United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 15-1644**
	)	**Issued: August 17, 2016**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Santa Rosa, CA, Employer	)	

Appearances:
William H. Brawner, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 28, 2015 appellant, through counsel, filed a timely appeal from a June 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's eligibility for wage-loss compensation and medical benefits effective June 17, 2015 as he had no disability or need for medical treatment due to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated May 16, 2013, the Board set aside a November 14, 2012 nonmerit decision of OWCP denying appellant's request for reconsideration under 5 U.S.C. § 8128(a).[3] The Board concluded that appellant had raised a new legal argument and had submitted new and relevant factual evidence supporting his contention. The Board remanded the case for OWCP to conduct a merit review.

On a later appeal, by decision dated April 23, 2014, the Board set aside an October 3, 2013 OWCP decision denying appellant's emotional condition claim as the Board found he had established a compensable work factor.[4] The Board remanded the case for OWCP to analyze the medical evidence to determine whether appellant had sustained an emotional condition due to the compensable employment factor. The facts and circumstances as set forth in the prior decisions are incorporated herein by reference. The facts relevant to the issue at hand are set forth below.

On March 11, 2011 appellant, then a 48-year-old supervisory air traffic control specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained stress causally related to factors of his federal employment.

In a report dated February 23, 2012, Dr. Donald T. Apostle, a Board-certified psychiatrist, diagnosed anxiety and depression due to "interpersonal relationships and teamwork on the job." On July 16, 2012 he diagnosed situational adjustment disorder with anxiety and depression. Dr. Apostle noted that appellant was "declared disabled."

Upon remand from the Board, OWCP prepared a statement of accepted facts on September 24, 2014. It listed as a compensable work factor that appellant began working in March 2008 in a location that handled grievances under a national collective bargaining agreement. He had a contentious relationship with two union representatives with whom he had to negotiate. One of the union representatives told appellant that he made her feel like she was being raped.

In a report received December 15, 2014, Dr. Sara Epstein, Board-certified in psychiatry and psychosomatic medicine and a treating physician, reviewed the statement of accepted facts and the Board's April 23, 2014 decision. She noted that the union representative, Ms. P., "often expressed herself in hyperbole and metaphor, which were unfortunately taken quite literally by the department on up the ranks, resulting in investigations, expense, and trauma for all concerned." Dr. Epstein stated, "It was ultimately determined that none of the rape/beating-up

[3] Docket No. 13-400 (issued May 16, 2013).

[4] Docket No. 14-0224 (issued April 23, 2014).

allegations merited a security investigation-but not before much furor, effort, and time were spent on these catastrophizations." She noted that Ms. P. had interfered with appellant's performance of his job duties as manager. Dr. Epstein diagnosed major depression and posttraumatic stress disorder (PTSD). She attributed the diagnosed conditions to appellant's "workplace conflicts with [Ms. P.]." Dr. Epstein found that his depression and PTSD would interfere with his managerial duties. She opined, "[Appellant] should never again work in Air Traffic Control. He is too fearful of all that can go wrong due to personalities losing focus on the main job of protecting passengers."

By letter dated December 22, 2014, appellant's counsel asserted that Dr. Epstein's report established that appellant was disabled as a result of his employment-related emotional condition. He also contended that the February 23 and July 16, 2012 reports from Dr. Apostle supported Dr. Epstein's opinion.

On January 14, 2015 OWCP referred appellant to Dr. Sam Michael Sasser, a Board-certified psychiatrist, for a second opinion examination.[5] In a report dated February 4, 2015, Dr. Sasser discussed appellant's work history and reviewed the statement of accepted facts. He noted that appellant had received medical treatment and the medication Lexapro for anxiety in 2011 and 2012 and retired in July 2012. Dr. Sasser opined:

> "[Appellant] had discontinued his Lexapro and is currently taking no medications for anxiety or depression. He denied any sense of need for medication or treatment as these conditions were no longer present. [Appellant's] anxiety levels did increase, however, in circumstances like today's evaluation as he revisited some of the issues and conflicts and contentions he had in his workplace. The theme-associated anxiety, however, was not disruptive to his ability to function or to participate in the evaluation."

On examination Dr. Sasser found that appellant was not in any emotional or physical distress. He stated, "On analog scales, where zero is absent and 100 extreme, he marked depression at 20 and anxiety at 64. The elevation on anxiety was said to be because of the topic and not because of any ongoing stress or anxiety disorder." Dr. Sasser diagnosed an employment-related adjustment disorder with anxiety that had resolved. He found that conflicts with union officials together with noncompensable work factors caused a "reactive emotional state that was treated by [appellant's] physician with the medicine that excluded him from being able to participate in his job duties. That emotional state is no longer present." Dr. Sasser found that he had no disability. In a February 6, 2015 work capacity evaluation, he indicated that appellant could return to his usual employment.

In a supplemental report dated March 22, 2015, Dr. Epstein diagnosed major depression and PTSD as a result of appellant's "contentious relationship with his subordinate employees without any other intervening causation." She also diagnosed sleep apnea, high blood pressure,

[5] On February 6, 2015 the employing establishment challenged the statement of accepted facts, contending that appellant's primary responsibility was not union relations but instead operations and that, when he was promoted to manager, Ms. P. was a union representative rather than the union president. In its June 17, 2015 decision, OWCP noted that any such errors were immaterial and would not affect the outcome of the case.

asthma aggravated by stress. Dr. Epstein related, "[Appellant] continues to be disabled as a direct result of the harm inflicted by his contentious relationship with subordinate employees. There are no nonindustrial factors of causation." She recommended psychiatric treatment and medication.

By decision dated June 17, 2015, OWCP accepted that appellant sustained adjustment disorder with mixed anxiety and depressed mood that had resolved. It found that Dr. Sasser's February 4, 2015 report represented the weight of the evidence and established that appellant had no residuals of his condition.

On appeal counsel argues that Dr. Epstein's opinion is entitled to more weight than Dr. Sasser's as Dr. Epstein is certified in psychosomatic medicine. He asserted that OWCP did not meet its burden of proof to terminate benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[6] 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.[7]

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

ANALYSIS

On June 17, 2015 OWCP accepted appellant's claim for an adjustment disorder, as had resolved based on the February 4, 2015 report from Dr. Sasser. Its acceptance of a claim for a specified period does not shift the burden of proof to the claimant to terminate benefits.[10] It is OWCP's burden to establish that appellant had no residuals from the accepted injury.[11]

In a report dated February 4, 2015, Dr. Sasser reviewed the statement of accepted facts and discussed appellant's history of treatment for anxiety in 2011 and 2012. He noted that

[6] *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[7] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[8] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[9] *Id*.

[10] *I.M.*, Docket No. 14-564 (issued July 10, 2014). *See Elsie L. Price*, 54 ECAB 734 (2003).

[11] *See id.; J.S*, Docket No. 13-1678 (issued April 3, 2014); *R.W.*, Docket No. 13-1420 (issued December 11, 2013). The record does not indicate that appellant received wage-loss compensation.

appellant was not currently taking any medication or receiving treatment for depression or anxiety, and that he did not believe that he continued to experience either condition. Dr. Sasser diagnosed a resolved adjustment disorder with anxiety due to conflicts with union officials in combination with noncompensable work factors. He opined that appellant had no further disability or residuals of his adjustment disorder with anxiety and could resume his usual employment. Dr. Sasser provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.[12] Dr. Sasser explained that appellant had no further symptoms on examination or complaints of a continued employment-related condition. Consequently, his opinion constitutes the weight of the evidence and establishes that appellant had no further condition or disability due to his accepted condition of an adjustment disorder as of February 4, 2015.

The remaining evidence is insufficient to show that appellant had any condition or disability after February 4, 2015. Dr. Apostle's reports address his medical condition in 2012, and thus are not probative in determining the extent of any condition in 2015. On December 15, 2014 Dr. Epstein diagnosed major depression and PTSD due to appellant's conflicts at work with Ms. P. in her position as union representative. She found that he should no longer work in his usual employment due to his fear of what could go wrong if his coworkers did not concentrate on work. Dr. Epstein did not specifically attribute appellant's disability to a compensable work factor but instead opined that he was afraid that actions by his coworkers would jeopardize the safety of air passengers, which has not been accepted as a compensable work factor.

In a supplemental report dated March 22, 2015, Dr. Epstein diagnosed major depression and PTSD arising from appellant's management of his subordinates. She further found that he had a stress-related aggravation of sleep apnea, high blood pressure, and asthma. Dr. Epstein asserted that appellant remained disabled "as a direct result of the harm inflicted by his contentious relationship with subordinate employees." She, however, did not provide any rationale for her finding that appellant was disabled from employment. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[13]

On appeal counsel contends that Dr. Epstein's opinion is entitled to more weight than that of Dr. Sasser's as Dr. Epstein is certified in psychosomatic medicine. He maintains that OWCP failed to meet its burden of proof to terminate benefits. As discussed, however, Dr. Epstein did not provide rationale for her disability finding and thus her opinion is of little probative value.[14] OWCP properly found that appellant was not entitled to compensation for disability after February 4, 2015, the date of Dr. Sasser's report.

[12] *See Pamela K. Guesford*, *supra* note 8.

[13] *See L.W.*, Docket No. 14-0559 (issued July 24, 2015); *Jean Culliton*, 47 ECAB 728 (1996).

[14] *See J.H.*, Docket No. 15-0923 (issued September 15, 2015); *Brenda L. Dubuque*, 55 ECAB 212 (2004).

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 entitlement to compensation benefits effective June 17, 2015.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2016
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