

FACTUAL HISTORY

On August 20, 2014 appellant, then a 52-year-old contract specialist, filed an occupational disease claim (Form CA-2) alleging that she developed acute stress disorder, anxiety disorder, and depressive disorder as well as post-traumatic stress disorder (PTSD) and psychological factors affecting her physical condition after deployment to Kandahar, Afghanistan. She first became aware of her condition on October 13, 2013 and first attributed her condition to her employment on February 7, 2014.

Appellant provided a narrative statement describing the conditions of her employment including rioting, rocket attacks, assaults on females, and suicide bombs. She also implicated the stress of performing her job functions while in Afghanistan. Appellant returned to the employing establishment in August 2013 and was assigned a different position with unique-type contracting which was more stressful than the usual contracting positions. She was also assigned to the multi-million dollar exercise option in October 2013. Appellant stated that the everyday administration of the contract was a heavy workload and complex in nature. She alleged that the contractor was nonresponsive and caused a heavier administrative burden. Appellant indicated that in October 2013 she felt that her comprehension and momentum were taxed. She felt fatigued and mentally exhausted. Appellant found herself remembering everyday events from her deployment including loud constant noises from helicopters and rocket attacks. She felt that she had to snap herself back into reality on a constant basis and was easily startled. Appellant felt irritable, impatient, and sad. She also reported having trouble sleeping. Appellant noted that her mother passed away while she was in Afghanistan, that she had new job demands returning from deployment, that her father's health was deteriorating, and that she had pain prior to surgery.

In a statement dated October 1, 2014, appellant attributed her emotional condition to her deployment from December 11, 2011 through July 13, 2013 and her new position upon returning to the employing establishment in August 2013. She felt that she was experiencing difficulties performing the day-to-day duties of her position by October 15, 2013. Appellant alleged that beginning on February 7, 2014 she was diagnosed with anxiety, depression, and signs of PTSD in her post-deployment health assessment at the employing establishment.

On September 8 and 9, 2014 Dr. Heath Penland, a Board-certified psychiatrist, diagnosed major depressive disorder, anxiety, and PTSD. He noted that appellant had difficulty functioning and coping with stressors of her occupation and memories associated with her job duties. Appellant was hospitalized for mental health treatment from August 27 through September 26, 2014. In a note dated September 15, 2014, Dr. Penland noted that she quickly became anxious and had been depressed. He diagnosed occupational stress and delayed PTSD. Dr. Penland discharged appellant on September 26, 2014 following treatment for PTSD-type symptoms, depression, and anxiety.

On August 20, 2014 appellant noted that she returned home in 2013 after working in Afghanistan from 2011 through 2013. She noted her emotional condition symptoms beginning in October 2013 with depression and anxiety. Appellant alleged that current issues at work increased her problems. In February 2014, she underwent a post-deployment examination and was diagnosed with adjustment disorder with depression and anxiety. Appellant informed her

supervisor, who discouraged her from stopping work in April 2014. She experienced problems with her job performance due to stress and on August 11, 2014 she was called in for a supervisory investigation interview. Appellant reported that her supervisor told her not to get help and her chain of command told her to seek medical care for her mental health.

Appellant submitted insurance forms indicating that she received treatment on September 30, October 13 and 23, November 17, and December 23, 2014.

By decision dated February 23, 2015, OWCP accepted appellant's claim for recurrent major depression, unspecified anxiety state, and PTSD.

Dr. Daniel Laeupple, a Board-certified psychiatrist, completed notes on March 2, 2015 indicating that appellant could return to work on March 3, 2015 and on April 1, 2015 indicating that she could return to work on April 12, 2015.

Appellant filed a claim for compensation (Form CA-7) and requested compensation for leave without pay from August 12 through September 30, 2014. She filed a second Form CA-7 for leave without pay for intermittent periods from October 13, 2014 through April 9, 2015.

In a letter dated May 29, 2015, OWCP informed appellant that compensation benefits were authorized from September 8 through 16, 2014, March 2, and April 1 and 9, 2015. It requested additional medical evidence supporting her claims for disability from August 12 through September 4, 2014, and October 13, 2014 through January 27, 2015.

Dr. Vidya Alapati, a Board-certified family practitioner, indicated that appellant was totally disabled from August 12 through 18, 2014 due to depression. In the accompanying notes dated August 12 and 15, 2014, Dr. Alapati certified that appellant received a diagnosis of depression but neglected to follow up with a therapist. Appellant's diagnoses were anxiety disorder and chronic pain. She requested a consultation regarding her PTSD. Appellant indicated that she was being investigated by the Chief regarding a previous supervisor. She reported that her current position was stressful and that it had been brought to her attention that she was not performing appropriately. Appellant alleged that she had an emotional breakdown on August 14, 2014 and her department recommended that she visit occupational health to request accommodations for less stressful duties. She reported memory lapses, inability to concentrate, anxiety, depression, and sleep disturbances.

Dr. Madan A. Maladkar, a Board-certified internist, certified that appellant was totally disabled from August 12 through September 30, 2014 for adjustment disorder with depressed mood, depression, and hospitalization for depression. He noted on August 21, 2014 that she had a diagnosis of PTSD, possibly related to her deployment, with findings of anxiety and depression. Within the prior week, appellant experienced a recurrence during an investigation at her employing establishment. She reported memory lapses, anxiety, depression, and sleep issues.

On August 25, 2014 Dr. Maladkar found rapid tremulous speech with dysthymic mood and tearful affect as well as racing thoughts. He diagnosed depression and recommended that appellant remain off work. In the accompanying notes, dated August 28, 2014, Dr. Maladkar diagnosed depression and work-related stress. He noted that appellant had been under stress and

experienced depression and anxiety that was aggravated two weeks previously during an investigation at her workplace. Appellant felt that she was unable to function in the workplace.

On October 6, 2014 Dr. Maladkar diagnosed atypical depressive disorder and adjustment disorder with depressed mood. He noted that appellant was hospitalized for the weekend of August 27, 2014 for a new onset of depression. Appellant completed a three-week outpatient treatment on September 29, 2014. She was released to return to work following outpatient treatment of depression, anxiety, and PTSD. Appellant noted that her organization was trying to reassign her to a lower stress work area.

Dr. Laeupple completed a work release note dated September 30, 2014.

By decision dated August 13, 2015, OWCP denied appellant's claim for compensation for the period August 12, 2014 to January 27, 2015. It explained, "It is important to note that at the time this office issued its May 29, 2015 letter indicating your entitlement to payment for dates September 8 to 16, 2014 we were unaware of the intervening factors noted in the subsequently submitted evidence. Therefore, it is determined that you are not entitled to compensation for September 8 to 16, 2014 as previously noted in our May 29, 2015 letter." OWCP indicated that it received medical evidence dated August 12 to 15, 2014, which suggested that appellant had an "emotional breakdown, yesterday" after she was investigated by Cheryl Davis regarding a previous supervisor.

LEGAL PRECEDENT

The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.² The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.³

It is well established that, once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation.⁴ 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. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.⁵

² *D.V.*, Docket No. 11-1629 (issued February 3, 2012); *Eli Jacobs*, 32 ECAB 1147 (1981).

³ *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

⁴ *Linda L. Newbrough*, 52 ECAB 323 (2001).

⁵ *E.W.*, Docket No. 08-1890 (issued February 19, 2009).

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to rescind acceptance of appellant's claim for periods of disability from September 8 through 16, 2014, March 2 and April 1 and 9, 2015.

In a letter dated May 29, 2015, OWCP informed appellant that payment for compensation benefits was authorized for the periods September 8 through 16, 2014, March 2, and April 1 and 9, 2015. OWCP then issued a decision dated August 13, 2015 which denied appellant's claim for compensation for the entire period August 12, 2014 through April 9, 2015. OWCP advised that it had been determined that appellant was not entitled to compensation for September 9 through 16, 2014 as previously provided in the May 29, 2015 letter.

The Board finds that OWCP failed to properly rescind the acceptance of the claim. As OWCP had previously accepted a period of disability beginning September 8, 2014, the August 13, 2015 decision denying disability from August 12, 2014, it was in fact a rescission of acceptance of the claim for that period. It has the burden of proof to rescind acceptance of compensation benefits for the periods previously awarded. As OWCP was attempting to rescind acceptance of periods of wage-loss compensation, it must follow its established procedures for rescinding her benefits. Its procedures require a proposed and final decision rescinding the original finding.⁶ These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded. The evidence used to rescind the claim should be thoroughly discussed so that it is clear to the reader how the case was incorrectly adjudicated and why the original decision is now being invalidated.⁷

OWCP did not follow the specific procedures for a rescission decision and did not inform appellant correctly and accurately of the basis of its rescission decision.⁸ It did not inform appellant that her claim was being rescinded and did not mention the applicable legal standard or that OWCP held the burden of proof for rescinding an accepted benefit. The Board finds that OWCP failed to properly rescind acceptance of disability for periods of compensation previously granted appellant beginning September 8, 2014.

As noted in *D.V.*,⁹ it is OWCP's burden of proof to establish that appellant is not entitled to receive compensation for wage loss for the periods September 8 through 16, 2014, and March 2, and April 1 and 9, 2015. This is based on the principle noted above that OWCP has the burden to terminate compensation. When appellant filed the Form CA-7s requesting compensation from August 12 through September 30, 2014 and intermittently from October 13, 2014 through April 9, 2015 it was her burden of proof to establish her entitlement to these

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.19(b) (February 2013).

⁷ *Id.* at Chapter 2.1400.19(d).

⁸ *S.R.*, Docket No. 12-1401 (issued December 11, 2012).

⁹ *Supra* note 2.

benefits. In this case, as in *D.V.*,¹⁰ OWCP explicitly found in a letter, here dated May 29, 2015, that based on the evidence appellant was entitled to compensation for a specific period, in the present situation from September 8 through 16, 2014, March 2, and April 1 and 9, 2015. Having accepted the claim and a period of disability, the burden is now on OWCP to rescind acceptance of the period of disability.¹¹

In the August 13, 2015 decision, OWCP denied her claim for compensation for the period August 12, 2014 to January 27, 2015. It based this de facto rescission on medical evidence from Dr. Alapati and Dr. Maladkar, which suggested that appellant had an emotional breakdown due to an investigation by the employing establishment. OWCP found that there was evidence of an intervening incident. It found that appellant stopped work due to the investigation by the employing establishment not her accepted conditions. These allegations are not sufficiently detailed to constitute proper findings of fact and a statement of reasons supporting the rescission of appellant's previously accepted periods of disability.

The Board finds that OWCP failed to provide a specific factual basis for the rescission of the previously accepted periods of disability from September 8 through 16, 2014, March 2, and April 1 and 9, 2015. As OWCP has not provided a clear explanation of its rationale for rescission, it has not established that rescission of the accepted periods of disability from September 8 through 16, 2014, March 2, and April 1, and 9, 2015 was warranted in this case.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to rescind acceptance of employment-related disability from September 8 through 16, 2014, March 2, and April 1 and 9, 2015.

¹⁰ *Id.*

¹¹ *See M.G.*, Docket No. 10-818 (issued March 21, 2011) (OWCP must provide a clear explanation with rationale for rescinding acceptance of surgery and accompanying disability).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2015 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 1, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board