

FACTUAL HISTORY

On March 24, 2010 appellant, then a 25-year-old drug program specialist, filed a traumatic injury claim alleging that she developed a stress condition on March 17, 2010 when an employee in her program displayed a knife to his supervisor and stated that he was going to kill appellant. By decision dated April 9, 2010, OWCP accepted her claim for post-traumatic stress disorder (PTSD). Appellant stopped work and did not return. Her job duties included serving as the collection site coordinator, scheduling all collection activities, and requesting orders for each type of drug testing. Appellant was required to be in contact with laboratory personnel, collection personnel, health care professionals, and employing establishment personnel including managers, supervisors, employees, and others serviced by the drug free workplace program. In a letter dated February 16, 2011, the employing establishment separated her from her position due to her physical inability to perform the essential duties of her position.

Appellant's attending physician, Dr. Deena Staab, a clinical psychologist, completed a report on May 21, 2010 and opined that appellant was totally disabled through May 31, 2010. She reported that at that point appellant could return to a four-hour workday, restricted from managing the follow-up program for employees who tested positive for drugs, restricted from being the point of contact person and restricted from managing volatile, irate, or aggressive employees. In a report dated May 18, 2011, Dr. Staab reported that appellant would have been ready to return to work on May 31, 2010, but due to the unavailability of work she had decompensated and become totally disabled. Appellant moved to Tennessee on May 23, 2011.

On February 1, 2012 OWCP referred appellant for a second opinion examination with Dr. Casey Arney, a Board-certified psychologist. Dr. Arney completed a report on March 2, 2012 and diagnosed depressive disorder. He opined that appellant's accepted PTSD had largely resolved, but that she continued to be socially isolative and had developed more depressive symptoms. Dr. Arney noted increased use of alcohol. He opined that in order to return to her date-of-injury position appellant would require gradual exposure and acclimatization to the work environments due to her underlying symptoms of irritability, depressed mood, anxiety, and sleep disturbance. Dr. Arney stated that she would also require assurance of a relatively safe environment to prevent retraumatization. He opined that appellant could return to work four hours a day in her regular duties. Dr. Arney noted that she could gradually increase work hours and recommended treatment with a psychotherapist and a psychiatrist.

Dr. Arney completed a work restriction evaluation on March 8, 2012 finding appellant able to work four hours a day at a job in which she had structure and support. He opined that she was likely to be able to work full time within eight weeks. Dr. Arney stated that appellant could perform her regular job providing that she was not likely to have contact with the employee who previously threatened her.

In a letter dated April 13, 2012, the employing establishing stated that there were no part-time positions available in appellant's new home town of Murfreesboro, Tennessee.

OWCP requested additional information from Dr. Arney as to whether appellant could work eight hours a day in a position that did not place her in direct contact with the public. On April 26, 2012 Dr. Arney stated, "Based on my evaluation of [appellant] I initially recommended beginning at four hours per day and increasing as she tolerated the work. If this is not available,

I believe that vocational rehabilitation services, especially if there is a work hardening type of program could help prepare and place [appellant] in a job where she could work for eight hours per day without direct contact with the public.”

On June 7, 2012 OWCP requested further clarification of whether PTSD had largely resolved. On June 25, 2012 Dr. Arney again noted specific symptoms of PTSD which were not present, including thinking often about the incident, nightmares, flashbacks or reliving experiences, hypervigilance, and startle reflex. He stated that appellant did not currently meet the full criteria for PTSD although she currently exhibited milder residual symptoms including, social isolation and irritability. Dr. Arney hoped that her residual symptoms would improve as she became more engaged in work. He stated that the residual symptoms were the reason that he initially recommended restrictions of four hours of work per day and treatment by a psychotherapist and a psychiatrist. Dr. Arney concluded, “If this restriction of hours is not possible, [appellant] could return to work on a trial basis on full[-]time schedule though I do not believe this is optimal.”

OWCP requested additional clarification from Dr. Arney as to whether appellant’s work-related disability had resolved on August 20, 2012. In a September 25, 2012 report, Dr. Arney responded that she continued to have mild residual symptoms of her PTSD, including social isolation and irritability.

OWCP referred appellant for an additional second opinion evaluation with Dr. Samuel O. Okpaku, a Board-certified psychiatrist, on April 3, 2013. Appellant did not report for this examination and on May 9, 2013 OWCP proposed to suspend her compensation. She rescheduled this appointment on July 31, 2013.

In a report dated August 16, 2013, Dr. Okpaku reviewed appellant’s history of injury. He reported her current crying spells, difficulty sleeping at night, loss of appetite, absent libido, lack of hobbies, and statement that nothing gave her pleasure. Dr. Okpaku noted that appellant reported having flashbacks. He stated that she drank alcohol every day in varying amounts depending on her mood. Dr. Okpaku stated that appellant initially exhibited some lack of seriousness about the interview, was vague and suspicious, and that her reliability was affected by this affect. He found that she was appropriately dressed with clear and coherent speech as well as linear and logical thoughts. Dr. Okpaku stated that appellant did not have any forum paranoid features and denied hallucinations or delusions. He diagnosed chronic post-traumatic stress syndrome with alcohol abuse and depressive disorder.

Dr. Okpaku noted that appellant’s date-of-injury position involved running a drug program that served 3,000 employees. He reported that she stated that she could work without restrictions, that she was able to drive herself, that she could perform activities of daily living, and that she could care for her children. Appellant reported becoming nervous around people, especially large crowds. Dr. Okpaku opined that her PTSD was chronic with severe sleep disturbance, avoidance of crowds, and excessive alcohol use. In regard to appellant’s ability to work, he stated, “[Appellant] is now a resident in Tennessee. It is unlikely that several years after the incident that her assailant will leave San Diego to threaten [her]. [Appellant] is able to concentrate and focus her thoughts. [She] can carry several independent tasks. Appellant should therefore be able to work as a Drug Program Specialist.” Dr. Okpaku stated that appellant had severe difficulties resulting from the threat by the employee. He noted that she was depressed

and that she used alcohol to make herself happy. Dr. Okpaku recommended that appellant undergo individual psychotherapy, group psychotherapy, and participation in Alcoholics Anonymous programs.

OWCP requested a supplemental report from Dr. Okpaku on November 4, 2013 addressing whether appellant could work in her date-of-injury position for eight hours a day. On November 4, 2013 Dr. Okpaku stated that she could work eight hours a day and that she had reached maximum medical improvement.

In a letter dated December 19, 2013, OWCP proposed to terminate appellant's wage-loss compensation. It allowed her 30 days to submit additional evidence if she disagreed with the proposed termination. Appellant did not respond within the allotted time.

By decision dated January 24, 2014, OWCP terminated appellant's wage-loss compensation effective that date. It found that Dr. Okpaku's report established that she could return to her date-of-injury position working eight hours a day and that she was no longer entitled to compensation for wage loss.

Appellant provided a change of address on January 31, 2014. In a telephone call occurring on January 31, 2014, she stated that she had not received notice that her wage-loss compensation benefits would be terminated.

Appellant requested reconsideration of the termination decision on February 18, 2014. She stated that she had not received notice of the proposed termination and did not receive the decision. Appellant requested referral to an additional second opinion physician.

By decision dated March 11, 2014, OWCP declined to reopen appellant's claim for consideration of the merits. It found that she failed to submit medical evidence supporting her continued disability for work and denied her request for reconsideration of the merits of her claim.

On March 13, 2014 appellant requested reconsideration and asked how she could return to a position which had been abolished. In a note dated March 17, 2014, Dr. Peter F. Cobb, a Board-certified family practitioner, diagnosed anxiety. Appellant completed a police report indicating that a sticky note with her child's full name was found in a department store leading her to believe that she was being followed.

By decision dated May 30, 2014, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision finding that the medical evidence was sufficient to terminate continuing disability compensation.

Appellant requested reconsideration on September 4, 2014. She argued that Dr. Okpaku's report was not sufficiently well reasoned to constitute the weight of the medical evidence and meet OWCP's burden of proof to terminate her wage-loss compensation benefits. Appellant argued that his report was internally inconsistent as he noted her employment-related fear of the public, but found that she could return to her date-of-injury position working with the professionals, employees, and other populations in the drug free workplace program at the employing establishment without restrictions.

Dr. Dawn B. Harrell, a clinical psychologist, examined appellant on June 24, July 2 and 9, 2014 and completed a report. She described the employment incident, the aftermath and the more recent incident where appellant's daughter's name was found on a sticky note at the mall in Tennessee. Dr. Harrell described appellant's alcohol usage and sleep patterns. On examination she found that appellant's speech was typically slowed, her mood described as depressed, and her affect flat. Dr. Harrell noted that appellant exhibited some paranoia evidenced by her difficulties in leaving her home and her desire to stay inside with the blinds drawn at all times. She found that appellant demonstrated difficulty with remote and recent memory, fair insight, and fair to good judgment. Dr. Harrell stated that appellant's behavior was withdrawn and her eye contact lacking.

Dr. Harrell performed psychological testing and found that appellant met all the criteria for PTSD. She noted that this contradicted the recent medical findings. Dr. Harrell stated that appellant had reason to have deliberately intensified or even invented symptoms in order to continue receiving disability benefits, but that it was impossible to determine if she had in fact done so. She reported that appellant felt that her symptoms of PTSD worsened when she found the sticky note with her daughter's name on it in a local shopping mall.

Dr. Harrell stated, "Since then, [appellant's] suspiciousness and hypervigilance have increased and she often feels unsafe unless in her own home with the blinds drawn." She further noted that appellant used Xanax on a regular basis and drank two to four alcoholic beverages daily. Dr. Harrell diagnosed PTSD and mild alcohol use disorder. She stated that appellant's condition was work related and ongoing. Dr. Harrell opined that appellant was experiencing a great deal of distress due to the work incident in 2010 and was not malingering. She stated that appellant's symptoms had evolved and that her mental health issues were further complicated by issues occurring after the traumatic event, but that "it is apparent that the source of her distress is the 2010 threat to her life." Dr. Harrell further found that appellant's long-term daily alcohol use along with her prescription for Xanax were affecting her ability to think clearly, concentrate, and make good decisions. She recommended treatment for alcohol use. Dr. Harrell also recommended long-term individual therapy.

Dr. Harrell completed a work capacity evaluation on August 14, 2014 and opined that appellant could not work eight hours a day due to her symptoms of anxiety, paranoia, depression, and detachment. She indicated that appellant could work up to four hours a day with an increase to eight hours "possibly within a year." Dr. Harrell stated, "It is possible that after receiving treatment, [appellant] will again be able to function on a daily basis without great difficulty and maintain steady full-time employment." She opined that appellant could not return to the work environment in which she experienced the traumatic event and reiterated that it was unlikely that she could currently maintain employment, but suggested after receiving treatment she could possibly gradually reenter the work force. Dr. Harrell stated that appellant could not return to her usual job due to her high level of suspiciousness working with the public would be very difficult for appellant. She recommended that appellant return to a position with limited access to the public when she was able to return to work.

By decision dated October 27, 2014, OWCP denied modification of its prior decisions finding that the weight of the medical evidence rested with Dr. Okpaku's reports. It found that Dr. Harrell's report was not based on an accurate factual background and was not sufficient to create a conflict with Dr. Okpaku's reports.

Appellant requested reconsideration through a letter dated February 1, 2015 and received by OWCP on February 2, 2015. She submitted a note from Dr. Harrell dated January 27, 2015. Dr. Harrell stated that she had reviewed Dr. Okpaku's reports and still opined that appellant's appropriate diagnosis was PTSD and that the remainder of her recommendations were valid.

OWCP denied appellant's request for reconsideration by decision dated February 6, 2015. It found that Dr. Harrell's report did not contain new medical evidence and was insufficient to require review of the merits of appellant's claim.

Appellant requested reconsideration by a form dated February 13, 2015 and received by OWCP on that date. She resubmitted Dr. Harrell's January 27, 2015 report, the work capacity evaluation and her January 27, 2015 note.

By decision dated February 25, 2015, OWCP declined to reopen appellant's claim for consideration of the merits as she failed to submit relevant new evidence in support of her request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury.³ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning supporting his conclusions.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits effective January 24, 2014. OWCP accepted her claim for PTSD resulting from an employment event on March 17, 2010. Appellant was unable to return to full duty and the employing establishment terminated her position. OWCP referred her for two second opinion evaluations within 13 months and determined that the weight of the medical evidence rested with the most recent second opinion evaluation and terminated her compensation benefits based on that report.

OWCP initially referred appellant for a second opinion examination with Dr. Arney. Dr. Arney examined her on March 2, 2012 and opined that her accepted PTSD had largely resolved, but that she continued to be socially isolative and had developed more depressive symptoms. He noted increased use of alcohol. Dr. Arney opined that in order to return to her

² *E.C.*, Docket No. 14-1467 (issued July 2, 2015).

³ *G.B.*, Docket No. 14-1241 (issued June 22, 2015); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

⁵ *A.D.*, Docket No. 15-0618 (issued July 1, 2015).

date-of-injury position appellant would require gradual exposure and acclimatization to the work environments due to her underlying symptoms of irritability, depressed mood, anxiety, and sleep disturbance. He stated that she would also require assurance of a relatively safe environment to prevent retraumatization. Dr. Arney opined that appellant could return to work four hours a day in her regular duties. In his supplemental report, he indicated that he hoped that her residual symptoms would improve as she began work. Dr. Arney stated that he initially recommended restrictions of four hours of work per day due to appellant's residual symptoms and her need for treatment. He concluded that she could possibly return to work on a trial basis for eight hours a day, but opined that this was not optimal for her.

Dr. Okpaku examined appellant on August 16, 2013 and reviewed her history of injury. He reported her emotional affect including crying spells, difficulty sleeping at night, loss of appetite, absent libido, lack of hobbies, flashbacks, and her statement that nothing gave her pleasure. Dr. Okpaku noted that appellant drank alcohol every day in varying amounts depending on her mood. He diagnosed chronic PTSD with alcohol abuse and depressive disorder.

Dr. Okpaku reported that appellant's date-of-injury position involved contact with approximately 3,000 employees. Appellant reported becoming nervous around people, especially large crowds, but stated that she wanted to return to work. Dr. Okpaku opined that her PTSD was chronic with severe sleep disturbance, avoidance of crowds, and excessive alcohol use. He reported that appellant was depressed and noted that she used alcohol to make herself happy. Dr. Okpaku recommended that she undergo individual psychotherapy, group psychotherapy, and participation in Alcoholics Anonymous programs. In regard to appellant's ability to work, he found it unlikely that the threatening employee would seek out her in Tennessee, but also noted that she had severe difficulties resulting from the accepted employment event. Dr. Okpaku stated, "[Appellant] is able to concentrate and focus her thoughts. She can carry several independent tasks. [Appellant] should therefore be able to work as a Drug Program Specialist." In a supplemental report dated November 4, 2013, he stated that appellant could work eight hours a day and that she had reached maximum medical improvement.

The Board finds that Dr. Okpaku's report is not sufficiently detailed and well-reasoned to meet OWCP's burden of proof to terminate appellant's compensation benefits. Dr. Okpaku did not address Dr. Arney's recent findings or his reasoning regarding her need for limited duty. He noted that appellant's date-of-injury position required contact with 3,000 individuals, and that she was uncomfortable with people, but did not offer any explanation of why he felt that she could return to work for eight hours a day in this position with no restrictions. Dr. Okpaku opined that she had severe residuals of her employment injury including alcoholism which required treatment, but did not explain how she would be able to return to full duty with these medical residuals and the need for treatment of these conditions. His conclusions were based solely on the findings that appellant could concentrate and focus her thoughts and could carry several independent tasks. The Board finds that this limited reasoning is insufficient to establish that she could return to full duty given the other medical evidence in the record from Dr. Arney and the specific findings, diagnoses, and other conclusions in Dr. Okpaku's report. As Dr. Okpaku's report is internally inconsistent, is not detailed, and does not offer clear medical reasoning in support of his opinion that appellant could return to full duty in her date-of-injury position, it is insufficiently well reasoned with the necessary medical rationale to meet OWCP's

burden of proof. OWCP therefore improperly terminated her wage-loss compensation effective January 24, 2014.⁶

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation effective January 24, 2014.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2014 merit decision of the Office of Workers' Compensation Programs is reversed. The February 25 and 6, 2015 decisions of OWCP are set aside and remanded.

Issued: September 14, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ Due to the resolution of this issue, the remaining issues before the Board are moot and need not be discussed.