

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

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N.G., Appellant )

and )

**DEPARTMENT OF THE ARMY, CIVILIAN  
PERSONNEL ADVISORY CENTER,  
Redstone Arsenal, AL, Employer** )

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**Docket No. 17-0884  
Issued: August 23, 2017**

*Appearances:*

*Sally F. LaMacchia, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 14, 2017 appellant, through counsel, filed a timely appeal from a February 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's entitlement to compensation effective October 22, 2014 as the temporary aggravation of schizoaffective disorder had resolved.

## FACTUAL HISTORY

On April 2, 2015 appellant, then a 51-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she experienced stress and overwork causally related to factors of her federal employment. She was last exposed to the conditions alleged to have resulted in her illness on July 1, 2014.

On March 24, 2015 appellant, through counsel, described her employment duties when she began work in 2006. She related that the employing establishment began assigning her additional duties starting in 2007. Appellant described her work duties in detail, noting that an August 30, 2010 Accretion of Duties form confirmed her added responsibilities. Counsel advised that appellant became concerned that she could not meet her job requirements after she began performing work formerly assigned to several people. The number of people using the travel system grew from 12 to 60 people, but she received no assistance. Appellant stopped work on October 22, 2014.

The employing establishment controverted the claim. In an April 28, 2015 memorandum, J.D., a manager, noted that appellant was largely absent from work beginning August 22, 2013 and was absent without leave beginning January 13, 2015. He submitted disciplinary actions and described her work duties. J.D. related that appellant initially requested full-time telework after her office relocated, which the employing establishment approved based on the supporting medical evidence. Appellant subsequently requested relocation, which the employing establishment granted after she agreed on August 21, 2013 to hold it harmless for any deterioration in her health due to the move. J.D. advised that appellant was "precluded from making any claims related to her health occurring after that date." He noted that she filed her claim only after receiving a proposed removal from service.

By decision dated May 28, 2015, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable factors of employment.

Appellant, through counsel, on June 10, 2015 requested an oral hearing before an OWCP hearing representative. On January 18, 2016 counsel requested reconsideration in lieu of an oral hearing. In a decision dated January 22, 2016, OWCP denied appellant's request for reconsideration as she had not raised a new legal argument or submitted relevant evidence sufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128(a).

On April 15, 2016 appellant, through counsel, again requested reconsideration. She attributed her condition to stress trying to meet her position requirements and thus asserted that she had established compensable work factors.

OWCP accepted as compensable work factors that the individuals using the Defense Travel System increased from 2008 to 2013. It further accepted that appellant assumed some duties of her manager when he retired in 2007 and became the lead for budget execution, though she received assistance from contractors in fulfilling her duties. In June 2011 appellant had to approve last minute travel orders for four employees and subsequently for her manager without time to allocate the budget. In July 2012 she had to redo a proposal using a different system. Appellant's responsibilities increased after a promotion in August 2010. OWCP noted that the employing establishment indicated that she did not manage all programs herself and only assumed some of the duties of a retiring manager. It prepared a statement of accepted facts (SOAF) on August 17, 2016.

On August 22, 2016 OWCP referred appellant to Dr. Walker Lyerly, IV, a Board-certified psychiatrist, for a second opinion examination. In a report dated September 6, 2016, Dr. Lyerly reviewed appellant's work history and found "prominent paranoid delusions" on evaluation of her mental status. He diagnosed schizoaffective disorder and to rule out personality disorder, and further noted that she had a history of fibromyalgia, and chronic fatigue syndrome. Dr. Lyerly indicated that appellant received treatment for depression and experienced difficulty with relationships prior to the factors set forth in the SOAF, but that the records did not provide a history of the paranoid delusions found on examination. He related, "Despite her psychiatric symptoms, medical records support that she was able to maintain employment until the beginning of 2014. Given that she was able to maintain employment up to that time although she had a preexisting condition, in my medical opinion the factors of employment described in [the SOAF], aggravated and accelerated her psychiatric condition." Dr. Lyerly noted that it was difficult to understand what happened in the workplace as she now believed that her supervisor and others were trying to kill her and were also rearranging items in her home. He advised that appellant related that "her underlying chronic fatigue syndrome and fibromyalgia were aggravated by stress that she encountered in the workplace." Dr. Lyerly opined that appellant was disabled from work due to her psychosis and paranoid delusions and found that she had not received adequate psychiatric treatment. Regarding the question of whether any employment-related condition had resolved, he responded, "No, as evidenced by [appellant's] paranoid delusions at this time are centered around a supervisor who previously worked with her in her last workplace."

OWCP, on September 26, 2016, requested that Dr. Lyerly clarify whether the work factors identified in the SOAF caused a psychiatric condition and, if so, whether it had resolved at the time of his evaluation. It used bold text and underlining to highlight portions of the questions.

In a supplemental report received October 24, 2016, Dr. Lyerly related that factors of appellant's federal employment as set forth in the SOAF aggravated her psychiatric condition and that she was "not able to adequately tolerate the stress and responsibilities of her work duties due to the nature of and severity of her psychiatric condition." He advised that work factors did not cause her condition, but that due to her condition she was unable to cope with its demands. Dr. Lyerly related:

"At the time of my evaluation, [appellant] was not employed. Therefore there is no work[-]related component of her psychiatric condition. [Appellant's]

psychiatric condition persists since she left her employment. Again it is my medical opinion that [appellant's] psychiatric condition was not caused by her work situation. It is my medical opinion that her psychiatric condition was present during her time of employment [and] was aggravated by her work stress and responsibilities because the nature and severity of her psychiatric condition was unable to tolerate and manage her work demands and responsibilities.”

Dr. Lyerly found that it was appropriate to remove appellant from work in October 2014. He opined that her psychiatric condition continued and diagnosed schizoaffective disorder and a possible personality disorder.

In a February 13, 2017 decision, OWCP modified in part and affirmed in part its May 28, 2015 decision. It found that Dr. Lyerly's report was sufficient to show that she sustained an aggravation of a preexisting mental condition due to employment factors, but that any aggravation resolved around October 22, 2014, the approximate date that she stopped work. OWCP accepted appellant's claim for a temporary aggravation of schizoaffective disorder.

On appeal counsel argued that Dr. Lyerly's opinion was insufficient to establish that her aggravation of schizoaffective disorder was temporary or ceased by October 22, 2014. She notes her objection to OWCP's use of bold text in its request for clarification from the physician.

### **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.<sup>3</sup> 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.<sup>4</sup>

### **ANALYSIS**

Appellant alleged that she sustained stress and overwork due to factors of her federal employment. OWCP accepted as compensable that the number of people she assisted under a travel system increased from 2008 to 2013, that she performed some managerial duties with assistance from contractors beginning 2007, and that her responsibilities grew after she was promoted in 2010. It further accepted that in 2011 appellant had to approve last minute travel arrangements and had to redo a proposal using a different system in 2012.

OWCP referred appellant to Dr. Lyerly to evaluate if she sustained an emotional condition due to employment factors. On September 6, 2016 Dr. Lyerly diagnosed schizoaffective disorder, possible personality disorder, fibromyalgia, and chronic fatigue syndrome. On examination he found paranoid delusions and discussed her history of depression prior to the events occurring in the SOAF. Dr. Lyerly determined that compensable work factors

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<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

aggravated appellant's psychiatric condition, noting that she maintained employment before those events. He also found that her preexisting fibromyalgia and chronic fatigue syndrome contributed to her difficulty functioning. Dr. Lyerly opined that appellant's work-related condition had not resolved as shown by her paranoid delusions about her supervisor. In an October 2016 supplemental report, he again opined that work factors as described in the SOAF aggravated her psychiatric condition such that she was unable to "tolerate" the stress of her work responsibilities. Dr. Lyerly clarified that work factors did not cause her condition, but that work stress and responsibility aggravated her condition. He noted that as appellant was not employed at the time of the evaluation, she had no current work-related aggravation. Dr. Lyerly found that it was "appropriate" to remove appellant from employment in October 2014.

Based on Dr. Lyerly's findings, OWCP accepted appellant's claim for an aggravation of schizoaffective disorder that ceased by October 22, 2014. The Board has held that, even when OWCP accepts the claim for a specific period of disability, the burden of proof does not shift to appellant to show that she is still disabled.<sup>5</sup> The burden is on OWCP to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>6</sup> The issue, consequently, is whether it has met its burden of proof to show that appellant had no residuals of the accepted condition after that date.

The Board finds that Dr. Lyerly's opinion is insufficient to support terminating appellant's compensation effective October 22, 2014. In his October 24, 2016 report, Dr. Lyerly noted that, at the time he evaluated her, she was no longer working for the employment establishment and thus had no "work[-]related component of her psychiatric condition." He, however, did not specifically address when the employment-related aggravation due to compensable work factors ceased. Further, Dr. Lyerly initially asserted in his September 6, 2016 report that appellant's employment-related emotional condition had not resolved. He did not explain his subsequent finding that she had no further work-related condition in a manner which would resolve the apparent inconsistency in his findings. Without a reasoned medical opinion addressing when any disability due to appellant's accepted temporary aggravation of schizoaffective disorder ended, OWCP has not met its burden of proof in finding that she had no further disability or residual condition due to her accepted employment injury as of October 22, 2014.<sup>7</sup>

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's entitlement to compensation effective October 22, 2014 as the temporary aggravation of schizoaffective disorder had resolved.

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<sup>5</sup> See *B.S.*, Docket No. 08-1869 (issued June 19, 2009); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *Id.*

<sup>7</sup> See *C.C.*, Docket No. 08-2485 (issued September 15, 2009); *Tara G. Deramu*, Docket No. 94-1391 (issued September 16, 1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 13, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 23, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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