

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

_____)	
K.T., Appellant)	
)	
and)	Docket No. 18-1561
)	Issued: April 22, 2019
DEPARTMENT OF THE AIR FORCE, TRAVIS)	
AIR FORCE BASE, CA, Employer)	
_____)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 13, 2018 appellant filed a timely appeal from a February 16, 2018 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 over the merits of this case.²

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 30, 2017, as she no longer had residuals or disability causally related to her accepted employment injury; and (2) whether

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

appellant has met her burden of proof to establish continuing disability or medical residuals due to the accepted conditions after May 30, 2017.

FACTUAL HISTORY

On May 8, 2006 appellant, then a 42-year-old child development program assistant, filed an occupational disease claim (Form CA-2) alleging stress due to continuous job abolishment and continuous harassment by management. She noted that she first became aware of her emotional condition and its connection to her federal employment in September 2001. Appellant stopped work in January 2007 and has not returned. By decision dated August 6, 2007, OWCP accepted her claim for temporary aggravation of adjustment disorder with mixed anxiety and depressed mood. Commencing June 10, 2006 it paid wage-loss compensation benefits on the supplemental rolls and on October 28, 2007 appellant was placed on the periodic rolls.³

On August 22, 2016 OWCP referred appellant for a second opinion evaluation with Dr. Alberto Lopez, a Board-certified psychiatrist, to determine the status of her accepted conditions and continued disability.

In a November 3, 2016 report, Dr. Lopez reviewed the case record, including a statement of accepted facts (SOAF), and provided examination findings. He noted that appellant's only employment had been with the employing establishment and that she wanted to return to work. Dr. Lopez noted that since 2008 she had been periodically treated by Dr. Micah Altman, Psy.D., a psychologist, every one to two weeks. He observed that appellant continued to have daily current symptoms including "anxiety and depression, erratic appetite, agitation, obsessive preoccupation with work factors, social withdrawal, lack of libido, and poor sleep." Based on responses to The Minnesota Multiphasic Inventory-2 (MMPI-2), Dr. Lopez diagnosed a paranoid disorder such as delusional disorder, which required medication, and noted that people with this type of disorder "are not open to psychological treatment." In response to questions posed by OWCP, he concluded that appellant continued to suffer from residuals of her original adjustment disorder with symptoms of depression and anxiety. Dr. Lopez opined that aggravation of her condition continued because her claim was still open and in litigation. He recommended therapy focused on a return to work. Dr. Lopez found no work limitations except that appellant not work with her former supervisor. He reported that her psychological testing suggested significant paranoia without clinical grounds.

In a February 13, 2017 report, Dr. Altman reviewed the report from Dr. Lopez and disagreed with his conclusions. He found the opinion of Dr. Lopez, that appellant remained depressed and anxious, but could return to work with no restrictions, was unsupported by the evidence.

OWCP requested clarification from Dr. Lopez. In a March 16, 2017 supplemental report, Dr. Lopez reiterated his opinion that appellant had no work restrictions other than not working with her former supervisor, who he added was no longer with the employing establishment. He also agreed that, if there was no current litigation, grievances, or complaints then obviously it was "not the case" that appellant's condition was aggravated by such a factor. Dr. Lopez noted that she remained brooding and preoccupied with her situation and her belief that she has been harmed

³ The employing establishment terminated appellant's employment effective January 26, 2007.

and wronged. He opined that it might be helpful to clarify the situation with appellant as she hoped to return to work with accommodation.

In an April 6, 2017 letter to OWCP, Dr. Altman asked that a new second opinion evaluation be performed, positing that Dr. Lopez's opinion was substandard and inadequate. He also alleged that the claims examiner's interactions with appellant were causing her stress.

In an April 28, 2017 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits because she ceased to have residuals of her accepted employment-related emotional conditions. It informed her that the proposed termination action was based on the opinion of Dr. Lopez, OWCP's referral physician. OWCP afforded appellant 30 days to submit evidence or argument challenging the proposed termination action.

In a letter dated April 27, 2017, appellant disagreed with the proposal to terminate her compensation.

Dr. Altman requested in a report dated May 17, 2017 that Dr. Lopez's opinion be disregarded due to his inappropriate and invalid use of MMPI testing and his unprofessional conduct.

By decision dated May 30, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, based on the opinion of Dr. Lopez.

On June 9, 2017 OWCP received appellant's request for an oral hearing before an OWCP hearing representative. The hearing was held on November 29, 2017. Both Dr. Altman and appellant testified during the hearing. Dr. Altman noted her disagreement with Dr. Lopez's conclusions. In a December 18, 2017 report, he reiterated his opinion that Dr. Lopez's report was inadequate, unrationalized, biased, and insufficient to support termination.

By decision dated February 16, 2018, OWCP's hearing representative affirmed OWCP's May 30, 2017 decision. The hearing representative found that Dr. Altman's reports contained insufficient medical rationale to create a conflict with Dr. Lopez's well-rationalized opinion.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP has accepted a claim and pays compensation, it bears the burden of proof to justify modification or termination of benefits.⁴ 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

⁴ *H.P.*, Docket No. 18-0851 (issued December 11, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ 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.⁸

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 May 30, 2017, based on November 3, 2016 and March 16, 2017 reports of Dr. Lopez, OWCP's referral physician. In his November 3, 2016 report, Dr. Lopez diagnosed a paranoid disorder such as delusional disorder and opined that she continued to have residuals of her original adjustment disorder with symptoms of depression and anxiety. He explained that appellant's aggravation continued because of her belief that her claim remained open and in litigation. Dr. Lopez opined that her condition is temporary and will likely become completely resolved and alleviated if she were to return to work as she wished to do. In a March 16, 2016 supplemental report, he responded to OWCP's question regarding whether the accepted conditions of temporary aggravation or adjustment disorder with mixed anxiety and depression with depressed mood continued if there was a lack of litigation "in 2007," by indicating that it was obviously not the case if there was no current litigation. Dr. Lopez, in his November 3, 2016 report, found appellant's accepted conditions had not resolved while in a March 16, 2017 supplemental report he provided a speculative, conflicting opinion as to whether the accepted conditions had resolved. The Board has held that a physician's contradictory opinions are insufficient to justify a termination of compensation.⁹

The Board also notes that Dr. Lopez provided no specific objective medical findings to substantiate that appellant's accepted conditions had resolved, such that she was no longer disabled. Dr. Lopez related that she continued to have daily current symptoms including anxiety and depression, poor sleep, agitation, and social withdrawal, but he opined that she was not totally disabled. To establish that appellant is no longer disabled due to the accepted conditions, the medical evidence must explain that she ceased to exhibit objective findings of the accepted

⁵ *J.D.*, Docket No. 18-0958 (issued January 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See D.P.*, Docket No. 18-0038 (issued January 4, 2019); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *H.P.*, *supra* note 4; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁹ *See J.H.*, Docket No. 18-0103 (issued October 15, 2018); *A.M.*, Docket No. 11-1205 (issued February 24, 2012).

conditions.¹⁰ Dr. Lopez provided a conclusory opinion, without rationalized objective support for his opinion that appellant's disability had ceased.¹¹

The Board therefore finds that Dr. Lopez's opinion is of limited probative value on the underlying issue of this case because he failed to provide a rationalized medical opinion, based on objective findings, that appellant ceased to have disability or residuals of her accepted employment-related conditions.¹²

For these reasons, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 30, 2017.¹³

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 30, 2017.

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 22, 2019
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

¹⁰ See *A.D.*, Docket No. 18-0497 (issued July 25, 2018).

¹¹ See *R.G.*, Docket No. 16-0271 (issued May 18, 2017).

¹² See *F.J.*, Docket No. 17-0147 (issued March 27, 2018); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹³ In light of the Board's disposition as to Issue 1, Issue 2 is moot.