

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

C.B., Appellant)

and)

**DEPARTMENT OF DEFENSE, FORT
BENNING COMMISSARY,
FORT BENNING, GA, Employer**)

**Docket No. 17-1144
Issued: January 12, 2018**

Appearances:
Appellant, pro se
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 May 2, 2017 appellant filed a timely appeal from a November 22, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 23, 2016.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.²

On January 7, 1998 appellant, then a 38-year-old sales store checker, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 1998 she reached and picked up a bag of sweet potatoes for weighing and experienced a sharp pain in her lower back. She underwent a lumbar magnetic resonance imaging (MRI) scan on January 12, 1998 which was normal. OWCP accepted appellant's claim for acute lumbar strain on May 10, 1999.³

Appellant filed a claim for total disability (Form CA-7) beginning November 14, 1998. OWCP denied this claim by decisions dated January 15, 2002 and January 8, 2003. Appellant subsequently appealed to the Board. By decision dated September 2, 2003,⁴ the Board found that she had not met her burden of proof to establish a recurrence of total disability commencing November 14, 1998.

Dr. David Moyerman, a licensed clinical psychologist, examined appellant on January 20, 1999. He noted her history of injury and her symptoms including memory impairment and suicidal thoughts. Dr. Moyerman diagnosed major depression and generalized anxiety disorder. He opined that appellant was totally disabled from work. On June 16, 2004 OWCP accepted her claim for prolonged depressive reaction. It authorized compensation benefits from January 5, 1999 through December 3, 2000.

Appellant filed a claim for a schedule award (Form CA-7) on July 12, 2004. OWCP denied the claim by decision dated March 8, 2005. Appellant subsequently appealed to the Board and, by decision dated August 23, 2005,⁵ the Board affirmed OWCP's March 8, 2005 decision.

On September 19, 2005 appellant elected to receive OWCP wage-loss compensation benefits, effective January 5, 1999. OWCP paid her wage-loss compensation on the supplemental rolls from December 4, 2000 to September 3, 2005. It placed appellant on the periodic compensation rolls beginning September 4, 2005.

On April 20, 2009 OWCP referred appellant for a second opinion evaluation regarding her psychiatric condition with Dr. Arthur Holt, a Board-certified psychiatrist. In a report dated May 1, 2009, Dr. Holt diagnosed major depression in partial remission without psychotic features. He found that appellant's work injury did contribute to the development of her clinical depressive syndrome. Dr. Holt opined that she could return to work on a part-time basis, but that she required continuing psychiatric treatment.

² Docket No. 05-1333 (issued August 23, 2005); Docket No. 03-1364 (issued September 2, 2003).

³ Appellant retired on disability effective December 4, 1999.

⁴ *Supra* note 2.

⁵ *Id.*

Dr. Moyerman completed notes on September 21 and October 5, 2011 and diagnosed major depression.

Dr. Joseph R. Lewis, Jr., a Board-certified family practitioner, completed notes on March 22, 2013 and March 26, 2014 and diagnosed chronic back pain and depression since 2001. He reported that there was no change in appellant's conditions.

On June 17, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Alexander N. Doman, a Board-certified orthopedic surgeon. Dr. Doman examined her on July 22, 2014. He reviewed the statement of accepted facts (SOAF) and medical records. Dr. Doman noted appellant's January 6, 1998 employment injury of acute lumbar strain and psychiatric depression. He listed her concurrent conditions of diabetes, hypertension, heart murmur, and toe replacement surgery. Dr. Doman reviewed appellant's MRI scan from 1998 which was normal. On examination appellant's physical findings were normal for strength, sensation, and reflexes. Dr. Doman reported that her subjective complaints appeared exaggerated and out of proportion to the lack of objective findings. He determined that appellant's lumbar strain was resolved and that there were no objective findings to support disability due to her lumbar condition. Dr. Doman found that she could return to her date-of-injury position without restrictions.

On August 27, 2014 OWCP provided appellant with a notice of proposed termination of benefits. It proposed to terminate her medical benefits for her accepted condition of back strain.

In a note dated March 31, 2015, Dr. Lewis diagnosed chronic back pain and depression and found no change in appellant's status.

OWCP referred appellant for a second opinion evaluation with Dr. Ramakanth Vemuluri, a Board-certified psychiatrist, on July 24, 2015.

On August 7, 2015 Dr. Vemuluri examined appellant. He reported that she indicated that she was believed to be "crazy" because of her back pain. Appellant had not worked since 1998 due to back pain and depression. She did not report any significant symptoms of depression like persistent low mood, anhedonia, or anergia. On examination Dr. Vemuluri found dysthymic and reactive affect. He noted, "At this time I did not see any psychiatric reasons for [appellant] not to return back to work. At this time she seems to be psychiatrically stable and does not seem to have any significant disability from her psychiatric issues."

In a note dated August 5, 2015, Dr. Moyerman reported that prior to August 5, 2015 appellant had not sought treatment for her psychological conditions for more than three years. He attributed the lack of treatment to anosognosia, somnolence, demoralization, avolition, dejection, withdrawal, blocking, inattentiveness, and derailment. Dr. Moyerman found that appellant had regressed and expressed utter worthlessness, death ideation, and fleeting suicidal thoughts. He further noted that she had been sedated for most of the past 44 months due to her reliance on sedatives, benzodiazepine, and opiate medications. On September 16, 2015 Dr. Moyerman, diagnosed major depression and possible schizoaffective disorder. He noted that appellant had been diagnosed with leukemia and sarcoidosis.

Dr. Lewis examined appellant on April 7, 2016. He diagnosed chronic back pain and depression. Dr. Lewis indicated that both conditions were long-standing and that appellant had no change in her status.

OWCP declared a conflict in medical opinion between Dr. Lewis, appellant's attending physician, and Dr. Doman, OWCP's referral physician. Consequently, on July 21, 2016, it referred appellant, a SOAF, and questions for an impartial medical examination by Dr. Raymond Godsil, Jr., a Board-certified orthopedic surgeon.

In a report dated August 30, 2016, Dr. Godsil noted appellant's history of injury and medical history. He performed a physical examination and found no muscle spasms. Appellant reported some tenderness in the lower dorsal area, right lumbosacral area, and right greater sciatic notch. Sitting straight leg raising was negative bilaterally while, in the supine position, it was positive on the right at 60 degrees. Dr. Godsil diagnosed chronic lumbar pain with a history of lymphoma, sarcoidosis, and type 2 diabetes. He responded to OWCP's questions and reported essentially no objective findings regarding the lumbar sprain. Dr. Godsil reported no atrophy and normal neurological examination. He noted Waddell's signs in the course of his physical examination. Dr. Godsil advised that MRI scan testing of the lumbar spine after the 1998 employment injury was negative. He found that appellant's disability from work was due to her concurrent conditions although she was unable to perform her regular job due to her lymphoma, sarcoidosis, diabetes, and depression.

OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits on October 4, 2016 and as her employment-related medical conditions and disability had ceased. It found that Dr. Godsil's August 30, 2016 report established that she had no residuals of her physiological condition as she had negative findings in the lumbar spine. OWCP further noted that Dr. Vemuluri reported on August 7, 2015 that appellant had no residuals of her psychiatric condition as her condition was in remission and she had not been treated for a psychiatric medical condition for over three and half years.

Appellant responded to the notice of proposed termination on October 19, 2016 and noted her diagnosed depression. She also asserted that the medical evidence did not establish that she was capable of her date-of-injury work.

By decision dated November 22, 2016, OWCP finalized its termination of appellant's wage-loss compensation and medical benefits. It found that Dr. Godsil's August 30, 2016 report was entitled to special weight and established that she had no physical residuals or disability from her January 6, 1998 employment injury. OWCP further found that Dr. Vemuluri's report was sufficient to establish that appellant had no disability or medical residuals due to her accepted condition of depression. It determined that the effective date of the termination would be November 23, 2016.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proof to establish that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁶ 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.⁷ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁹

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.¹⁰ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹¹

ANALYSIS

OWCP accepted appellant's January 6, 1998 traumatic injury claim for both physical and psychological conditions. In regard to the accepted acute lumbar strain on May 10, 1999, it referred her to Dr. Doman for examination on July 22, 2014. Dr. Doman determined that appellant's lumbar strain had resolved and that she had no disability from work due to her lumbar condition. Appellant's attending physician, Dr. Lewis, diagnosed chronic back pain on March 31, 2015 and April 7, 2016.

Due to the disagreement between Dr. Doman and Dr. Lewis, OWCP properly found a conflict of medical opinion. It referred appellant for an impartial medical examination with Dr. Godsil on August 30, 2016. Dr. Godsil provided an accurate history of injury, performed a physical examination, and diagnosed chronic lumbar pain with a history of lymphoma, sarcoidosis, and type 2 diabetes. He found no objective findings regarding the lumbar sprain noting that appellant had no atrophy and a normal neurological examination. Dr. Godsil determined that her continued disability for work was not due to her accepted acute lumbar strain.

⁶ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁷ *Id.*

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

¹¹ *R.C.*, 58 ECAB 238 (2006).

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based on a proper factual background, must be given special weight.¹² The Board finds that Dr. Godsil's report was based on a proper factual background and provided medical reasoning noting no objective findings on physical examination which supported appellant's continued lumbar sprain or disability from this condition. The Board finds that he provided a comprehensive, well-rationalized opinion. Dr. Godsil had full knowledge of the relevant facts and the course of appellant's condition. His opinions were based on proper factual and medical history and on the SOAF.¹³ Dr. Godsil's reports contained a detailed summary of the history of the claim. Additionally, he addressed the medical records, examined appellant, and reached a reasoned conclusion regarding appellant's conditions.¹⁴ Dr. Godsil's opinion is therefore entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.¹⁵ As he established that appellant had no disability or medical residuals as a result of her January 6, 1998 traumatic back injury, OWCP met its burden of proof to terminate her entitlement to wage-loss compensation and medical benefits due to this condition.

The Board further finds that there remains an unresolved conflict of medical opinion regarding appellant's accepted condition of major depression. OWCP referred her for a second opinion evaluation with Dr. Vemuluri. In his August 7, 2015 report, Dr. Vemuluri noted that appellant did not report any significant symptoms of depression, such as persistent low mood, anhedonia, or anergia. He determined that she was psychiatrically stable and could return to work.

Appellant submitted notes from her attending clinical psychologist, Dr. Moyerman dated August 5 and September 16, 2015. Dr. Moyerman found that her emotional condition had regressed and that she expressed utter worthlessness, death ideation, and fleeting suicidal thoughts. He further noted that appellant had been sedated for most of the past 44 months due to her reliance on sedatives, benzodiazepine, and opiate medications. Dr. Moyerman diagnosed major depression and possible schizoaffective disorder.

The Board finds that there remains an unresolved conflict of medical opinion evidence between Drs. Moyerman and Vemuluri regarding appellant's current emotional condition and her need for further medical treatment. Dr. Vemuluri found no medical residuals, while Dr. Moyerman found that her psychiatric condition had worsened with death ideation and fleeting suicidal thoughts. As OWCP has not resolved the conflict regarding residuals for

¹² *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

¹³ *See R.G.*, Docket No. 16-0271 (issued May 18, 2017); *T.M.*, Docket No. 17-0915 (issued August 29, 2017).

¹⁴ *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); *T.M.*, *supra* note 13.

¹⁵ *See Sharyn D. Bannick*, 54 ECAB 537 (2003); *L.J.*, Docket No. 17-0639 (issued September 1, 2017).

appellant's accepted psychiatric condition,¹⁶ the Board finds that OWCP has not met its burden to terminate her wage-loss compensation and medical benefits with respect to her accepted emotional condition.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits due to her accepted acute lumbar strain, but did not meet its burden of proof to terminate her wage-loss compensation and medical benefits effective November 23, 2016 due to her accepted emotional condition.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: January 12, 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

¹⁶ *S.T.*, Docket No. 16-1471 (issued August 18, 2017).

¹⁷ *L.J.*, Docket No. 15-0485 (issued April 22, 2016).