

On appeal counsel argues that the opinion of OWCP's referral physician was insufficient to meet OWCP's burden of proof to terminate wage-loss benefits.

FACTUAL HISTORY

On August 16, 2013 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2013 he developed post-traumatic stress due to hearing several gunshots near where he was delivering mail. He also alleged that the back window of his postal vehicle near where he had been standing was shattered by a gunshot. Appellant stopped work on August 12, 2013 and has not returned. OWCP accepted the claim for post-traumatic stress disorder (PTSD) and panic disorder without agoraphobia. Appellant received compensation benefits on the supplemental rolls as of September 30, 2013 and on the periodic rolls as of August 24, 2014.

On August 1, 2014 appellant was referred for a second opinion evaluation with Dr. Richard W. Cohen, a Board-certified psychiatrist, for an evaluation to clarify treatment and appellant's work capacity.

In an August 14, 2014 report, Dr. Cohen, based upon the statement of accepted facts and appellant's examination, diagnosed major depressive disorder, PTSD, and panic disorder. He noted that these conditions were improving at the time of his examination. Dr. Cohen related that appellant continued to have mild impairment with daily living activities, remained dependent on his wife, continued to have moderately impaired social functioning, and continued to have preoccupation with the events of August 10, 2013. He also reported that appellant had a long episode of decompensation, which he noted was improving. Dr. Cohen opined that appellant had not yet reached maximum medical improvement, but that in three months he could return to the date-of-injury job at the employing establishment with no restrictions or limitations. He concluded that, while appellant continued to have residuals from his accepted employment injury in the form of panic attacks, flash backs, and fears these residuals were becoming less intense.

On a September 14, 2014 OWCP-5a form, Dr. Cohen indicated that appellant was capable of working eight hours, but not as a letter carrier. He further noted that appellant could return to his job as a letter carrier in three months.³

On January 23, 2015 OWCP referred appellant back to Dr. Cohen for a follow-up evaluation.

In a February 6, 2015 report, Dr. Cohen diagnosed greatly improved PTSD and panic disorder without agoraphobia, and moderate residual distress from the accepted August 10, 2013 employment injury. He concluded that appellant had no continuing decompensation from the accepted August 10, 2013 employment injury. Under current status, Dr. Cohen reported that appellant was not currently having nightmares about the event, he continued to have less intense flashbacks twice a month, and appellant was less fearful and less dependent on his wife when going outside. He also reported that appellant related that his panic attacks were less intense and

³ OWCP received this form on May 26, 2015.

not as frequent. In support of this conclusion, Dr. Cohen observed no marked or moderate functional limitations with appellant's concentration, social functioning, or daily living activities. A mental status examination revealed goal-oriented answers, a blunted affect, suppressed and anxious mood, fair judgement and proverbs/abstract insight, no suicidal thoughts, and no thought disorder. Dr. Cohen noted that appellant had a mild impairment in social functioning, mild impairment in his daily living activities, and had mild issues with persistence, pace, and concentration. Based on the mental status examination, and medical history, he concluded that appellant could return to work at the employing establishment with no restrictions. With respect to continued treatment, Dr. Cohen recommended that appellant's medication management be terminated within three months and that appellant be weaned off his current medication.

In response to OWCP's specific questions, Dr. Cohen opined that appellant's accepted PTSD and anxiety disorder with agoraphobia were both greatly improved, that appellant had reached maximum medical improvement, and that appellant could return to work. Dr. Cohen opined that there were only psychiatric limitations, which had improved to the point where appellant could return to work without limitations or restrictions. In an attached work capacity evaluation form for psychological/psychiatric conditions (Form OWCP-5a), Dr. Cohen noted that appellant was capable of working eight hours and was competent to perform his usual work duties.

Following receipt of Dr. Cohen's report, OWCP received a November 21, 2014 OWCP-5a form and November 25, 2014 attending physician's report (Form CA-20) from Dr. Prakash Amin, a treating Board-certified psychiatrist. In the November 21, 2014 OWCP-5c form, Dr. Amin diagnosed PTSD, depressive disorder, and panic disorder, and found appellant totally disabled from any type of work. Dr. Amin noted on the form that appellant was very fearful, deathly afraid of any return to work at the employing establishment, and anxious.

Dr. Amin, in the November 25, 2014 Form CA-20, diagnosed PTSD, panic disorder, and depressive disorder. He noted that appellant was last seen on November 21, 2014 and that he had been seen every two to three weeks since the injury. Dr. Amin opined that appellant remained disabled from returning to work due to his continuing fear of being shot, and anxiety regarding a return to work. He reported that appellant had been depressed, afraid of returning to work, and fearful of going near a post office since the accepted August 10, 2013 employment injury.

On September 23, 2015 OWCP proposed to terminate appellant's compensation benefits based upon Dr. Cohen's February 6, 2015 report. It accorded less weight to Dr. Amin's November 25, 2014 report as there had not been a recent psychological examination and Dr. Amin had not provided any rationale for his opinion.

In a September 28, 2015 OWCP-5a form, Dr. Amin opined that appellant was unable to return to work. He explained that appellant was very anxious, depressed and sad. Appellant had continuing nightmares and flashbacks of being shot. In support of this opinion, Dr. Amin further noted that appellant was very fearful and deathly afraid of any return to work at the employing establishment. He also reported appellant was scared to go to his mailbox to pick up his mail and continued to be scared of being shot at if he returned to work at the employing establishment.

By decision dated November 9, 2015, OWCP finalized the termination of appellant's wage-loss compensation, effective that same date. It found the weight of the medical evidence rested with the opinion of Dr. Cohen, an OWCP referral physician, as it was based on a recent mental examination and was well rationalized. OWCP noted that appellant's medical benefits were not terminated and would remain open.

In a November 16, 2015 letter, counsel requested an oral hearing before an OWCP hearing representative, which was held on March 3, 2016.

On December 3, 2015 OWCP received an October 28, 2015 report from Dr. Amin. Diagnoses included PTSD, panic disorder without agoraphobia, and single episode of major depressive disorder. Dr. Amin provided a history of the accepted August 10, 2013 employment injury and development of anxiousness, fear, and helplessness. He reported that appellant continued to have depressive episodes which lasted two to three hours, two to three times per week. Dr. Amin noted that appellant's new medication resulted in improved mood. However, he noted that appellant continued to have PTSD symptoms without any improvement. Appellant's symptoms included avoidance of social activities, requiring his wife to be with him when he had to be with people. He also continued to feel discomfort when going outside. Dr. Amin concluded that he disagreed with Dr. Cohen regarding appellant's ability to return to his date-of-injury job. He noted that Dr. Cohen did not mention any of appellant's PTSD symptoms including his flashbacks, nightmares, fear, extreme anxiety, and hypervigilance.

By decision dated May 23, 2016, OWCP's hearing representative affirmed the termination of appellant's wage-loss compensation, effective November 9, 2015. However, he found there was an unresolved conflict in the medical opinion evidence between Dr. Cohen and Dr. Amin on the issue of whether appellant continued to have residuals or disability due to his accepted conditions on and after November 9, 2015.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

OWCP accepted that appellant sustained PTSD and panic disorder without agoraphobia as a result of the accepted August 10, 2013 employment injury. Appellant stopped work on

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

August 12, 2013 and was placed on the periodic rolls for temporary total disability by letter dated August 21, 2014.

OWCP terminated appellant's wage-loss compensation, effective November 9, 2015, finding that he no longer had disability due to his accepted conditions. It based its termination decision on the February 6, 2015 report of Dr. Cohen, OWCP's referral physician.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective November 9, 2015.

Dr. Cohen initially reported on August 14, 2014 that appellant's period of decompensation was improving, and that while appellant continued to have residuals of his accepted injury in the form of panic attacks, flash backs, and fears, these residuals were becoming less intense. He opined that appellant had not reached maximum medical improvement, but that appellant could return to work in three months. OWCP referred appellant for a follow up evaluation with Dr. Cohen on January 23, 2015.

In his February 6, 2015 report, Dr. Cohen diagnosed greatly improved PTSD and panic disorder without agoraphobia and moderate distress. He concluded that appellant was capable of returning to full-time work without restrictions due to the lack of continuing decompensation from the accepted August 10, 2013 employment injury. In support of this conclusion, Dr. Cohen reported that appellant's nightmares had ceased, he had less intense flashbacks, and his panic attacks were less frequent and intense. He also explained that appellant was less fearful of going outside, and he was less dependent on his wife. Dr. Cohen concluded that appellant's accepted PTSD and anxiety disorder with agoraphobia were both greatly improved, that appellant had reached maximum medical improvement, and he could return to work.

The Board finds that Dr. Cohen's reports represented the weight of the medical evidence at the time OWCP terminated benefits and that OWCP properly relied on his opinion in terminating appellant's wage-loss compensation.

Dr. Cohen had full knowledge of the relevant facts and the course of appellant's condition. His opinions were based on a proper factual and medical history and on the statement of accepted facts. Dr. Cohen's reports contained a detailed summary of the history of the claim.⁷ Additionally, he addressed the medical records, examined appellant, and reached a reasoned conclusion regarding appellant's conditions.⁸ At the time benefits were terminated, Dr. Cohen had explained that appellant's accepted condition had improved and that he was capable of returning to work. His February 6, 2015 report is both probative and reliable evidence regarding appellant's current psychiatric condition.⁹ Accordingly, the Board finds that Dr. Cohen's

⁷ See *R.G.*, Docket No. 16-0271 (issued May 18, 2017).

⁸ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

⁹ *Supra* note 7.

opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation for the accepted conditions.

Dr. Amin, in OWCP-5a forms dated November 21, 2014 and September 28, 2015 and a November 25, 2014 CA-20 form diagnosed PTSD, depressive disorder, and panic disorder, which he opined were totally disabling. He reported that appellant was anxious, very fearful, deathly afraid of any return to work at the employing establishment. On November 25, 2014 Dr. Amin reported that he had been seen every two to three weeks since the injury and remained disabled due to PTSD, panic disorder and depressive disorder. On October 28, 2015 Dr. Amin advised that appellant continued to be disabled due to his accepted psychological conditions of depression and anxiety. However, Dr. Amin did not provide any objective findings or medical rationale explaining why appellant continued to be disabled from work due to the accepted conditions. Thus, his reports are of diminished probative value and insufficient to overcome the weight of Dr. Cohen's report or to create a medical conflict.¹⁰ While Dr. Amin provided a more detailed report following the termination, the Board notes that the issue of continuing disability was remanded by the hearing representative to resolve the new conflict in medical evidence. That issue is not ripe for a decision by the Board.¹¹

Counsel argues on appeal that Dr. Cohen's opinion is insufficient to support OWCP's burden of proof to terminate wage-loss compensation. As discussed above, the Board finds that Dr. Cohen's report was well rationalized and represented the weight of the medical evidence at the time that OWCP terminated compensation.

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 wage-loss compensation effective November 9, 2015.

¹⁰ See S.S., Docket No. 15-1160 (issued January 11, 2016). The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion. *James Mack*, 43 ECAB 321 (1991).

¹¹ See 20 C.F.R. § 501.2(c)(2) (there will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case). *F.T.*, Docket No. 15-1109 (issued June 17, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2016 is affirmed.

Issued: September 1, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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