

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

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<b>J.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 17-2021</b>
	)	<b>Issued: August 8, 2018</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD, Bremerton, WA,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*John Eiler Goodwin, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 28, 2017 appellant, through counsel, filed a timely appeal from an April 3, 2017 merit decision of the Office of Workers' Compensation Programs<sup>2</sup> (OWCP). Pursuant to the

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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> Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated March 14, 2018, the Board exercised its discretion and denied the request, finding that the arguments presented on appeal could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 17-2021 (issued March 14, 2018).

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

### **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 23, 2015; and (2) whether appellant met her burden of proof to establish continuing employment-related disability after March 23, 2015.

### **FACTUAL HISTORY**

On November 13, 1974 appellant, then a 31-year-old secretary, filed a federal employee's notice of injury or occupational disease (CA-1 & CA-2 forms) alleging that working factors, including 500 hours of overtime work performed from January 1972 to May 1973, and a pattern of sexual harassment, intimidation, and threats by managers, caused stress, tension, nervous exhaustion, and high blood pressure. She stopped work on May 16, 1973 and did not return.

In a report dated March 8, 1973, Dr. Arpad L. Masley, Jr., an attending Board-certified surgeon, noted appellant's history of cervical spine injuries sustained in a June 27, 1963 nonoccupational motor vehicle accident, and an emotional condition following the death of her father in 1969, treated with medication. Appellant related that commencing in July 1972, she experienced intractable headaches, nausea, anxiety, and severe tension due to her secretarial duties at the employing establishment. Dr. Masley "advised a total disability retirement secondary to psychiatric emotional disability precipitated by the tension of her job." He referred appellant for psychotherapy.

In a report dated March 10, 1973, Dr. Sean M. Killoran, an attending Board-certified psychiatrist and neurologist, related appellant's account of an increasingly hostile work environment during the previous six months. On examination he noted appellant's "preoccupation with her unhappy employment" with feelings of persecution, depression, despair, and hopelessness. Dr. Killoran diagnosed "[a]nxiety neurosis with depressive features and possible paranoid decompensation." He hospitalized appellant briefly in March 1973 due to an acute episode of free-floating anxiety.

In a report dated April 9, 1973, Dr. Fred R. Lewis, an employing establishment physician, noted that appellant had been working seven days a week in her secretarial position. Appellant complained of weight loss, chronic headaches, nausea, and menorrhagia. Dr. Lewis diagnosed chronic, severe depressive neurosis beginning in 1972. He found appellant disabled from work for an indefinite period.

The employing establishment accepted appellant's claim for disability retirement, effective April 18, 1973. Appellant remained under medical treatment.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

In a report dated February 23, 1974, Dr. Killoran diagnosed chronic severe depressive neurosis. He found that appellant remained totally disabled from work.

On November 6, 1974 appellant filed a claim for compensation on account of injury or occupational disease (Form CA-4, revised July 1970) commencing on her last day of work. The employing establishment indicated that she had retired on May 16, 1973, and was in a leave without pay (LWOP) status as of March 7, 1975.

In a July 9, 1976 statement, the employing establishment acknowledged that during the Vietnam War, appellant had been responsible for “typing the most urgent items. At times there was considerable pressure to get items typed so waterfront work was not delayed. Appellant was also responsible for the large filing system” and the work of two to three other clerk-typists. “During the period January 1, 1972 through May 16, 1973, [appellant] worked 500 hours of overtime.”

On February 10, 1977 OWCP obtained a second opinion regarding causal relationship between appellant’s emotional condition and the identified work factors from Dr. Hugo Van Dooren, a Board-certified psychiatrist and neurologist. Dr. Van Dooren reviewed the medical record and an August 2, 1976 statement of accepted facts (SOAF). On examination he noted that appellant was “extremely anxious and quite tearful” during his interview, with a severely depressed mood and affect. Dr. Van Dooren diagnosed severe depressive neurosis with a psychosomatic gastrointestinal condition. He opined that appellant’s “psychiatric disorders are causally related to her employment conditions” of excessive overtime, harassment, and sexual harassment. Dr. Van Dooren found appellant totally and permanently disabled from work.

On March 4, 1977 OWCP accepted that appellant sustained depressive neurosis in the performance of duty due to the work factors corroborated by the employing establishment. Appellant elected to receive FECA benefits in lieu of Office of Personnel Management (OPM) retirement benefits, effective March 7, 1973. OWCP paid her wage-loss compensation for total disability retroactive to February 23, 1973, with an offset for Civil Service Retirement benefits previously paid. It also paid medical benefits. Appellant remained under psychiatric treatment with Dr. Killoran.

In a report dated November 13, 1978, Dr. Killoran agreed with Dr. Van Dooren’s February 10, 1977 opinion. He noted that appellant presented with disfiguring scarring of the face and chest due to dermatitis which had not been present during his prior consultations. Dr. Killoran opined that appellant was “severely and permanently disabled from her neuropsychiatric disorder.” He explained that although her symptoms had been brought under control, “the resulting aftermath ha[d] been devastating in terms of her emotional development and stability.” Dr. Killoran opined that “the stress she endured while working for the Federal Government was a large contributing factor in her present symptom complex.

Dr. Killoran opined in a report dated March 6, 1989 that appellant continued to suffer from “an atypical affective disorder associated with severe somatoform symptomatology and anxiety.” Although her depression had improved, appellant had become severely withdrawn due to facial disfigurement from dermatitis. Dr. Killoran found appellant totally disabled from work due to her psychiatric conditions.

In a report dated September 30, 1997, Dr. Killoran explained that while appellant's presentation remained unchanged, the diagnostic terminology for her condition had changed. "The patient has been diagnosed as having a depressive neurosis, though the present DSM IV Multi-Axial System would more accurately describe the condition that led to her decompensation as a major depressive disorder, recurrent type, severe with transient psychotic features (296.34) and associated anxiety. A secondary, but also extremely debilitating condition is the patient's severe neurodermatitis" being followed by a dermatologist. Despite a variety of medications, appellant had "recurrent depressive symptoms and compulsive excoriation of her skin lesions." Dr. Killoran found appellant totally disabled from work.

In a work capacity evaluation, psychiatric/psychological conditions (OWCP-5a) report dated September 8, 2000, Dr. Curtis H. Holder, an attending Board-certified psychiatrist, found appellant totally disabled from work due to generalized anxiety disorder with atypical features with stress-related neurodermatitis.

On February 8, 2002 OWCP obtained a second opinion on the causal relationship of appellant's continuing condition to the accepted depressive neurosis from Dr. Michael K. Friedman, an osteopathic physician Board-certified in psychiatry. He opined that appellant remained totally disabled from work due to depressive disorder not otherwise specified with psychotic features, and rule out body dysmorphic disorder. Dr. Friedman found that these conditions remained related, in part, to the accepted work factors.<sup>4</sup>

On December 6, 2012 OWCP obtained a second opinion regarding the nature and extent of appellant's ongoing condition from Dr. Jeffrey J. Hanson, a Board-certified psychiatrist, who opined that the condition accepted as work related was no longer present. Dr. Hanson opined that appellant's ongoing condition was caused solely by an idiopathic personality disorder.

On June 13, 2013 OWCP obtained a second opinion regarding the nature and extent of appellant's ongoing condition from Dr. Mark Koenen, a Board-certified psychiatrist. Dr. Koenen diagnosed recurrent, severe major depressive disorder with a reported history of psychotic features, currently in partial remission. He opined that the accepted condition had not resolved. In an August 1, 2013 supplemental report, Dr. Koenen clarified that any "stressors from the early 1970s that exacerbated" underlying depression and anxiety "likely resolved decades ago."

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<sup>4</sup> By decision dated January 18, 2011, OWCP terminated appellant's monetary compensation and medical benefits based on the August 2010 opinion of Dr. Gary Hudak, a Board-certified psychiatrist and second opinion physician who found the accepted condition had ceased without residuals. An OWCP hearing representative vacated the termination by decision dated August 23, 2011, finding that Dr. Hudak was asked inappropriate leading questions. The hearing representative directed that Dr. Hudak's report be excluded from the case record. On October 13 and November 10, 2011 OWCP obtained an updated second opinion from Dr. Douglas Robinson, a Board-certified psychiatrist, but indicated that it would exclude his reports from the case record. By decision dated August 1, 2012, it terminated appellant's monetary compensation and medical benefits based on the March 3, 2012 opinion of Dr. Daniel A. Kodner, a Board-certified psychiatrist and second opinion physician, who opined that the accepted depressive neurosis had ceased with no residuals. On August 20, 2012 appellant, through counsel, requested an oral hearing. By decision dated September 25, 2012, an OWCP hearing representative reversed OWCP's August 1, 2012 decision, finding that OWCP had asked Dr. Kodner inappropriate leading questions. The hearing representative further found that OWCP had committed reversible error by retaining Dr. Hudak's and Dr. Robinson's reports in the case record. The hearing representative directed that Dr. Kodner's report be excluded from the case record.

In a SOAF dated October 9, 2013, OWCP noted that the following work factors had been proven as factual and had occurred in the performance of duty: that appellant “was responsible for typing most of the urgent items,” at times under considerable time pressure; that appellant was responsible for a large filing system; that appellant was responsible for the work of two to three other clerk-typists; and that appellant worked 500 hours of overtime between January 1972 and May 1973. It noted that it had accepted that appellant sustained depressive neurosis in the performance of duty.

On December 2, 2014 OWCP formulated questions to be posed to a new second opinion physician to determine whether appellant “continue[d] to suffer the effects of her May 16, 1973 accepted industrial injury.” Question 4 asked “what medical rationale or evidence is there to support that [appellant’s current condition is still connected to the May 16, 1973 industrial injury.” Question 5 inquired as to whether it was necessary for OWCP to “separate out the extent of the accepted disability” from “other medical conditions or personal problems.”

On January 8, 2015 OWCP obtained a second opinion regarding the nature and extent of appellant’s ongoing condition from Dr. Michael Ruthrauff, a Board-certified psychiatrist. Dr. Ruthrauff reviewed the medical record and October 9, 2013 SOAF. On examination he observed mild psychomotor retardation, blunted and restricted affect, and fair insight and judgment. Dr. Ruthrauff noted that appellant was no longer taking psychotropic medications or under psychiatric treatment. He diagnosed recurrent, severe major depressive disorder with a reported history of psychotic features, currently in partial remission, a possible chronic dysthymic disorder, a resolved past history of benzodiazepine dependence, and passive dependent personality traits. In response to the December 2, 2014 questions, Dr. Ruthrauff opined that appellant had “chronic dysthymic disorder, which is more similar to the old category of depressive neurosis.” He explained that, while the depressive neurosis remained present, it was “difficult to believe that at this time 40 years later that her present degree of disability is related to the original work stress back in 1970s” or “the original occupational incident of May 16, 1973.” Dr. Ruthrauff elaborated that “[s]olely as it pertains to the industrial incident of May 16, 1973 she is capable of full-time gainful employment without restrictions, although from an unrelated standpoint she may not be and likely is completely disabled.”

By notice dated February 3, 2015, OWCP notified appellant of its proposal to terminate her wage-loss compensation and medical benefits as Dr. Ruthrauff’s report indicated that the accepted depressive neurosis had ceased without residuals. It afforded her 30 days to submit additional evidence or argument. Appellant did not submit additional evidence within the time allotted.

By decision dated March 23, 2015, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective that date as the accepted depressive neurosis had ceased without residuals. It accorded Dr. Ruthrauff the weight of the medical evidence.

On April 14, 2015 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review, held by video conference on February 22, 2017. During the hearing, counsel contended that the questions posed to Dr. Ruthrauff inaccurately attributed the accepted condition to a single May 16, 1973 incident, and inappropriately asked him to apportion causation between the accepted condition and idiopathic problems. Counsel also argued that new

medical evidence from Dr. Antone B. Pryor, an attending licensed clinical psychologist, created a conflict of medical opinion with Dr. Ruthrauff's report. He submitted additional evidence.

In an April 1, 2015 report of a March 26, 2017 examination, Dr. Pryor reviewed Dr. Ruthrauff's January 8, 2015 report and disagreed with his conclusion that appellant's condition was no longer work related. He noted that Dr. Ruthrauff failed to provide "objective assessment data" or probative medical rationale to differentiate between any underlying psychiatric condition and the effects of the accepted depressive neurosis. Dr. Pryor contended that Dr. Ruthrauff also failed to explain why he disagreed with Dr. Killoran's consistent support for causal relationship over a 24-year period.

By decision dated April 3, 2017, OWCP's hearing representative affirmed OWCP's March 23, 2015 decision which terminated appellant's wage-loss compensation and medical benefits. The hearing representative found that Dr. Pryor's report contained insufficient medical rationale to create a conflict with Dr. Ruthrauff's well-rationalized opinion.

### **LEGAL PRECEDENT**

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.<sup>5</sup> Having determined that an employee has a disability causally related to his 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.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>8</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>9</sup>

OWCP's procedures provide, "[w]hen the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."<sup>10</sup>

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<sup>5</sup> *Y.D.*, Docket No. 17-0461 (issued July 11, 2017); *Bernadine P. Taylor*, 54 ECAB 342 (2003).

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

<sup>7</sup> *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>8</sup> *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990). *Y.D.*, *supra* note 5.

## ANALYSIS

The Board finds that OWCP did not meet its burden of proof to justify termination of appellant's wage-loss compensation and medical benefits.

OWCP accepted that appellant sustained depressive neurosis due to overwork and being required to meet tight deadlines in the performance of duty from January 1972 to May 1973. By decision dated March 23, 2015, it terminated appellant's wage-loss compensation and medical benefits effective that day based on the opinion of Dr. Ruthrauff, a Board-certified psychiatrist second opinion physician. OWCP's hearing representative affirmed the March 23, 2015 termination decision on April 3, 2017.

The Board finds, however, that the termination was improper as Dr. Ruthrauff's opinion was not based on the SOAF provided to him. To assure that the report of a medical specialist is based upon a proper factual background, OWCP provides information to the physician through the preparation of a SOAF.<sup>11</sup> The SOAF provided to Dr. Ruthrauff indicated correctly that appellant's accepted depressive neurosis was caused by a pattern of overwork and meeting deadlines from January 1972 to May 1973. Dr. Ruthrauff was therefore required to base his opinion on the work factors noted in the SOAF which were found to have caused the accepted emotional condition. Instead, he opined that it was "difficult to believe" that appellant's condition continued to be related to the "original occupational incident of May 16, 1973." He found appellant capable of full-time employment "[s]olely as it pertains to the industrial incident of May 16, 1973." Dr. Ruthrauff did not explain whether appellant remained disabled from work due to the accepted work factors.

The Board notes that the list of questions provided to Dr. Ruthrauff referred twice to a "May 16, 1973 industrial injury," implying that a single traumatic incident caused appellant's depressive neurosis. The questions were thus phrased inaccurately. Nevertheless, OWCP instructed Dr. Ruthrauff to frame his opinion within the history provided by the SOAF, not the list of questions. As he failed to do so, Dr. Ruthrauff's opinion is of diminished probative value and insufficient to represent the weight of the medical evidence.<sup>12</sup>

The Board also notes that Question 5 asked Dr. Ruthrauff whether it was necessary for OWCP to "separate out the extent of the accepted disability" from idiopathic conditions or nonindustrial stressors. However, there is no apportionment under FECA.<sup>13</sup> Any contribution to appellant's continuing condition by the accepted work factors would render her ongoing condition compensable.<sup>14</sup>

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<sup>11</sup> Federal (FECA) Procedure Manual, Chapter 3.600(3) (October 1990).

<sup>12</sup> *Y.D.*, *supra* note 5.

<sup>13</sup> *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

<sup>14</sup> *Id.*

For the above reasons, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 23, 2015.

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 23, 2015. In light of the Board's disposition on the first issue, the second issue is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 3, 2017 is reversed.

Issued: August 8, 2018  
Washington, DC

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

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

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