

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

M.R., Appellant	)	
	)	
and	)	Docket No. 17-0457
	)	Issued: April 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,	)	
Blackwood, NJ, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On December 22, 2016 appellant, through counsel, filed a timely appeal from a July 25, 2016 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 to consider the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 13, 2015; and (2) whether appellant

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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.*

met her burden of proof to establish any continuing disability and residuals on and after December 13, 2015 causally related to the accepted February 2, 2009 employment injury.

On appeal counsel argues that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

### **FACTUAL HISTORY**

On February 3, 2009 appellant, then a 53-year-old window distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries when a shelf fell on her face and left arm while she was unloading a divided automated passport control (APC) machine on February 2, 2009. She stopped work the next day on February 3, 2009 and returned on February 9, 2009. OWCP accepted the claim for postconcussion syndrome, post-traumatic stress disorder, as well as left upper arm and face contusion.

Appellant filed a recurrence of disability (Form CA-2a) on November 5, 2009. OWCP accepted her recurrence claim on January 27, 2010. Appellant received compensation benefits on the periodic rolls for temporary total disability as of January 17, 2010.

OWCP continued to receive progress notes and reports from Dr. Leon I. Rosenburg, a treating Board-certified psychiatrist, concerning appellant's psychiatric status, treatment, and continued disability from work.

On February 10, 2011 OWCP referred appellant to Dr. Mary Ann Kezmarsky, a licensed psychologist, to determine appellant's disability status. In a report dated February 28, 2011, Dr. Kezmarsky related that she diagnosed postconcussive disorder and major depression, with occasional psychotic features. She related that appellant did not have post-traumatic stress disorder. However, Dr. Kezmarsky noted that there was a direct relationship between appellant's accepted work injury and her diagnosed conditions. She related that appellant was currently disabled and needed neuropsychological/cognitive treatment. Dr. Kezmarsky evaluated appellant again on June 2, 2011 and again related that appellant remained totally disabled, but could be helped by a course of cognitive rehabilitation. In a report dated January 2, 2012, she related that while appellant had shown mild improvement she still had significant difficulty with working memory, visual memory, severe retroactive interference in recall, and difficulty with divided attention. Dr. Kezmarsky again strongly recommended neuropsychological treatment.

In a report dated July 2, 2014, Dr. Rosenberg related that appellant was no longer psychotic. Appellant no longer had flight of ideas and her speech was free-flowing and spontaneous. Dr. Rosenberg further noted that appellant's judgment, insight, memory, attention, and concentration were good. However, he also noted that she still had depression and anxiety.

On March 3, 2015 OWCP referred appellant to Dr. Richard Cohen, a Board-certified psychiatrist, for a second opinion evaluation regarding appellant's psychiatric status and ability to work. In a March 17, 2015 report, Dr. Cohen reviewed the statement of accepted facts (SOAF) as well as the medical record. He conducted a psychiatric examination and noted that appellant's major depressive disorder was improving and that she was no longer psychotic. A review of appellant's mental status revealed no hallucinations, paranoid ideations, no thought disorder, and

mild concentration impairment. Dr. Cohen observed an anxious and depressed mood, which was improving. He opined that appellant no longer had post-traumatic stress disorder. Based on his evaluation, Dr. Cohen observed mild impairments in concentration, social functioning, and daily living activities. He found that appellant's depression was no longer disabling and she could return to her date-of-injury job from a psychiatric standpoint. Dr. Cohen opined that appellant had no psychiatric limitations precluding her from work. In an attached work capacity evaluation psychiatric/psychological conditions form (Form OWCP-5a), he checked "yes" to the question of whether appellant was competent to perform her usual job.

On April 1, 2015 OWCP referred appellant to Dr. Melvin Vigman, a Board-certified neurologist, for a second opinion evaluation of her neurological condition, treatment, and ability to work. Dr. Vigman, in an April 20, 2015 report, opined that appellant had no neurological condition. In reaching this conclusion, he detailed the medical records he reviewed and provided his own examination findings. Dr. Vigman opined that appellant's headaches following her injury did not support a diagnosis of concussion and she did not have symptoms of postconcussion syndrome. Based on the examination findings, he concluded that appellant was neurologically sound and capable of working her date-of-injury job with no restrictions. Dr. Vigman opined that appellant did not suffer a concussion from the accepted employment injury as she had no loss of consciousness or any impairment of her consciousness. In an attached work capacity evaluation (Form OWCP-5c), he indicated that appellant was capable of working an eight-hour day with no restrictions.

On June 8, 2015 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits as she no longer had any residuals or disability due to her accepted conditions. It found the weight of the medical opinion evidence rested with the opinions of Drs. Cohen and Vigman, who both opined that appellant was capable of working with no restrictions. Dr. Vigman determined that appellant had no neurological deficits while Dr. Cohen opined that appellant's post-traumatic stress disorder had resolved.

By letter dated July 1, 2015, counsel disagreed with the proposal to terminate appellant's wage-loss benefits. He requested that appellant's claim be expanded to include the condition of major depressive disorder based on Dr. Cohen's report diagnosing this condition. In addition, counsel contended that Dr. Cohen's report was insufficient to terminate wage-loss compensation as he failed to demonstrate any knowledge of appellant's date-of-injury job duties.

On July 13, 2015 OWCP received a June 23, 2015 progress report from Dr. Rosenberg diagnosing depression and anxiety. Appellant's examination revealed she was not psychotic, her thought process was not circumstantial or tangential, no flight of ideas, normal language, average fund of knowledge, flat affect, and fair judgement, insight, memory, attention, and concentration.

In a July 22, 2015 report, Dr. Rosenberg reviewed the reports from Drs. Cohen and Vigman and noted his disagreement that appellant was capable of working. He detailed his disagreement with Dr. Cohen's report, examination, and conclusions. Dr. Rosenberg reported that while appellant's condition was improving due to her medication and treatment, she continued to be disabled from work due to residual impairment from her accepted employment injuries. He noted that the neuropsychological testing performed by Dr. Kezmarsky noted impairment due to appellant's accepted postconcussion syndrome. Dr. Rosenberg related that no repeat

neuropsychological testing had been performed and there was no evidence that impairment due to postconcussion syndrome was not still evident. He subsequently submitted progress notes detailing appellant's ongoing treatment and condition.

In a December 1, 2015 attending physicians report (Form CA-20), Dr. Rosenberg diagnosed anxiety, confusion, and depression and noted an injury date of February 2, 2009. He opined that appellant remained totally disabled from any type of work.

Dr. Rosenberg also submitted a December 1, 2016 Form OWCP-5c indicating that appellant was unable to work due to her depression and anxiety.

A December 1, 2015 report from Dr. Rosenberg was duplicative of his July 22, 2015 report.

By decision dated December 10, 2015, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective December 13, 2015. It determined that the weight of the medical opinion evidence rested with the opinions of Drs. Cohen and Vigman and that appellant no longer had residuals or disability due to her accepted employment injuries.

In a letter dated December 17, 2015, counsel requested an oral hearing before an OWCP hearing representative, which was held on April 25, 2016.

In an April 18, 2016 report, Dr. Rosenberg related that to determine whether appellant had residual impairment from postconcussion syndrome, he asked her the name of the street on which his office was located. He noted that appellant had been coming to his office for the past seven years, since she was injured. Appellant incorrectly identified the street. Dr. Rosenberg explained that appellant remained unable to be a postal distribution clerk as knowing streets was the bread and butter of postal distribution. He also noted appellant's ability to work with numbers was impaired due to her postconcussion syndrome.

By decision dated July 25, 2016, OWCP's hearing representative affirmed the termination of appellant's wage-loss compensation and medical benefits.

### **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.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

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<sup>3</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective December 13, 2015.

OWCP accepted appellant's claim for left upper arm and face contusion, postconcussion syndrome, and post-traumatic stress disorder. As of December 10, 2015 it terminated wage-loss compensation and medical benefits effective December 13, 2015. OWCP found that the weight of the medical evidence was represented by the opinions of Dr. Cohen and Vigman. An OWCP hearing representative affirmed the termination by decision dated July 25, 2016.

The Board notes that there was no medical evidence of record that appellant still had residuals of the accepted conditions of left upper arm and face contusion. OWCP therefore met its burden of proof to terminate wage-loss compensation and medical benefits based upon these conditions.<sup>8</sup>

Regarding appellant's accepted postconcussion syndrome, OWCP referred appellant to Dr. Vigman to determine whether appellant continued to have residuals of this neurologic condition. In his April 20, 2015 report, Dr. Vigman explained that appellant did not experience a loss of consciousness when the injury occurred. He questioned whether appellant had sustained a concussion on the date of injury, based upon her medical records, and he further noted that appellant's current physical examination findings established that appellant was neurologically sound and had no work restrictions related to this diagnosis. With respect to whether appellant continued to have residuals from any neurological condition causally related to the work injury, OWCP gave determinative weight to the medical opinion of Dr. Vigman, who reviewed the entire record and SOAF and performed a thorough examination of appellant. Dr. Vigman opined that there were no objective medical findings to support residuals of postconcussion syndrome. The Board finds that OWCP properly found that his opinion represented the weight of the medical evidence as he submitted a well-rationalized report which found that appellant had no current residuals or disability stemming from her accepted concussion condition. His opinion is sufficiently probative, rationalized, and based on a proper factual background.<sup>9</sup>

Dr. Cohen, in his March 17, 2015 report, assessed appellant's mental status. He opined that she did not suffer from post-traumatic stress disorder as she no longer had any flashbacks or nightmares. Dr. Cohen observed mild impairments in social function, concentration, and daily

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<sup>6</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>8</sup> *Supra* notes 4 and 7.

<sup>9</sup> *See R.G.*, Docket No. 08-0803 (issued December 9, 2008).

living. He opined that appellant 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 for her post-traumatic stress syndrome and that OWCP properly relied on his opinion in terminating appellant's compensation benefits.

Dr. Cohen had full knowledge of the relevant facts and the course of appellant's condition. His opinion was based on a proper factual and medical history and on the SOAF. Dr. Cohen's report contained a detailed summary of the history of the claim.<sup>10</sup> Additionally, he addressed the medical records, examined appellant, and reached a reasoned conclusion regarding appellant's conditions.<sup>11</sup> At the time benefits were terminated, Dr. Cohen explained that appellant no longer had post-traumatic stress disorder and that she was capable of returning to work. His March 17, 2015 report is both probative and reliable evidence regarding appellant's current psychiatric condition.<sup>12</sup> Accordingly, the Board finds that Dr. Cohen's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of wage-loss compensation for the accepted post-traumatic stress disorder.

In multiple reports, including his July 22, 2015 report, Dr. Rosenberg disagreed with Dr. Cohen's examination findings and conclusions. He contended that appellant continued to have residuals and disability. Dr. Rosenberg noted that appellant was only able to function because of her medication. He opined that appellant continued to suffer from the accepted postconcussive syndrome. However, Dr. Rosenberg did not provide sufficient objective findings and medical rationale explaining why appellant continued to be disabled from work due to the accepted postconcussive syndrome. 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.<sup>13</sup>

While Dr. Rosenberg also diagnosed anxiety and depression in numerous reports and related that appellant was disabled due to these conditions, the Board notes that these conditions have not been accepted as causally related to appellant's February 2, 2009 injury. For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation. Dr. Rosenberg however offered no rationalized medical opinion causally relating this diagnosis to the accepted injury.<sup>14</sup>

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<sup>10</sup> See *R.G.*, Docket No. 16-0271 (issued May 18, 2017).

<sup>11</sup> 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).

<sup>12</sup> *Supra* note 9.

<sup>13</sup> 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).

<sup>14</sup> See *Alice J. Tysinger*, 51 ECAB 638 (2000); see also *E.H.*, Docket No. 17-1402 (issued November 8, 2017).

Counsel contends that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits as the opinions of both Dr. Vigman and Dr. Cohen were insufficiently rationalized. As discussed above, the Board found the opinions of both physicians well rationalized and sufficient to meet OWCP's burden of proof to terminate appellant's compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, the burden shifted to her to establish that she had any disability or residuals causally related to her accepted injury.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board further finds that appellant has not establish any continuing disability or residuals on and after December 13, 2015 causally related to the accepted February 2, 2009 employment injury.

Following the termination of benefits on December 10, 2015 and prior to OWCP's hearing representative's decision affirming the termination on July 25, 2016, appellant submitted additional medical evidence in support of her claim that she continued to have residuals and disability due to her accepted postconcussion syndrome. Given that the Board has found that OWCP properly relied on the opinions of Dr. Cohen and Dr. Vigman, OWCP referral physicians, in terminating appellant's compensation effective December 13, 2015, the burden shifted to appellant to establish continuing disability. The Board has reviewed the additional evidence submitted by appellant and finds that it is of insufficient probative value to establish that she had residuals of her accepted postconcussion syndrome on or after December 13, 2015.

In Dr. Rosenberg's April 18, 2016 report he opined that appellant continued to suffer from her postconcussion syndrome because she incorrectly identified the street name where his office was located. The Board finds that his opinion is of limited probative value because he did not provide medical rationale in support of his opinion on continuing work-related residuals. Dr. Rosenberg's opinion is conclusory in nature and does not adequately explain how her inability to identify his office's street name supported his opinion.<sup>16</sup> As explained above, the medical evidence does not show that appellant's has a continuing postconcussion syndrome, a condition which Dr. Rosenberg posited still contributes to a work-related emotional condition.

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.

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<sup>15</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>16</sup> See *J.D.*, Docket No. 14-2016 (issued February 27, 2015); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits. The Board further finds that appellant has not met her burden of proof to establish any continuing disability or residuals on and after December 13, 2015 causally related to the accepted February 2, 2009 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 25, 2016 is affirmed.<sup>17</sup>

Issued: April 13, 2018  
Washington, DC

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

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

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<sup>17</sup> Colleen Duffy Kiko Judge, participated in the preparation of this decision but was no longer a member of the Board effective December 11, 2017.