

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant)

and)

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, SOUTHWESTERN
INDIAN POLYTECHNIC INSTITUTE,
Albuquerque, NM, Employer**)

**Docket No. 16-0201
Issued: April 12, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 13, 2015 appellant filed a timely appeal from a June 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective August 25, 2014 as her accepted emotional conditions had ceased without residuals.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on or before July 29, 1994 appellant, then a 43-year-old supply technician, sustained an adjustment reaction and major depressive disorder, single episode, due to being repeatedly pressured to submit a purchase order where there were no funds to cover the expenditure. It accepted the following incidents as factual and compensable: a July 28, 1994 meeting where supervisors asked her to break the law by committing funds that did not exist to make more than \$115,000.00 in purchases; a director directly pressured appellant to submit the purchase order; and the director caused appellant's supervisor to pressure appellant to do the same. OWCP accepted as factual but not compensable, that a director asked her to submit a September 1992 order for carpeting when there were not yet funds to pay for it, that on or about April 5, 1994 she was asked to submit an incorrect travel voucher for payment, that government and private snack bar funds were comingled, that imprest (petty) cash was comingled and misused, and that the director did not follow regulations in assigning bids. It found that appellant was not asked directly to violate the law in any of these incidents. Appellant stopped work on July 29, 1994 and did not return. She received total disability compensation on the periodic rolls.

By decision dated April 25, 1997, OWCP reduced appellant's compensation effective April 27, 1997 under sections 8106 and 8115 of FECA,² based on her ability to earn \$317.42 in the constructed position of secretary.³

Dr. Melinda Garcia, an attending clinical psychologist provided annual reports from February 2, 2003 through February 20, 2012, opining that the accepted emotional conditions remained active and disabling. Appellant exhibited anxiety, sleep disorder, rumination, difficulty concentrating, easy fatigue, emotional lability, and difficulty making decisions. Trials of several prescribed medications did not alleviate her symptoms. Appellant also experienced frequent, intrusive recollections of the accepted work factors. Dr. Garcia explained that any attempt to produce work under time pressure resulted in major depression, panic attacks, and post-traumatic stress disorder (PTSD). Also, appellant could not "tolerate even ordinary interpersonal stressors" or any type of conflict. Dr. Garcia noted that on unspecified dates prior to April 1997, appellant made two attempts to return to work as part of a vocational rehabilitation program, first as a full-time secretary, then as a part-time secretary. Appellant was unable to work more than one month in each position as "minor stresses of the office situation caused panic attacks, severe headaches, major depression," and PTSD. Dr. Garcia diagnosed recurrent major depression, generalized anxiety disorder with panic attacks, and PTSD. She noted that as of February 2012 appellant was "able to show her artwork at a limited (one to two) number of shows during the year. These shows are screened so that they are not too big, they are outdoors, and relatives stay with her the whole time. [Appellant] cannot do more." It was also noted that she enjoyed working on her farm and performing physical activity.

² *Id.* at § 8106 and § 8115.

³ OWCP terminated benefits effective June 10, 1999 but, in a November 1, 2000 decision, it retroactively reinstated benefits.

In an affidavit of earnings and employment (Form EN1032) signed on January 20, 2010, appellant answered “yes” to question 2, “Were you employed or involved in any business enterprise in the past 15 months.” She noted that in June 2009, she had “work or business involvement” in “digital photography” and “ceramics.”

In a March 15, 2010 letter, appellant noted that in June 2009 she displayed ceramics and photographs at an art fair but did not sell anything. She characterized her photography and ceramics work as therapeutic hobbies, not a business. Appellant explained that she could not tolerate negative reactions from others about her art, so could not conduct a business. She noted on a February 3, 2011 Form EN1032 that from January 1, 2010 to the present, she worked or had business involvement with “pottery, photography.” On Forms EN1032 signed on February 21, 2013 and February 21, 2014, appellant asserted that she had not performed any work or business activities during the previous 15 months.

Appellant also submitted medical reports concerning a lumbar spine condition. There is no claim presently before the Board relating to a lumbar spine condition.

In a March 17, 2014 letter, OWCP advised appellant to submit a current medical report from her attending physician. The letter included specific questions for appellant’s physician. Appellant was afforded 30 days to submit such evidence.

Appellant did not submit an updated medical report and as such on June 19, 2014 OWCP referred appellant, the medical record, and a statement of accepted facts to Dr. Lori A. Willinghurst, a Board-certified psychiatrist, for a second opinion examination. The appointment was scheduled for June 30, 2014, then rescheduled to July 8, 2014.

Dr. Willinghurst provided a July 9, 2014 report reviewing appellant’s history of injury and treatment and the statement of accepted facts. She related appellant’s account of periodic depression, but that generally she felt “great.” Appellant described her husband intervening for her in social situations, such as selling her pottery. She noted that she had earned an art degree in college. Dr. Willinghurst noted that appellant was contradictory in her presentation, as she stated that she felt “great” but described frequent depressed moods. She also noted enjoying physical activities on her ranch, but complained of fatigue. Dr. Willinghurst diagnosed chronic depressive disorder, generalized anxiety disorder, and a personality disorder. She asserted that Dr. Garcia’s reports should not be relied on as they were repetitive, conflicting, and demonstrated “a pattern of carelessness.” Dr. Willinghurst opined that appellant did not meet the criteria for PTSD as being pressured to break the law was not equivalent to a life-threatening experience. She explained that, while work-related stress likely triggered the accepted conditions, appellant’s current issues were chronic depression, possible generalized anxiety, and a possible personality disorder, none of which were work related. Dr. Willinghurst found appellant able to perform full-time sedentary or light work, in a setting where there was limited social contact.

By notice dated July 16, 2014, OWCP advised appellant of its proposal to terminate her wage-loss compensation and medical benefits as the accepted emotional conditions had ceased without residuals, based on Dr. Willinghurst’s opinion as the weight of the medical evidence. Appellant was afforded 30 days to submit evidence or argument.

In response, appellant and her husband submitted July 25 and August 5, 2014 letters, contending that she sustained an anxiety disorder due to alleged harassment when she attempted to return to work in 1996. She accused OWCP of “doctor shopping” and mishandling her claim.

Dr. Garcia provided a March 11, 2014 report, received by OWCP on August 4, 2014. She opined that the accepted emotional conditions remained present, unchanged, and totally disabling. Dr. Garcia noted that appellant had ongoing short-term memory problems, likely related to a prescription medication for cholesterol. She reiterated her opinion that appellant could not work in any job requiring social interactions, but could show her artwork at one to two shows a year.

In a July 28, 2014 letter, Dr. Garcia contended that Dr. Willinghurst completely misread appellant’s medical history and seriously mischaracterized her clinical presentation. She asserted that appellant’s anxiety and depression were chronic, active, disabling, and work related. Dr. Garcia contended that appellant was completely unable to work, as very brief attempts at volunteer activities exacerbated her anxiety symptoms.

By decision dated August 25, 2014, OWCP terminated appellant’s wage-loss and medical compensation benefits effective that day, finding that the accepted emotional conditions had ceased without residuals. It accorded the weight of the medical evidence to Dr. Willinghurst, the second opinion physician, who provided a well-rationalized report explaining that the accepted conditions had ceased.⁴

Appellant disagreed and in a September 16, 2014 letter requested a telephonic hearing. She contended that Dr. Willinghurst was biased as she used to work for the Federal Government, and that OWCP failed to ask Dr. Garcia for an annual report in 2014.

In a September 17, 2014 report, Dr. Garcia noted that Dr. Willinghurst’s opinion was inadequate as she performed only a brief mental status examination, but not a full intake examination and assessment. She contended that Dr. Willinghurst misinterpreted the diagnostic criteria for PTSD in contradiction of current medical practice standards. Dr. Garcia reiterated that appellant’s inability to interact with others or tolerate stress precluded her from any activities requiring timed production or social interactions of any kind. Appellant was able to work on her ranch and produce art at her own pace, but could not perform such tasks in a structured employment environment. Dr. Willinghurst therefore misinterpreted appellant’s activities as indications that she was no longer totally disabled.⁵

At the hearing, held on April 20, 2015, appellant contended that OWCP had no legitimate basis for referring her for a second opinion examination. She submitted an April 20, 2015 statement, reiterating that Dr. Willinghurst was biased against her, and that OWCP had adopted an adversarial posture against her.

⁴ OWCP did not specifically address the April 25, 1997 wage-earning capacity determination.

⁵ Dr. Garcia provided a copy of a May 4, 2000 brief from an attorney regarding a prior request for reconsideration. Appellant contended in an October 30, 2014 letter that she did not authorize Dr. Garcia to submit this document, and that she wanted no action taken on the brief.

By decision dated and finalized June 23, 2015, an OWCP hearing representative affirmed the August 25, 2014 decision terminating appellant's wage-loss and medical compensation benefits. He found that at the time of the termination, Dr. Willinghurst's opinion represented the weight of the medical evidence. The hearing representative further found, however, that Dr. Garcia's September 17, 2014 report was of sufficient probative quality to create a conflict with Dr. Willinghurst's opinion, requiring resolution by an impartial medical specialist on the issue of continuing disability. He remanded the claim to OWCP to select an impartial medical examiner to resolve the conflict of opinion regarding whether appellant remained disabled from work due to the accepted emotional conditions on and after August 25, 2014.

LEGAL PRECEDENT

Once OWCP has accepted 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 his or 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 Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁹ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that on or before July 29, 1994 appellant sustained an adjustment reaction and major depressive disorder, single episode. She received disability on the periodic rolls.¹¹

In a decision dated August 25, 2014, OWCP terminated appellant's entitlement to medical and wage-loss compensation benefits finding that the medical evidence failed to establish that she continued to suffer residuals of the accepted emotional conditions. By decision dated June 23, 2015, an OWCP hearing representative affirmed the termination of appellant's medical and wage-loss benefits, and remanded the case to resolve a conflict of medical opinion

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁰ *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

¹¹ On April 25, 1997 OWCP reduced appellant's entitlement to wage-loss compensation based upon a determination that the selected position of secretary fairly and reasonably represented her wage-earning capacity and adjusted her compensation accordingly.

between Dr. Garcia and Dr. Willinghurst, a Board-certified psychiatrist and second opinion physician, regarding whether appellant's condition on and after August 25, 2014 remained related to the accepted psychiatric conditions.

In support of her entitlement to ongoing wage-loss compensation, appellant provided annual reports from Dr. Garcia, an attending clinical psychologist, from 2003 through February 2012. Dr. Garcia found appellant totally disabled for work due to the accepted emotional conditions, along with anxiety and PTSD.

On June 19, 2014 OWCP referred appellant to Dr. Willinghurst for a second opinion evaluation. In a July 9, 2014 report, Dr. Willinghurst provided an accurate history of injury and treatment, and noted that she reviewed the statement of accepted facts and the medical record. She related appellant's account of being in a "great" mood most of the time, and that she was able to sell her ceramic and photographic art at craft fairs twice a year. Dr. Willinghurst determined that there was no medical evidence to support that appellant's employment-related conditions were still present, attributing her presentation to an idiopathic personality disorder. She found appellant able to perform full-time sedentary or light-duty work, with limited social interactions.

The Board finds that based on the opinion of Dr. Willinghurst that appellant's accepted conditions have resolved without residuals. Dr. Willinghurst provided a thorough factual and medical history and accurately summarized the relevant medical evidence. She conducted an examination and provided medical rationale explaining that appellant's ongoing psychiatric presentation was due to nonoccupational causes. Thus, OWCP met its burden of proof to terminate appellant's medical and wage-loss compensation benefits on August 25, 2014.¹²

On appeal, appellant contends that OWCP failed to send out reminders to submit annual medical reports in 2013 and 2014. However, the record contains OWCP's March 17, 2014 letter to appellant reminding her to have her physician submit a current medical report. Appellant argues that OWCP did not provide her adequate notice of the second opinion examination, such that she did not have enough time to have Dr. Garcia present at the examination. However, OWCP may refer a claimant for a second opinion at any time.¹³ Appellant also alleges that the hearing representative refused her request to record the telephonic hearing, in addition to the transcript. The Board notes that there is insufficient evidence of record to evaluate this allegation.¹⁴

¹² *S.R.*, Docket No. 14-0733 (issued August 18, 2015); *C.K.*, Docket No. 14-0341 (issued April 24, 2014).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Intervention Actions and Case Management*, Chapter 2.600.3.b.1 (June 2011).

¹⁴ As noted, the OWCP hearing representative found a medical conflict and remanded the case for additional development regarding whether appellant established continuing residuals or associated disability on and after August 25, 2014. Moreover, the Board is without jurisdiction to address this aspect of the hearing representative's decision as Board regulations provide that there will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case. 20 C.F.R. § 501.2(c)(2).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective August 25, 2014 as the accepted emotional conditions had ceased without residuals.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2015 is affirmed.

Issued: April 12, 2016
Washington, DC

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

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

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