

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

G.B., Appellant)	
)	
and)	Docket No. 16-0996
)	Issued: September 14, 2016
U.S. POSTAL SERVICE, POSTAL)	
INSPECTION SERVICE, Oakland, CA,)	
Employer)	
)	

Appearances:
William Hackney, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 11, 2016 appellant, through counsel, filed a timely appeal from a January 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 issues are: (1) whether OWCP properly terminated wage-loss compensation and medical benefits effective February 8, 2015; and (2) whether appellant met her burden of proof to establish residuals or continuing disability causally related to the accepted injury after the termination of her compensation benefits.

FACTUAL HISTORY

On December 31, 1997 appellant, then a 45-year-old postal inspector, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition in the performance of duty as a result of work-related stress and harassment. On April 17, 1998 she claimed that she sustained delayed onset of post-traumatic stress disorder (PTSD) after a man was shot and killed during the execution of a search warrant on January 6, 1994. Appellant stopped work on December 3, 1997. OWCP accepted the claim for delayed onset of PTSD. Appellant received appropriate wage-loss compensation from OWCP.

In a July 10, 1998 report, Dr. Donald Mechling, a clinical psychologist, advised that on January 6, 1994 appellant participated in the execution of a search warrant in which an Oakland police officer shot and killed a man. He noted that the man was the husband of the woman whom the search warrant targeted and that he was shot after he drew his gun as he thought someone was breaking into his home. Appellant related that she experienced guilt, fear, and anxiety after the incident, but continued to work as she thought the feeling would subside. She indicated that she had visual memory of pools of blood on the floor, a trail of blood leading to the door, and the victim's dead dog lying in a pool of blood. Appellant also felt that she was harassed by her supervisor as far back as 1990 within five months of transferring to the employing establishment. Dr. Mechling noted that most of the stressful events alleged by appellant took place prior to the PTSD. He assessed delayed onset PTSD, adjustment disorder with mixed anxiety and depressed mood, witness to shooting death, and perceived harassment by supervisor. In a July 31, 1998 report, Dr. Mechling noted that OWCP informed him that appellant did not actually witness the shooting. In light of the new information, he believed that appellant only had adjustment disorder.

In a September 15, 1998 report, Dr. Edward Fiorella, a Board-certified psychiatrist and an OWCP referral physician, noted that appellant was experiencing nightmares, trouble sleeping at night, memory loss, anxiety, and fear that someone would break into her house and kill her by mistake like the 1994 incident. He opined that the emotional condition was precipitated by the December 1994 event and was aggravated by feelings of harassment and noted that appellant was not capable of adapting to stressors common to her work environment. Dr. Fiorella noted that he did not agree with Dr. Mechling's assessment that appellant did not have PTSD because, although she did not witness the shooting, she witnessed the aftermath, which he concluded had a traumatic effect.

In an October 2, 2000 report, Dr. Robert Hepps, a Board-certified psychiatrist and neurologist and an OWCP referral physician, diagnosed PTSD and major depressive disorder. He opined that appellant's condition remained employment related and was totally disabling. Dr. Hepps issued a "very guarded" prognosis.

Appellant continued to undergo treatment by Dr. James Liles, a Board-certified psychiatrist, who diagnosed PTSD and opined that she was unable to work.

On March 12, 2013 OWCP referred appellant, together with the medical record and a statement of accepted facts (SOAF) to Dr. Douglas Robinson, a Board-certified psychiatrist, for a second opinion regarding her current medical status. The SOAF noted that on January 6, 1994 appellant sat in a car 35 yards across the street from the residence where a search warrant was executed. It noted that a man was shot and killed by the police in the execution of the search warrant, but appellant did not see the incident and only heard pops which she believed to be gunshots. The SOAF noted that appellant did not enter the premises until after it had been secured by the police and the body had been removed.

In an April 4, 2013 report, Dr. Robinson advised that appellant complained of insomnia, inability to concentrate, memory impairment, and no tolerance for stress. He noted that appellant related that she was harassed by her supervisor beginning in 1991. Dr. Robinson noted that appellant filed an EEO complaint against her supervisor, but was later transferred to a different unit. He also noted that in 1994 appellant was at the scene where a man was shot and killed by the police. Appellant became fearful after this and expressed guilt because he was an innocent man who just happened to be there. On December 3, 1997 she related that she had a breakdown while talking to her supervisor while discussing her performance. Appellant noted that her team leader advised her to take some time off from work and she never returned. She currently related a depressed mood and on-going intermittent anxiety. Dr. Robinson indicated that appellant did not appear depressed and that she did not react as individuals with PTSD do when talking about trauma; rather she referred to that period of time as very stressful and painful to remember. He assessed probable panic disorder with agoraphobia and opined that appellant was misdiagnosed as he did not believe that she had PTSD. Dr. Robinson explained that she did not experience an event capable of producing PTSD and that her symptoms were inconsistent with that diagnosis. He noted that there was no reason that a person with PTSD would avoid activities away from home on a wholesale basis. Dr. Robinson further opined that she was capable of full-time work and recommended vocational rehabilitation. An accompanying work capacity evaluation advised that appellant was unable to perform her usual job due to impaired concentration.

On May 23, 2013 OWCP issued a proposed notice of termination of appellant's compensation benefits based on the report of Dr. Robinson.

In a May 30, 2013 report, Dr. Liles disagreed with Dr. Robinson's assertion that appellant did not experience an event capable of producing PTSD, noting that it was largely a neurological condition with nothing to do with the strength of the stressor. He contended that his medical report gave a more accurate description of appellant, her history, and current condition.

By letter dated July 17, 2013, OWCP informed appellant that it had determined that a conflict in the medical evidence existed. It scheduled a referee examination with Dr. Russell Vandenberg, a Board-certified psychiatrist. In an August 19, 2013 report, Dr. Vandenberg detailed the history of appellant's injury and treatment. On examination he noted a number of depression and anxiety symptoms including subjective sense of depression, feelings of guilt and unworthiness, regretfulness, anxiety about the future, hopelessness, indecision, poor memory, social withdrawal, poor motivation, and impaired concentration. Dr. Vandenberg assessed major

depression without psychotic features and opined that there was no clinical information to support appellant's PTSD diagnosis. He noted that the information provided in the SOAF did not describe a situation in which appellant reasonably concluded that she was at risk for imminent harm, or serious injury. Dr. Vandebelt further opined that evidence of record did not indicate that appellant was subjected to the type of harassment that could legitimately lead to a PTSD diagnosis. He opined that there was no evidence to support that appellant was in need of treatment because of events or circumstances in the workplace.

By decision dated September 10, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits effective September 11, 2013. It found that the weight of medical opinion was represented by Dr. Vandebelt.

On October 9, 2013 appellant submitted a request for an oral telephone hearing received by OWCP on October 22, 2013.

On April 9, 2014 an oral hearing took place. Counsel argued that the SOAF did not provide all the pertinent facts of the January 6, 1994 incident. He argued that the SOAF did not note that appellant saw the trail of blood in the house and how she stood next to a pool of blood on the kitchen floor as a police officer explained to her how the shooting occurred.

In a June 27, 2014 decision, an OWCP hearing representative reversed the September 10, 2013 decision. He found that the factual framework relied upon by the second opinion and referee physicians Drs. Robinson and Vandebelt did not contain sufficient detail about the January 6, 1994 incident. The hearing representative also found that the SOAF was confusing regarding whether appellant's allegation of agency harassment was established. He directed OWCP to create a corrected SOAF and refer appellant to a second opinion examination.

A September 10, 2014 SOAF advised that on January 6, 1994 appellant was involved in an execution of a search warrant where a man was shot and killed by the police. It noted that she witnessed the deceased being taken out of the home on a stretcher, trails of blood in the home, and the deceased's dead dog lying in a pool of blood. The SOAF noted that in a subsequent search of the home no evidence was found linking the shooting victim to a crime. OWCP advised that this incident occurred in the performance of duty. It did not accept that appellant's interactions with her supervisor were established or rose to the level of a compensable factor of employment.

In a September 2, 2014 report, Dr. Liles advised that appellant continued to have a diagnosis of PTSD. He noted that appellant had significant anxiety, depressed moods and ideation, insomnia, social withdrawal, cognitive dysfunction, and anergia. Dr. Liles noted that her symptoms were exacerbated by her recent struggle to retain her compensation benefits. He opined that appellant had been retraumatized by having to relive the original injury and indicated that she was unable to return to work or any kind of vocational rehabilitation for several years.

On September 12, 2014 OWCP referred appellant, together with the medical record and a SOAF to Dr. Larry Bornstein, a Board-certified psychiatrist, for a second opinion regarding her current medical status. In an October 2, 2014 report, Dr. Bornstein detailed the history of appellant's injury and treatment. He advised that on January 6, 1994 appellant witnessed a

shooting victim being carried out on a stretcher, a trail of blood, and a pool of blood inside the home as she stood near the shooting victim's deceased dog. Dr. Bornstein noted that a subsequent search of the residence linked the shooting to fraudulent credit cards or stolen property. Appellant related her anxiety to the January 1994 work incident. Dr. Bornstein noted that appellant appeared depressed when she related her history and when she discussed less emotionally affecting events her mood appeared to be euthymic. He noted that appellant appeared quite anxious and ruminative and that there was no evidence of any hallucinations or delusions. Dr. Bornstein provided psychiatric diagnoses of major depression, passive-dependent, and histrionic personality traits. He opined that appellant did not suffer from PTSD connected to her work factors as there was no clear evidence that she was at risk to imminent harm or serious injury during the incident in 1994. Dr. Bornstein noted that although this incident was anxiety provoking, it did not qualify as a cause of PTSD. He advised that appellant had ongoing anxiety and depression which was based on her own internal personality factors. Dr. Bornstein noted that, although he believed that it was possible for appellant to return to work, given her lengthy period of time outside of the work force, her own perceptions of anxiety, and poor stress tolerance, a return to work was less likely at that point. He opined that appellant had no limitations due to work-related factors. An accompanying work capacity evaluation indicated that appellant could not work eight hours a day due to ongoing depression, anxiety, and insomnia.

On October 28, 2014 OWCP issued a proposed notice to terminate appellant's compensation benefits. It was based on the report of Dr. Bornstein.

By decision dated February 3, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 8, 2015.

Appellant submitted additional evidence that was received by OWCP on February 3, 2015. This included a December 1, 2014 report from Dr. Liles who noted treating appellant since December 1998. Dr. Liles disagreed with Dr. Bornstein's conclusion. He opined that appellant continued to have employment-related PTSD and explained the reasons why he offered that diagnosis.

By decision dated February 5, 2015, OWCP advised that additional evidence was received on February 3, 2015, the same date that a Notice of Decision to terminate compensation benefits was issued. It advised that the additional evidence was reviewed and that it was determined that the evidence was not sufficient to change the decision.

On March 6, 2015 appellant requested an oral telephone hearing. She argued that she was not provided with a copy of the SOAF and without the knowledge of its contents she was unable to adequately respond to Dr. Bornstein's findings and conclusions. Appellant further contended that because Dr. Bornstein was only provided with medical information he could not provide a comprehensive and accurate report. She contended that because Dr. Robinson was not given an updated SOAF his conclusions were inaccurate, unreliable, and prejudicial to her claim and, because Dr. Vandenbelt and Dr. Bornstein were provided with this report, their reports were also inaccurate and unreliable. Appellant indicated that the assertion that Dr. Liles' opinion was not based on a recent examination was inaccurate as she traveled to Oakland for an appointment with him on September 2, 2014. She also argued that her hostile work environment and

harassment experienced from 1991 to 1997 was dismissed as a contributing factor of her claim when both individual and class action EEO complaints settled in favor of female postal inspectors revealed that there had been gender discrimination at the employing establishment since the 1970's.

On October 16, 2015 a telephone hearing took place. Appellant's counsel argued that Dr. Bornstein's report had no probative value as it was not based on an accurate accounting of the history of the injury. Appellant reiterated that the shooting victim was an innocent man and that the police department was required to pay a settlement to the victim's family. She noted that Dr. Bornstein incorrectly asserted that the shooting victim was linked to fraudulent credit cards or stolen property.

In a November 10, 2015 report, Dr. Liles reiterated that appellant had PTSD. He noted that his examination that day revealed social withdrawal, cognitive dysfunction such as an inability to sustain focus and memory impairment, persistent reexperiencing of the event in question in the form of nightmares and recollections, depressive moods and ideation, and diffuse anxiety about the resolution of her case and her future. Appellant also resubmitted other reports of Dr. Liles.

In a November 13, 2015 statement, appellant contended that there had been a number of postal inspectors who had committed suicide and indicated that she believed that it was due to PTSD and hostile/toxic work environment. She also noted that with each second opinion examination she is required to attend she experiences a deeper level of depression of increased duration.³

By decision dated January 4, 2016, an OWCP hearing representative affirmed OWCP's February 5, 2015 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁵

FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint

³ Appellant submitted a June 10, 2009 periodical article regarding a letter carrier who committed suicide.

⁴ *Kenneth R. Burrow*, 55 ECAB 157 (2003).

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

a third physician who shall make the examination.⁶ The implementing regulations state that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that appellant had delayed onset of PTSD. As of February 5, 2015 it terminated compensation for wage-loss and medical benefits effective February 8, 2015. OWCP found that the weight of the medical evidence was represented by Dr. Bornstein in his October 2, 2014 report.

Dr. Bornstein, in his October 2, 2014 report, assessed major depression, passive-dependent, and histrionic personality traits. He opined that appellant did not suffer from PTSD connected to her work factors as there was no clear evidence that she was at risk to imminent harm, or serious injury during the incident in 1994. He noted that although this incident was anxiety provoking, it did not qualify as a cause of PTSD. Dr. Bornstein opined that appellant's ongoing anxiety and depression were based on her own internal personality factors. He did not attribute any ongoing condition to her employment.

In multiple reports, including his May 30, 2013 report, Dr. Liles disagreed with the assertion that appellant did not have PTSD. Dr. Liles contended that as he was appellant's primary psychiatrist his medical reports gave a more accurate description of appellant, her history, and current condition. In his December 1, 2014 report, Dr. Liles specifically disagreed with Dr. Bornstein's conclusion. He opined that appellant continued to have employment-related PTSD and provided the reasons for his opinion.

The Board finds that OWCP improperly found that Dr. Bornstein represented the weight of the medical evidence at the time OWCP terminated benefits as there is an unresolved conflict of medical opinion evidence between the opinions of Dr. Bornstein and Dr. Liles on whether appellant still had residuals or disability from the accepted condition. The reports are based on a proper history of injury, and provide physical findings, and address the issue of causal relationship between appellant's employment and her diagnosed condition. The Board finds the outstanding medical issues must be addressed and resolved by an impartial medical examiner, pursuant to 5 U.S.C. § 8123(a).

Thus, the Board finds that OWCP did not meet its burden of proof in terminating appellant's compensation benefits. As OWCP improperly terminated appellant's compensation, the second issue regarding whether she established continuing disability following the termination is moot.

⁶ 5 U.S.C. § 8123(a).

⁷ 20 C.F.R. § 10.321.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective February 8, 2015.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 14, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board