

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 21, 2016; and (2) whether appellant has established continuing disability or residuals due to her accepted emotional condition on and after August 21, 2016.

FACTUAL HISTORY

On August 29, 2014 appellant, then a 52-year-old critical care nurse, filed an occupational disease claim (Form CA-2) alleging that on or before December 5, 2013, encounters with violent patients, a series of patient deaths, and overwork due to staffing shortages caused post-traumatic stress disorder (PTSD), anxiety, depression, insomnia, and migraine headaches. In an associated statement, she described numerous incidents of patients who died while in pain when families refused to allow palliative care. Appellant also noted that she cared for patients who were violent, sexually inappropriate, and inebriated. She alleged that her unit was chronically short staffed and that management had engaged in a pattern of discrimination and harassment against her and other senior nurses.

In a statement of accepted facts (SOAF) dated May 8, 2015, OWCP related that appellant had established that her position involved the care and treatment of critically ill patients, some of whom die during the course of treatment and that her position involved care and treatment of patients with psychiatric disorders, addiction-related problems or a combination of both. Appellant had been the subject of verbal threats and physical violence from some of these patients. OWCP also noted that she did not stop work.

After initial development, on May 11, 2015 OWCP accepted the claim for PTSD, adjustment disorder with anxiety, and major depression, single episode, moderate. It paid appellant wage-loss compensation for intermittent dates from March 7 to September 11, 2015. OWCP paid compensation on the periodic rolls commencing September 20, 2015.

Dr. D. Kenneth Counts, an attending licensed clinical psychologist, provided periodic reports from June 25, 2015 to February 3, 2016 finding that appellant remained totally disabled and should be off work through September 2016 due to continuing symptoms of PTSD and major depression. He explained that appellant's diagnosed conditions were related to her employment, which involved treating dying and combative patients. Appellant had nightmares, intrusive thoughts, memory problems, psychomotor retardation, depressed thought content, passive suicidal ideation, an exaggerated startle response, and outbursts of anger.

On April 5, 2016 OWCP obtained a second opinion on the nature and extent of appellant's continuing condition from Dr. Bradley C. Diner, a Board-certified psychiatrist. Dr. Diner summarized the medical record and the May 8, 2015 SOAF provided for his review. He noted that appellant had been off from work since May 2015 when OWCP "accepted her requested family medical leave" and that OWCP had not accepted her allegations of harassment. Dr. Diner noted that, although appellant had not previously been examined by a psychiatrist, she reported that her gynecologist prescribed Prozac in 2008 for "stress" at approximately the same time she was diagnosed with ovarian cancer. A primary care physician, increased appellant's dose of Prozac in December 2013 due to "stress and anxiety at work." Appellant also admitted to

increasing alcohol use. Dr. Diner found appellant “alert and well oriented” based on cognitive testing. Appellant was “preoccupied with her feelings of helplessness, hopelessness, and low self-esteem, as well as her past occupational difficulties. She perceived herself as the victim of a persecutory environment and herself as helpless to manage her environment.” Dr. Diner diagnosed severe, recurrent major depression, adjustment disorder with depressed and anxious mood, and a severe alcohol use disorder. He noted appellant’s depressive symptoms began shortly after she developed ovarian cancer in 2008 and underwent a hysterectomy. Dr. Diner opined that the diagnosed depression was “not the direct result of the care and treatment of critically ill patients. Rather, as appellant became more depressed, her ability to manage her job and her patients became overwhelming and she perceived herself as unable to do the job she had always held herself to do.” She then blamed her depression on her job as an “outside extenuating cause to understand depressive symptoms.” Dr. Diner noted that it was “possible that her diagnosis with cancer in 2008 was the initial negative event which precipitated some of her depressive symptoms.” He found that appellant remained disabled for work and required additional psychiatric treatment and medication.

On July 15, 2016 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits based on Dr. Diner’s opinion. It found that Dr. Counts “was not a physician of the appropriate specialty” as he was not licensed to prescribe medication, whereas Dr. Diner was a Board-certified psychiatrist. OWCP afforded appellant 30 days to submit additional evidence or argument.

In response, appellant provided her July 25, 2016 statement contending that she had been placed on Prozac in 2006 due to depression caused by work stress, approximately two years prior to her ovarian cancer diagnosis. She attributed her condition to her patients dying “at times in great agony” and consoling their families during the end of life events.

Counsel submitted an August 12, 2016 letter contending that Dr. Diner’s report was speculative and based on a misunderstanding of the SOAF. He referred to appellant using FMLA leave, but did not acknowledge that OWCP had accepted her claim and paid her wage-loss compensation. Additionally, Dr. Diner speculated that appellant’s ovarian cancer was the probable origin of her depression, but did not provide decisive medical rationale negating the accepted work factors as a contributing cause of her ongoing emotional condition. Alternatively, counsel asserted that there was a conflict of medical opinion between Dr. Counts and Dr. Diner which required resolution by an impartial medical specialist. She submitted additional medical evidence.

In reports dated May 11, 2016, Dr. Counts found that appellant remained totally disabled from work due to PTSD, major depressive disorder, and adjustment disorder with anxiety. In a report dated August 5, 2016, he opined that appellant’s well-documented work stressors triggered PTSD and major depressive disorder. Appellant did not “require mental health services prior to her experiences at her place of employment,” but presently required extensive mental health care and medication.

By decision dated August 18, 2016, OWCP terminated appellant’s wage-loss compensation and medical benefits effective August 21, 2016, finding that the medical evidence of record established that appellant’s accepted emotional condition had ceased without residuals. It accorded Dr. Diner’s opinion the weight of the medical evidence.

On September 23, 2016 appellant, through counsel, requested reconsideration. She contended that new medical evidence from Dr. Joe F. Bradley, an attending Board-certified psychiatrist, was sufficient to create a conflict with Dr. Diner's opinion.

In a report dated September 8, 2016, Dr. Bradley contended that Dr. Diner "did not adequately explore or document" appellant's PTSD as documented by her treating physicians. He explained that appellant had PTSD that fully met the diagnostic criteria as set forth in the DSM-5 [*Diagnostic and Statistical Manual -- 5th Edition*]," including nightmares, intrusive thoughts, avoidance of triggers, diminished interest, symptoms of detachment, irritability, insomnia, difficulty concentrating, hypervigilance, and an exaggerated startle response. Dr. Bradley opined that appellant's work with "dying and combative patients" was the direct cause of her PTSD, major depression, and adjustment disorder with anxiety. It was "clear that performing the job duties of a critical care nurse over the course of time has severely affected [appellant's] psychologic functioning" and had caused PTSD. Dr. Bradley opined that while these circumstances "may not account for 100 percent of [appellant's] current symptomatology," "being exposed to the critically ill and caring for them over time" was the direct cause of her current diagnoses. He found appellant totally disabled from work.

By decision dated December 15, 2016, OWCP denied modification, finding that the additional evidence submitted was insufficient to outweigh Dr. Diner's opinion or to cast doubt on its propriety. It found that Dr. Bradley did not differentiate between the role of the accepted and nonaccepted work factors in causing the diagnosed psychiatric conditions, whereas Dr. Diner mentioned that OWCP had not accepted appellant's allegations of harassment as factual.

On October 24, 2017 appellant, through counsel, requested reconsideration. She contended that an enclosed Equal Employment Opportunity Commission (EEOC) bench opinion established appellant's allegations of managerial harassment as factual. Counsel also asserted that a new medical report from Dr. Counts was sufficient to establish causal relationship.

Counsel provided a copy of a May 31, 2017 EEOC bench opinion entering a judgment in appellant's favor regarding her complaint of harassment and discrimination. The judge awarded appellant back pay to be calculated by the employing establishment, and medical expenses not covered by OWCP.

In a report dated October 11, 2017, Dr. Counts noted that appellant's results on PCL-V (PTSD Checklist) and MMPI-II (Minnesota Multiphasic Personality Inventory, version two) testing met or exceeded the DSM-V criteria for PTSD. He opined that appellant's conditions were contributed to by working with dying and combative patients. Dr. Counts also attributed the diagnosed PTSD, major depressive order, and adjustment disorder with anxiety to overwork and managerial harassment.

By decision dated December 15, 2017, OWCP denied modification, finding that Dr. Diner's opinion remained controlling, as it was thorough and based on all relevant evidence. It found that Dr. Counts' October 11, 2017 report was insufficient to create conflict of opinion with the well-reasoned opinion of Dr. Diner. OWCP further found that the EEOC findings concerned the administrative matters of leave use, scheduling, training, and disciplinary matters which were not considered to be in the performance of appellant's regular or specially assigned duties.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her 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.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

OWCP terminated appellant's wage-loss compensation and medical benefits effective August 21, 2016, based on the opinion of Dr. Diner, a Board-certified psychiatrist acting as second opinion physician, who found that the accepted PTSD and adjustment disorder had ceased without residuals, and that the accepted major depression was not occupationally related. However, the Board finds that Dr. Diner's report was not entitled to the weight of the medical evidence.

In his April 5, 2016 report, Dr. Diner reviewed the medical evidence of record and a SOAF dated May 8, 2015. The Board notes that the SOAF was issued before OWCP accepted appellant's claim and omits the crucial information that OWCP accepted the claim and the specific conditions accepted. Dr. Diner thus based his opinion on an incomplete factual and medical history. OWCP procedures provide that when a referral physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, the probative value of the opinion is diminished.⁸

Because Dr. Diner was not forwarded an up-to-date SOAF with the specific conditions accepted, the Board finds that OWCP erred in relying on his opinion as the basis to terminate monetary compensation and medical benefits for the accepted conditions. His conclusions were

³ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁴ *Id.*

⁵ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *See T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

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

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *R.P.*, Docket No. 17-1133 (issued January 18, 2018).

not based on an accurate factual history. Dr. Diner's report is therefore insufficient for OWCP to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.⁹

Accordingly, the Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits effective August 21, 2016.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 21, 2016.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2017 is reversed.

Issued: December 11, 2018
Washington, DC

Christopher J. Godfrey, 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

⁹ *R.P., id.*

¹⁰ In light of the Board's disposition of the first issue, the second issue is moot.