

her burden of proof to establish continuing work-related disability after the March 13, 2011 termination of her compensation benefits.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.³

On August 13, 1998, appellant, then a 36-year old legal instruments examiner, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition resulting from a hostile work environment while in the performance of duty. Appellant stopped work on February 22, 1996 and the employing establishment indicated that appellant was removed from her position on September 26, 1997 because she was physically unable to perform her job duties. OWCP found compensable factors of employment including incidents which occurred in the performance of duty including that appellant was subjected to a racially hostile environment; that her nonselection in the drug and alcohol unit was due to impermissible race or discrimination and reprisal. It found that these incidents were accurate and constituted error on the part of the employing establishment. OWCP accepted the claim for post-traumatic disorder and depressive disorder as the symptoms caused by the compensable factors of appellant's federal employment and paid appellant wage-loss compensation and medical benefits.⁴

On October 6, 2010 OWCP referred appellant for a second opinion examination to determine the extent of her condition, along with a statement of accepted facts, a set of questions and the medical record to Dr. Amar Bhandary, a Board-certified psychiatrist.

In his November 18, 2010 report, Dr. Bhandary noted that appellant denied any history of psychiatric illness or treatment prior to 1994. He related that in 1994, appellant encountered a workplace-related issues. Dr. Bhandary described the factors that occurred at work, which resulted in the aforementioned incidents accepted by OWCP as having occurred in the performance of duty. He explained that as a result, in 1994, she was ultimately fired and as a result, she reported the onset of post-traumatic stress disorder and depression. Appellant's reported symptoms included: insomnia, nightmares, flashbacks, anxiety, agitation, mood swings, concentration problems, and difficulty handling stress. Dr. Bhandary related that appellant indicated that these symptoms persisted. Additionally, she reported major depression characterized by insomnia, loss of interest, concentration problems, appetite disturbance, feelings of worthlessness and hopelessness, and fatigue. Dr. Bhandary indicated that appellant related that she had recurrent episodes of depression, but "in the past few years (she could not identify the exact number of years) she has had no time to be depressed because she has raised 4 boys." Dr. Bhandary explained that she denied any actual symptoms during these last few years. He also noted that appellant: never

³ Docket No. 09-0602 (issued January 15, 2010); Docket No. 11-1899 (issued March 15, 2012); and Docket No. 13-0064 (issued August 5, 2013).

⁴ Appellant's benefits were suspended on September 26, 2003 for failure to appear for a scheduled medical examination. By decision dated February 15, 2011, OWCP determined that appellant's obstruction of medical examination remained from September 5, 2003 through June 29, 2008 and that compensation was payable for the period June 30, 2008 through March 12, 2011.

attempted suicide; had not engaged in self-injurious behavior; denied a history of mania, psychosis, eating disorder, learning disorder, panic disorder with agoraphobia, obsessive-compulsive disorder, or attention deficit hyperactivity disorder. Dr. Bhandary noted that appellant was hospitalized in the 1990's for a period of eight days, but she did not recall the treating physician or the exact dates. He also determined that appellant received treatment from Dr. Martiece Carson, a neurologist and psychiatrist, from 1994 until 2001. Dr. Bhandary indicated that she had not received any psychiatric treatments since that time. However, he noted that she had several recent visits with a physician whose specialty and reports are not of record. Dr. Bhandary indicated that Dr. Carson had prescribed her various psychotropic medications and diagnosed appellant with post-traumatic stress disorder and depressive disorder, not otherwise specified. He also found that she had not taken any psychotropic medications since she treated with Dr. Carson.

Dr. Bhandary examined appellant and determined that she was alert and oriented to time, place, and person. He determined that her mood was okay, her concrete thinking, abstract thinking, and recall were good. Additionally, appellant's other faculties of memory were good. Dr. Bhandary determined that her speech was clear and comprehensible. He found that she denied: suicidal, homicidal, paranoid ideation; or hallucinations and did not appear to respond to imperceptible stimuli. Dr. Bhandary found that her attention span, concentration, social and formal judgment was good, along with her insight and reliability. He determined that until 1994, appellant did not have any psychiatric problems. Dr. Bhandary explained that her psychiatric problems essentially started at the workplace. He noted that the history included that she was "keen on working in another unit. However, there was a racist contract employee and he denied her the opportunity. He further made racially derogative statements and jokes." Dr. Bhandary opined that there was "no dispute that this employee's actions were derogatory, unacceptable, and deserved condemnation in the harshest terms. There is no dispute that his actions caused emotional trauma to the patient. However, there is the question of whether the patient suffered post-traumatic stress disorder." Dr. Bhandary explained that criteria for PTSD and one of the criteria was not met, as appellant was never subjected to physical trauma. He further explained that there was never a threat to her physical integrity or to the physical integrity of others. Dr. Bhandary opined that there was no situation where there was any life-threatening situation where others were killed or wounded. Based on this requirement, he explained that appellant did not meet the criteria for post-traumatic stress disorder. However, Dr. Bhandary explained that she developed major depression and her depression could be attributed to the workplace trauma. He also determined that appellant suffered from recurrent episodes of depression.

Dr. Bhandary found that appellant reported that for the "past 9 years or so, she has not taken any treatment. By her own statement, for the past few years, appellant has not experienced any depression symptoms. Furthermore, she is leading a good quality life. Appellant has no alcohol or drug problems. No legal problems. Appellant has been married to her only husband for a long time and has been raising her family." Dr. Bhandary concluded that there was no evidence of any impairment. He opined that appellant's depressive symptoms had resolved. Dr. Bhandary opined that her cognitive functions were excellent. He also added that the stressors related to the work trauma occurred 16 years ago and were since removed. Dr. Bhandary opined that from a psychiatric standpoint, appellant was able to return to her normal employment without any restrictions needed.

Dr. Bhandary diagnosed major depression, moderate, recurrent, in remission and opined that appellant could return to her regular job without restrictions and that she was competent to handle her finances. He further opined that there were no clinical findings, no findings of emotional conditions and no residuals of the accepted condition, which resolved almost nine years ago. Dr. Bhandary completed a November 29, 2010 work capacity evaluation advising that appellant could work in “any job similar to her previous job.”

On January 12, 2011 OWCP proposed to terminate all future medical benefits and wage-loss compensation because the medical evidence of record established that she no longer had any residuals or continuing disability from work. It concluded that Dr. Bhandary had found that she no longer had any residuals or continuing disability from work stemming from her work-related injury and that she could return to her normal work without any restrictions. He also found that her restrictions and conditions ended “almost 9 years ago.” OWCP explained that the last medical evidence of file was from January 15, 2002 and appellant also admitted that she had no treatment for the last nine years or so. It informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. No evidence was received.

By decision dated February 15, 2011, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective March 13, 2011. It based its decision on the opinion of Dr. Bhandary as set forth in his report dated November 18, 2010.

On October 5, 2011 appellant requested reconsideration of the February 15, 2011 termination decision and submitted new medical evidence.

In a September 22, 2011 report, Dr. Jeanie L. Klabzuba, Board-certified in family medicine, indicated that she had recommended a medical need for leave of absence from appellant’s workplace, for an unknown period of time based upon the diagnosis of PTSD. She explained that appellant was a new patient and presented with a “predetermined diagnosis of PTSD apparently from trauma at her jobsite.” Dr. Klabzuba noted that it was her “understanding that [appellant] continues to have PTSD[-]related symptoms of stress, inability to sleep, inability to control her emotions, depression. She continues in counseling at this time as well as medication management of her symptoms without significant improvement.” Dr. Klabzuba opined that since “the conditions at her worksite have not changed and I understand that the trauma occurred at the worksite, she is still unable to return there as accommodations cannot be made to resolve her condition.” She further noted that she had reviewed the July 8, 1998 report, from Dr. Carson, and she opined that the conditions of that assessment still applied.

OWCP also received a treatment note from May 14, 1998 with an illegible signature.

OWCP received a November 17, 2013 report from the Oklahoma Board of Medical Licensure & Supervision indicating Dr. Bhandary’s medical license was revoked on June 18 and November 17, 2013 due to criminal conviction. OWCP also received newspaper clippings, an indictment, and reports to include an October 30, 2013 report which indicated that Dr. Bhandary was convicted of Medicare fraud during the period 2008 to 2009 for dispensing controlled substances.

In a September 10, 2014 report, Dr. Klabzuba opined that appellant had a medical need for a leave of absence from her work site and repeated the contents of her September 22, 2011 report.

By decision dated October 24, 2014, OWCP denied modification of its February 15, 2011 termination decision. In particular, it noted that at the time of his examination of appellant, Dr. Bhandary was a duly licensed physician, authorized to perform the examination that took place and there was no basis to discard his medical report based upon the inappropriate conduct that occurred after the examination and led to the loss of his license in 2014. OWCP also noted that none of the conduct for which he lost his license was relevant to appellant's claim. It found that there was no contemporaneous medical evidence to make Dr. Bhandary's report unreliable or to strike his report from the record.

On August 31, 2015 appellant requested reconsideration and submitted additional evidence.⁵

Dr. Klabzuba saw appellant on January 26, 2012 for medication, and on July 14 and September 14, 2015 for high blood pressure.

OWCP received several treatment notes from a nurse dating from April 17 to May 22, 2015 and a functionality report completed by appellant on September 29, 2015.

By decision dated November 12, 2015, OWCP denied modification of the October 24, 2014 decision. It found that Dr. Bhandary did not lose his license until 2013 and none of the conduct for which his license was revoked, involved appellant or affected his evaluation of appellant. OWCP indicated that the record contained no medical evidence from January 16, 2002 through November 17, 2010. Furthermore, the medical evidence submitted after Dr. Bhandary's November 18, 2010 medical report contained no findings or medical rationale which would explain why she would have continued to be disabled from working as of when the termination decision was issued on February 15, 2011 or at any point thereafter.

On April 14, 2016 appellant requested reconsideration of the November 12, 2015 decision.

Appellant subsequently submitted a letter dated April 12, 2016, concerning her request for reconsideration. She argued that she did not understand the meaning of "probative value." However, appellant argued that the conduct that caused Dr. Bhandary to have his license revoked was reduced after the authorities were unable to charge him with the death of eight or more patients. She argued that his reports were "tainted at best." Additionally, it appeared that Dr. Bhandary's employing establishment had no interest in his questionable behavior. Appellant indicated that OWCP should have known about the investigation before they scheduled an examination with him. She indicated that once she notified OWCP that he was being investigated, OWCP declined to assign her to a different physician. Appellant also argued that Dr. Klabzuba, in her report of September 2014, reaffirmed her previous report of 2011, when she concurred with her prior treating physicians and indicated that she would not be comfortable with her returning to

⁵ On March 10, 2015 appellant requested a hearing. By decision dated March 27, 2015, OWCP denied her request for a hearing, as reconsideration was previously requested.

the work site where the injury occurred. She argued that no requests for medical documentation were made between 2002 to 2010.

By decision dated May 2, 2016, OWCP denied modification of its November 12, 2015 decision.

On May 23, 2016 appellant requested reconsideration of the May 2, 2016 decision.

In a January 28, 2016 report, Dr. Lawrence K. Kaczmarek, a Board-certified psychiatrist, noted that appellant presented with a number of complaints dating back to a discrimination claim she filed with the employing establishment approximately 20 years ago. He noted that appellant had found it difficult to be gainfully employed since she was fired from the employing establishment. Dr. Kaczmarek advised that appellant continued without any relief for her anxiety and depressive symptoms and went without treatment for many years at a time due to changes in her resources. He also noted that her condition was complicated by her current marital situation. Dr. Kaczmarek advised that her complaints included chronic difficulties with anxiety, depression, and insomnia and noted that “without reviewing the records” the patient identified a prescription which was helpful, but she discontinued due to dietary complaints. He conducted a mental status examination and determined that appellant was: alert; oriented to all spheres with intact attention, concentration, fund of knowledge; and able to communicate in an appropriate fashion. Dr. Kaczmarek found that her psychomotor activity was within normal limits, there was no evidence of delusional ideations, or perceptual disturbances. He also determined that her affect was appropriate and unrestricted. Dr. Kaczmarek indicated that appellant denied suicidal or homicidal ideations or thoughts of violence. He diagnosed depressive episode unspecified, anxiety disorder unspecified, insomnia, unspecified and cognitive gait disorder, unspecified. Dr. Kaczmarek recommended medication and additional treatment in four weeks.

On June 10, 2016 OWCP denied modification of its May 2, 2016 decision, finding that Dr. Kaczmarek’s report was insufficient to overcome the deficiencies in appellant’s claim, as he did not provide a rationalized opinion supporting why her ongoing treatment was necessary or explain her continued inability to work. It also found that he did not explain how her current condition was directly related to her accepted condition and not the personal issues mentioned in his report.

On June 24, 2016 appellant requested reconsideration.

OWCP received a Form CA-20 attending physician’s report dated June 27, 2016 from Dr. Klabzuba who diagnosed PTSD from emotional trauma at her workplace. Dr. Klabzuba checked the box marked “yes” in response to whether she believed the condition was caused or aggravated by an employment activity. She filled in “N/A” in response to findings and filled in October 1, 1994 for the period of the disability. Dr. Klabzuba indicated that appellant could not return to work and filled in “that return to her job site would incur emotional trauma.”

By decision dated September 12, 2016, OWCP denied modification of its June 10, 2016 decision. It explained that there was no medical evidence of record sufficient to overcome the weight of Dr. Bhandary’s report. OWCP found that she had not submitted any evidence to support

her request to strike Dr. Bhandary's report from the record or to support her claim for disability compensation.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss and medical benefits, effective March 13, 2011.

In a report dated November 18, 2010, Dr. Bhandary described the accepted workplace incidents and explained that as a result, in 1994, she was ultimately fired. He also noted the resulting onset of PTSD and depression. Dr. Bhandary also found that her reported symptoms included: insomnia, nightmares, flashbacks, anxiety, agitation, mood swings, concentration problems, and difficulty handling stress, which persisted. However, he determined that "in the past few years (she could not identify the exact number of years) she has had no time to be depressed because she has raised 4 boys." Dr. Bhandary reported that she denied any actual symptoms during these last few years. He found that appellant: never attempted suicide; had not engaged in self-injurious behavior; and denied a history of mania, psychosis, eating disorder, learning disorder, panic disorder with agoraphobia, obsessive-compulsive disorder, or attention deficit hyperactivity disorder.

Dr. Bhandary determined that until 1994, appellant did not have any psychiatric problems and explained that her psychiatric problems essentially started at the workplace noting that the history included that she was "keen on working in another unit. However, there was a racist contract employee and he denied her the opportunity. He further made racially derogative statements and jokes."

Dr. Bhandary further determined that appellant had not received any treatment for the "past nine years..." Additionally, he related that she indicated that for the past few years, she has not experienced any depression symptoms. Dr. Bhandary also explained that appellant indicated that she was leading a good quality life with no alcohol or drug problems and no legal problems. He related that she indicated that she has been married to her only husband for a long time and has been raising her family. Dr. Bhandary concluded that there was no evidence of any impairment. He opined that appellant's depressive symptoms have resolved. Dr. Bhandary determined that her cognitive functions were excellent. He also added that the stressors related to the work trauma occurred 16 years ago and were removed.

⁶ *Curtis Hall*, 45 ECAB 316 (1994).

⁷ *Jason C. Armstrong*, 40 ECAB 907 (1989).

Dr. Bhandary opined that from a psychiatric standpoint, appellant was able to return to her normal employment without any restrictions needed. He found that appellant was not psychotic, suicidal, or homicidal. Dr. Bhandary diagnosed major depression, moderate, recurrent, in remission. He opined that appellant could return to her regular job without restrictions and that she was competent to handle her finances. Dr. Bhandary opined that there were no clinical findings, no findings of emotional conditions and no residuals of the accepted condition, which resolved almost nine years ago. He completed a November 29, 2010 work capacity evaluation advising that appellant could work in “any job similar to her previous job.”

The Board finds that Dr. Bhandary’s opinion is sufficiently well rationalized and represents the weight of the medical evidence regarding appellant’s accepted conditions. The Board also notes that, prior to the termination of her benefits, there were no current reports from a treating physician to contradict these findings as to the residuals of her work injury. Because appellant no longer had residuals or disability related to her accepted employment conditions, OWCP properly terminated entitlement to wage-loss compensation and medical benefits, effective March 13, 2011.

LEGAL PRECEDENT -- ISSUE 2

It is well established that after termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁸

ANALYSIS -- ISSUE 2

Subsequent to the February 15, 2011 decision, which terminated appellant’s compensation benefits effective March 13, 2011, the burden shifted to appellant to demonstrate that she continued to have disability for work on and after March 13, 2011 due to the accepted injury.⁹

After the termination of appellant’s compensation benefits, appellant submitted arguments and additional evidence to support that she continued to be disabled from work due to the accepted injuries. She submitted documentation and evidence that Dr. Bhandary’s license was revoked on June 18, 2013 due to a criminal conviction. However, the Board notes that Dr. Bhandary examined appellant in 2010 and the revocation of his license was related to the distribution of narcotics and not to his professional expertise or his actions in connection with his examination of appellant. The Board does not find that his report was compromised due to his subsequent license revocation. These arguments therefore are insufficient to meet her burden of proof to establish continuing residuals or disability after March 13, 2011.

The medical evidence received subsequent to the March 13, 2011 termination includes a July 8, 1998 report from Dr. Carson. However, the Board notes that this report is not relevant as

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁹ *See id.*; *Virginia Davis-Banks*, 44 ECAB 389 (1993).

it predates the termination and does not otherwise support continuing injury-related residuals or disability after March 13, 2011.¹⁰

Several reports of Dr. Klabzuba were submitted by appellant in support of her claim for continuing benefits. In reports dated September 22, 2011 and September 10, 2014, which were virtually the same with the exception of the dates, she indicated that appellant was unable to return to her job site where the injury occurred. However, Dr. Klabzuba did not document any symptoms or objective findings to explain why appellant was unable to return to work after the March 13, 2011 termination. This type of reasoning is especially important as appellant indicated to Dr. Bhandary that she was too busy to be stressed while raising four boys. The Board further notes that after Dr. Bhandary saw her, she informed Dr. Kaczmarek, she also had personal problems related to her marriage. The reports of Dr. Klabzuba fail to address any of these relevant facts and therefore these medical records are insufficient to establish continuing residuals or disability after March 13, 2011.¹¹

The April 17 and June 27, 2016 reports from Dr. Klabzuba are found to merely contain medical diagnoses with no supportive rationale on the issue of continuing disability. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² The July 15 and September 15, 2015 reports were for treatment of high blood pressure. These reports are not relevant as high blood pressure is not an accepted condition and they fail to support continuing injury-related residuals or disability after March 13, 2011. Dr. Klabzuba submitted a Form CA-20 attending physician's report dated June 27, 2016 and diagnosed PTSD from emotional trauma at her workplace. She checked the box marked "yes" in response to whether she believed the condition was caused or aggravated by an employment activity. Dr. Klabzuba filled in "N/A" in response to findings and filled in October 1, 1994 for the period of the disability. He indicated that appellant could not return to work and filled in that PTSD "that return to her job site would incur emotional trauma." However, the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹³

OWCP also received a January 28, 2016 report from Dr. Kaczmarek. Dr. Kaczmarek noted appellant's history dating back to the work incident 20 plus years ago. He explained that appellant found it difficult to be gainfully employed since she was fired from the employing establishment. Dr. Kaczmarek advised that appellant continued without any relief for her anxiety and depressive symptoms and went without treatment for many years at a time due to changes in her resources. He also noted that her condition was complicated by her current marital strife with her husband who has "put [her] out of the house," at times, with appellant sleeping in her car. Dr. Kaczmarek determined her complaints included chronic difficulties with anxiety, depression and insomnia. He conducted a mental status examination and found that appellant was: alert; oriented to all spheres with intact attention, concentration, found of knowledge; and able to

¹⁰ *D.B.*, Docket No. 16-0765 (issued August 23, 2016).

¹¹ *See Valerie R. Ansite*, Docket No. 97-2848 (issued September 21, 1999).

¹² *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

communicate in an appropriate fashion. Dr. Kaczmarek advised that her psychomotor activity was within normal limits, there was no evidence of delusional ideations or perceptual disturbances. He also determined that her affect was appropriate and unrestricted. Dr. Kaczmarek did not offer any opinion regarding her ability to work, which is the relevant issue under consideration on appellant's request for continuing disability compensation. As he failed to provide an opinion on this issue, his report is insufficient for appellant to meet her burden of proof to establish her claim.¹⁴

On appeal appellant argues that she tried to return to work, but she was told that she was unqualified. She also argues that OWCP would not accept reports from licensed clinical social workers, that she was unsure what she was required to do to comply with OWCP, and that she submitted "explanation after explanation each time rejected because either I am not qualified to make decisions regarding my health in relation to FAA injury." Appellant argued that she was not sure what OWCP wanted and she was "pretty convinced it is a form of reprisal." The Board notes that the requisite medical evidence has not been submitted to establish that appellant continued to have residuals or disability after the March 13, 2011 termination.

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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 13, 2011. The Board also finds that appellant has not met her burden of proof to establish continuing residuals or disability after the March 13, 2011 termination of her compensation benefits.

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2018
Washington, DC

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

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

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