly personalized convictions about events did not follow a logical or rational process. He found that appellant imputed negative intent to others or believed that negative events were caused by others. There were recurring themes of feeling vulnerable to being judged by others for his

³ Dr. Almarez and Dr. Blue created and signed a joint report, but Dr. Almarez completed the neurological part of the report and Dr. Blue completed the orthopedic portion.

⁴ In addition, no facial laceration was observed to be present.

perceived deficiencies as well as real ones, particularly regarding impaired literacy. Dr. Robinson found that appellant “does not appear exactly depressed, but rather angry and frustrated with circumstances.” He diagnosed appellant with depressive disorder, but not major depressive disorder, which he stated was more likely a consequence of dysthymic disorder. Dr. Robinson also diagnosed appellant with anxiety disorder. He stated that he did not think appellant was suffering from post-traumatic stress disorder. Dr. Robinson stated:

“[T]he reason for [appellant’s] depression is his personality disorder. I do not believe that events of his employment are an active cause, even though he continues to ruminate about them. There are reasons for that which have nothing to do with the event itself. [Appellant] projects blame. He holds himself faultless in interactions.... [Appellant] has assumed, and undoubtedly prefers, a life of passivity and inactivity.”

* * *

“I do not believe that there are any limitations that result from the work-related condition. The only limitations are largely self-imposed, and a product of [appellant’s] personality disturbance.... The psychiatric abnormalities that are responsible for these limitations, however, have nothing to do with depression, but rather are a product of his personality disorder.”

In a notice dated July 2, 2013, OWCP advised appellant that it proposed to terminate his entitlement to wage-loss compensation and medical benefits based upon the second opinion physicians’ reports. Appellant was provided 30 days to submit evidence and argument challenging the proposed termination action.

Appellant submitted a July 31, 2013 statement in which he stated that he did not have access to all his medical records and asserted that the opinions of his attending physicians should carry greater weight than those of the OWCP referral physicians. He submitted a July 22, 2013 report in which Dr. Southwick diagnosed him with low back pain, headache, chronic pain syndrome, and post-traumatic stress disorder. Dr. Southwick stated that appellant had pain, depression, and post-traumatic stress disorder due to his “initial injury and should be entitled to benefits.” Appellant also provided copies of previously submitted medical reports from his prior treating physicians.

By decision dated August 13, 2013, OWCP terminated appellant’s wage-loss compensation and eligibility for medical benefits effective August 13, 2013, noting OWCP referral physicians’ opinions represented the weight of medical evidence regarding any work-related residual effects or disability.

In a September 11, 2013 statement, appellant requested copies of his medical records and argued that Dr. Southwick’s opinion should be given more weight because he was experienced in treating psychiatric conditions and had been treating him for years. On February 13, 2014 OWCP had provided him a complete copy of his case file.

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on March 17, 2014, he provided additional argument challenging the termination action.

In a March 5, 2014 report, Dr. Southwick stated that OWCP's termination action was unjust and needed to be reconsidered due to the fact that the second opinions rendered did not appear to be unbiased. He indicated that appellant's May 6, 1983 employment injury left appellant with chronic pain and migraines. The injury along with the chronic pain and the fact that appellant was unable to work led to depression and anxiety. Dr. Southwick stated that there were inaccuracies in the reports, and appellant had been dealing with chronic pain, migraines, nerve damage, depression, post-traumatic stress disorder, panic attacks, and hypertension over the last 30 years due to the injury caused by the employment injury.

In a June 3, 2014 decision, the hearing representative affirmed OWCP's August 13, 2013 decision noting that the weight of the medical evidence continued to rest with the opinions of the OWCP referral physicians.

Appellant requested reconsideration of his claim and submitted a September 19, 2014 report in which Dr. Richard Worst, an attending Board-certified psychiatrist, discussed his psychiatric condition. Dr. Worst reported the findings of his evaluation of appellant and diagnosed, "Unspecified Neurocognitive Disorder, indicating that his current symptoms are a result of the concussion that he experienced in 1983." He noted that an associated diagnosis would be an adjustment disorder with mixed-disturbance of emotions and conduct "which refers to the psychological overlay that has infiltrated into the issues of the initial injury as he has felt victimized and disbelieved, and now even more so since the 2012 medical opinion." Appellant submitted other medical evidence but none of these reports indicated that he continued to have work-related residuals.

In a February 25, 2015 decision, OWCP denied medication of its June 3, 2014 decision, noting that it properly terminated appellant's wage-loss compensation and medical benefits effective August 13, 2013. It also found that he had failed to establish work-related disability or eligibility for medical benefits on or after August 13, 2013.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

⁵ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for a concussion, a cervical strain, a right eyebrow laceration, post-concussion syndrome, depression, and consequential migraine headaches after a supervisor punched him in the right eye on May 6, 1983.

In the present case, the weight of medical opinion is represented by the well-rationalized December 19, 2012 opinions of Dr. Almarez, a Board-certified neurologist, Dr. Blue, a Board-certified orthopedic surgeon, and Dr. Robinson, a Board-certified psychiatrist, who served as OWCP referral physicians. OWCP properly terminated appellant's entitlement to wage-loss compensation and medical benefits effective August 13, 2013 based upon these opinions.

Dr. Almarez performed a full neurological examination on appellant, and found no objective findings to support continuing residual effects of appellant's neurological conditions. Dr. Blue also examined appellant, and found a lack of objective findings to support any continuing residual effects of any orthopedic conditions. Dr. Robinson provided an opinion that appellant continued to suffer from psychiatric conditions, including personality disorder with concurrent depression and anxiety disorder. However, he indicated that appellant's examination did not support that any continuing psychiatric conditions or disability were causally related to his work injury. Rather, appellant's present condition was due to a nonwork-related personality disorder. Dr. Robinson concluded that appellant was no longer disabled due to the employment injury. He documented full examinations, and were provided with a complete and accurate statement of accepted facts and the relevant medical records.

Appellant submitted a July 22, 2013 report in which Dr. Southwick, stated that appellant had pain, depression, and post-traumatic stress disorder due to his "initial injury and should be entitled to benefits." This report is of limited probative value on the relevant issue of this case because Dr. Southwick did not provide any medical rationale for his opinion that appellant's work injuries continued to cause disability and the need for medical treatment. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.⁸

Before OWCP and on appeal, appellant argues that he was not provided with copies of his medical records. However, OWCP provided copies of his medical records in February 2014. Appellant was provided with sufficient notice of the requirements for continuing benefits such that he had an effective opportunity to respond. He alleges that the second opinion physicians' reports showed inconsistencies in the factual and medical history, and they were not provided with all medical reports. However, the physicians were provided with a statement of accepted facts, relevant medical records, and performed a thorough evaluation of appellant, including taking a history. Appellant argues that additional conditions, including a shoulder condition and post-traumatic stress disorder, were causally related to his employment and continued to affect him. However, the evidence does not establish with medical rationale and objective findings that any additional conditions are causally related to appellant's employment. Appellant alleges that OWCP and the second opinion physicians were biased and the process was unfair. However, he

⁸ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

has not provided any objective evidence documenting bias and his disagreement with the decision issued in his case and the referral physician opinions does not amount to bias.

LEGAL PRECEDENT -- ISSUE 2

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.⁹

ANALYSIS -- ISSUE 2

After OWCP's August 13, 2013 decision terminating appellant's compensation effective August 13, 2013, appellant submitted additional medical evidence which he believed established that he continued to be disabled due to residuals of his accepted work injuries. Given that the Board has found that OWCP properly relied on the opinions of Dr. Almarez, Dr. Blue, and Dr. Robinson, OWCP referral physicians, in terminating appellant's compensation effective August 13, 2013, the burden shifted to appellant to establish continuing disability. The Board has reviewed the additional evidence submitted by appellant and finds that it is of insufficient probative value to establish that he had residuals of his employment injuries on or after August 13, 2013.

In the March 5, 2014 report, Dr. Southwick provided an opinion that appellant continued to suffer residual effects or disability causally related to the work injury, and stated that the second opinion physicians appeared biased. He did not provide objective findings or medical rationale, other than to state that appellant continued to exhibit subjective complaints, to support his opinion that appellant continued to suffer residual effects of the accepted work injuries rather than the effects of a nonwork-related condition. Dr. Southwick did not provide a rationalized opinion on causal relationship.

In Dr. Worst's September 19, 2014 report, he diagnosed, Unspecified Neurocognitive Disorder, and found that his current symptoms were a result of the concussion that he experienced in 1983. He noted that an associated diagnosis would be an adjustment disorder with mixed-disturbance of emotions which refers to a psychological overlay that has infiltrated into the issues of the initial injury due to feeling victimized and disbelieved. Dr. Worst found that even more obvious in the 2014 report than in his 2012 medical opinion. The Board finds that his opinion is of limited probative value because he did not provide medical rationale in support of his opinion on continuing work-related residuals. Dr. Worst's opinion is conclusory in nature and he does not adequately explain how it is supported by objective findings of record. As explained above, the medical evidence does not show that appellant's has a continuing post-concussion syndrome, a condition which Dr. Worst posited still contributes to a work-related emotional condition. Moreover, OWCP has not accepted an adjustment disorder and the medical evidence does not otherwise establish the existence of such a work-related condition

⁹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 13, 2013. The Board further finds that appellant did not meet his burden of proof to establish work-related disability or entitlement to medical benefits on or after August 13, 2013.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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