

ISSUE

The issue is whether OWCP met its burden of proof to rescind its acceptance of adjustment disorder with mixed anxiety and depressed mood.

FACTUAL HISTORY

On January 13, 2014 appellant, then a 43-year-old occupation support specialist, filed a traumatic injury claim (Form CA-1) alleging that, on January 10, 2014, she sustained injuries to her shoulders, neck, hands, low back, right knee, and right big toe when she tripped and fell after her walker caught on her office chair wheel.³ She stopped work on January 13, 2014 and has not returned.

On February 19, 2014 OWCP accepted that appellant sustained neck, lumbar, right knee, bilateral shoulder and upper arm, thoracic, right foot, and right hand sprains as a result of the January 10, 2014 trip and fall.

In an April 24, 2014 report, Dr. Charles E. Willis, a Board-certified pain management physician and anesthesiologist, noted that appellant had been diagnosed with anxiety and post-traumatic depression due to a work injury. He indicated that, after her return to work following a nonwork-related November 2013 toe surgery, appellant reported feelings of anger and being upset, depressed, and anxious. Appellant also reported sleep disruption, frustration, agitation, fatigue, loss of appetite, interest, and concentration, and decreased ability to perform any household activity. Dr. Willis noted that appellant had a medical history of fibromyalgia and hypertension.

In a report dated April 25, 2014, Dr. Jack Currin, a licensed clinical psychologist, noted the accepted orthopedic work conditions and diagnosed adjustment disorder with mixed anxiety and depression. He reported that appellant was referred by her treating physician for an evaluation of her psychological symptoms caused by a work injury. Dr. Currin related that she had sustained a work-related injury on January 10, 2014. He noted that appellant had just returned to work following nonwork-related foot surgery, and on January 10, 2014, was using a knee walker and right foot boot. Appellant sustained injury when her walker caught on her office chair and caused her to fall backwards. She related that, after the work injury, she experienced feelings of increased anxiety and depression, in addition to pain and disability from work. Appellant described her symptoms as loss of interest and motivation, sleep disturbance, and cognitive constriction. Dr. Currin reported that, based on the information provided, it appeared that appellant's pain from her employment injury, her functional limitations, and resulting lifestyle disruption led to poor coping. He explained that she had reported taking psychotropic medications prior to the work-related injury, but that she had not received psychiatric treatment. Dr. Currin also noted that appellant's psychiatric symptoms had not impacted her work performance prior to the work-related injury. He attributed the diagnosed

³ The record reflects that appellant had prior nonwork-related surgery of her right toe in 2007 and a nonwork-related surgery to her right foot for hammertoes and bunionectomy on November 7, 2013. Following her return to work, she felt angry, depressed and anxious, and had begun taking psychotropic medication to treat her preexisting emotional condition.

adjustment disorder with mixed anxiety and depression to the accepted employment injury. In support of this conclusion, Dr. Currin explained that the conditions were employment-related based on her depressed mood and anxiety caused by the work injury.

Dr. Michael A. Katz, a Board-certified orthopedic surgeon, acting as an OWCP medical adviser reviewed Dr. Currin's April 25, 2014 report, as well as the medical evidence of record, and recommended that appellant's claim be expanded to include a consequential adjustment disorder with mixed anxiety and depression.

On May 30, 2014 OWCP expanded the acceptance of appellant's claim to include adjustment disorder with mixed anxiety and depressed mood.

In a June 10, 2014 report, Dr. Willis diagnosed cervical, lumbar, right knee and leg, thoracic, bilateral shoulder and arm strain, right tarsometarsal, and right carpometacarpal strains, anxiety, and post-traumatic depression, which they attributed to the accepted January 10, 2014 work injury. This report noted a diagnosis of a right hip injury which was attributed to the January 10, 2014 work injury, which was pending approval by OWCP. Physical examination findings were provided and appellant's medical history of fibromyalgia and hypertension was noted.

By letter dated June 12, 2014, OWCP informed appellant that she would receive compensation benefits on the periodic rolls for temporary total disability with the first payment commencing May 27, 2014.

On June 25, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Ivan J. Antosh, a Board-certified orthopedic surgeon, to determine whether the claim should be expanded to include a cervical radiculitis condition and an evaluation of her current disability status.

In an August 22, 2014 report, Dr. Antosh, based upon a review of the medical evidence, statement of accepted facts, and physical examination, concluded that appellant's multiple musculoskeletal complaints were unrelated to the accepted January 10, 2014 employment injury. A physical examination revealed decreased cervical, lumbar, and thoracic range of motion; bilateral shoulder tenderness on palpation; right wrist/hand tenderness on palpation; positive bilateral Neer impingement test; and right foot tenderness medially with hypersensitivity of the big toe on palpation. Dr. Antosh also reported that appellant had a notable history of fibromyalgia. He opined that she was capable of performing light-duty work, preferably sedentary duties. Dr. Antosh recommended continued treatment with appellant's podiatrist and opined that she may have developed chronic regional pain syndrome.

Dr. Antosh, in a September 25, 2014 addendum, noted that appellant sustained a minor fall from her chair at work. He opined that her pain and injury complaints were likely due to her preexisting fibromyalgia and that her cervical radicular findings were due to an underlying cervical degenerative disease and not the accepted employment injury.

On October 10, 2014 OWCP referred appellant to Dr. Robert J. Holladay, IV, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Antosh and Dr. Willis regarding appellant's work capacity.

On October 13, 2014 OWCP received a September 11, 2014 report from Dr. Willis diagnosing chronic low back pain and lumbar facet syndrome, which he attributed to the accepted January 10, 2014 work injury. He described how the January 10, 2014 work injury occurred and noted that appellant had no prior neck, back, knee, right wrist/hand, or shoulder conditions.

In a December 9, 2014 report, Dr. Holladay, reviewed the statement of accepted facts and noted appellant's history of injury. He described her physical examination findings. Dr. Holladay reported that appellant had a notable history of fibromyalgia and opined that it was not medically reasonable to conclude that all of her musculoskeletal complaints arose from the accepted employment injury, which was described as a minor fall out of a chair. He opined that the injury would have aggravated her right foot condition and that she was currently capable of working with restrictions which included no lifting more than 20 pounds, no prolonged periods of being on her feet, or walking any distance.

In a February 6, 2015 report, Dr. Currin again diagnosed adjustment disorder with mixed anxiety and depression, which he attributed to the January 10, 2014 employment injury. He noted that, following her work injury, appellant experienced chronic pain, severe psychological distress, and loss of functioning. Dr. Currin opined that she was totally disabled from work, as she was unable to complete her work duties due to her work-related stressors, continuing pain, and disability.

On April 13, 2015 OWCP issued a notice proposing to rescind acceptance for the condition of adjustment disorder with mixed anxiety and depressed mood.⁴ It found that the medical report that formed the basis for the acceptance of the psychological condition had not been based on complete medical and factual histories.

On April 14, 2015 OWCP issued an amended proposed notice of rescission. It related that the evidence of record established that the diagnosing physicians did not have a complete factual and medical background on which to diagnose the condition of adjustment disorder with mixed anxiety and depressed mood resulting from the accepted injury. Also the medical evidence of record, one month prior to Dr. Currin's examination, supported a finding that the accepted condition from the work-related injury had resolved and that appellant's continuing medical conditions existed prior to her work injury of January 10, 2014.

In a May 6, 2015 report, Dr. Currin reported that appellant continued to receive treatment for psychological stress and pain caused by the accepted January 10, 2014 employment injury. Appellant related emotional, behavioral, and emotional stressors resulting from the accepted employment injury. Diagnoses included adjustment disorder with mixed anxiety and depression, which was attributed to the accepted January 10, 2014 employment injury. Based on the

⁴ By separate April 13, 2015 decision, OWCP also finalized the February 6, 2015 proposal to terminate appellant's wage-loss compensation benefits for failure to accept a temporary light-duty job for the period April 5 to July 25, 2015. Appellant subsequently requested reconsideration, and by decision dated August 13, 2015, OWCP denied modification of the April 13, 2015 decision terminating her wage-loss compensation. It found the weight of the medical opinion evidence rested with the opinion of Dr. Holladay, the impartial medical examiner, that she was capable of performing light-duty work with restrictions.

information provided by appellant and examination findings, Dr. Currin concluded that appellant's current psychological condition was caused by the accepted January 10, 2014 employment injury.

In a letter dated May 12, 2015, counsel contended that OWCP had not met its burden of proof to rescind acceptance of her claim for adjustment disorder with mixed anxiety and depressed mood. He argued that a mere review of the evidence and arrival at a different was insufficient for OWCP to meet its burden of proof.

By decision dated June 25, 2015, OWCP rescinded its acceptance of appellant's claim for adjustment disorder with mixed anxiety and depressed mood, effective that date. It found that Dr. Currin's opinion was not based on a complete and accurate medical and factual history and, thus, was insufficient to establish acceptance of the diagnosed condition.

On June 20, 2016 appellant, through counsel, requested reconsideration of the June 25, 2015 decision. In support of her request, appellant submitted a May 6, 2015 report by Dr. Currin, again opining that appellant's work-related injury was the source of her current psychological distress.

By decision dated September 18, 2016, OWCP denied modification of its June 25, 2015 rescission decision, as it had not received any medical evidence based on a complete factual and medical history with a with a rationalized medical opinion supporting causal relationship.

LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.⁵ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁶ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁷

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.⁸ It is well established that, once OWCP accepts the claim, it has the burden of justifying the termination or modification of compensation benefits.⁹ OWCP's burden of justifying termination or

⁵ 5 U.S.C. § 8128.

⁶ *D.G.*, 59 ECAB 74 (2008); *L.C.*, 58 ECAB 493 (2007); *John W. Graves*, 52 ECAB 160 (2000).

⁷ 20 C.F.R. § 10.610.

⁸ *L.C.*, *supra* note 6; *Kelly Y. Simpson*, 57 ECAB 197 (2005).

⁹ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

modification of compensation holds true where it later decides that it has erroneously accepted a claim of compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.¹⁰

ANALYSIS

In order to rescind acceptance of the consequential emotional condition, OWCP must show that the weight of the reliable evidence establishes that the acceptance of the claim was erroneous.¹¹ The Board finds that OWCP based its June 25, 2015 rescission on an incorrect finding that the reports of the physicians who supported acceptance of the consequential emotional condition were based on an inaccurate medical history, as they did not mention appellant's preexisting psychological condition. The evidence clearly supports, however, that Drs. Willis, Currin, and Katz were in fact aware of appellant's preexisting psychological condition.

While Dr. Willis, in his April 24, 2014 report, related that appellant reported feelings of anger, depression, and anxiety following her November 2013 nonwork-related toe surgery, she was not diagnosed with anxiety and post-traumatic depression until after her work injury. Dr. Currin thereafter related in his April 25, 2014 report that appellant related that she had feelings of increased anxiety and depression in addition to her pain and disability following her work injury. He explained that she had reported taking psychotropic medications prior to the work related injury, but that she had not received psychiatric treatment. Dr. Currin also noted that appellant's psychiatric symptoms had not impacted her work performance prior to the work-related injury. The Board, therefore, finds that both Dr. Willis and Dr. Currin were aware of appellant's preexisting anxiety and depression at the time of their reports, wherein they described an aggravation of these conditions by the January 10, 2014 work injury. Furthermore, OWCP's medical adviser, Dr. Katz, reviewed Dr. Currin's April 25, 2014 report, as well as the medical reports of record on April 25, 2014 and recommended that appellant's claim be expanded to include a consequential adjustment disorder with mixed anxiety and depression.

OWCP's burden of proof to rescind requires rationalized medical opinion evidence in support of its decision.¹² The Board finds that OWCP improperly analyzed the medical opinions of appellant's treating physicians, Drs. Currin and Willis, as well as OWCP's medical adviser, Dr. Katz. The Board finds that the evidence of record supports that these physicians were aware of appellant's preexisting psychological condition that she sustained a consequential adjustment disorder with mixed anxiety and depressed mood due to the accepted January 10, 2014 employment injury and therefore had a complete factual and medical background to form the basis of their medical opinions finding causal relationship. As this rationale was the sole basis for OWCP's recession of appellant's accepted condition, the Board thus finds that OWCP did not meet its burden of proof.

¹⁰ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

¹¹ See *A.W.*, Docket 11-1915 (issued August 21, 2012).

¹² *Supra* note 9.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to rescind acceptance of adjustment disorder with mixed anxiety and depressed mood.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 18, 2016 is reversed.¹³

Issued: May 1, 2018
Washington, DC

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

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

¹³ Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.