

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

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**J.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Conyers, GA, Employer**

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**Docket No. 18-0958  
Issued: January 8, 2019**

*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 April 9, 2018 appellant filed a timely appeal from a February 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 4, 2018.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated November 20, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0958 (issued November 20, 2018).

## **FACTUAL HISTORY**

On January 21, 2000 appellant, then a 40-year-old supervisor of customer services, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to various claimed incidents and conditions at work, including the fact that the postmaster at her worksite treated her like a “second class citizen” and left her out of important managerial decisions which adversely affected her work as a supervisor of customer services. She stopped work on January 22, 2000.

By decisions dated June 30 and December 22, 2000, OWCP denied appellant’s emotional condition claim. After further development of the evidence, it accepted in August 2001 that she sustained employment-related post-traumatic stress disorder and adjustment reaction with depressed/anxious mood and reactive depression.<sup>3</sup> OWCP paid appellant disability compensation on the periodic rolls commencing June 16, 2002.

Appellant periodically received treatment for her emotional condition from Dr. Charles Nord, an attending clinical psychologist. In an April 18, 2003 report, Dr. Nord indicated that, when he treated her on April 10, 2003, she was in a highly agitated state. He noted that appellant had been under his care since 2000 and diagnosed severe panic attack and stress disorder.

In August 2010 OWCP referred appellant for a second opinion examination to Dr. Robert S. Benson, a Board-certified psychiatrist. It requested that Dr. Benson evaluate whether appellant continued to have residuals of her accepted employment-related emotional conditions.

In an October 18, 2010 report, Dr. Benson reported the findings of the psychiatric evaluation he conducted on October 10, 2010. He diagnosed major depressive disorder (single episode) and anxiety disorder (not otherwise specified), and he indicated that appellant continued to have residuals of her accepted employment-related conditions.

In July 2017 OWCP again referred appellant for a second opinion examination to Dr. Benson and asked him to evaluate whether appellant continued to have residuals of her accepted employment-related emotional conditions.

In an August 17, 2017 report, Dr. Benson reported the findings of the evaluation he conducted on that date, including the results of several psychiatric tests, and diagnosed appellant with major depressive disorder (single episode), anxiety disorder (not otherwise specified), and hypertension. He noted that she had a history that supported a diagnosis of major depressive disorder. Appellant had been in treatment with medication appropriate for that diagnosis and continued in treatment, which likely accounted for her minimal symptoms at the time of his examination. Dr. Benson indicated that, given her self-reported measures, appellant had consistently endorsed mild-to-moderate levels of anxiety and depression. Appellant had consistently reported symptoms that suggested a diagnosis of depression and had received a

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<sup>3</sup> In a July 27, 2017 statement of accepted facts, OWCP indicated under a heading for accepted events that were factors of employment that it had been determined “that the changes made with operational procedures, which were effectuated by the postmaster, directly affected [appellant’s] mode of operations.”

diagnosis of depression in a variety of settings. Dr. Benson advised that she currently was in treatment for depression with medication appropriate for the diagnosis. He noted that appellant reported few symptoms and there was little evidence of impairment, but advised that she had subjective complaints which were consistent with the objective findings in his August 17, 2017 evaluation.

Dr. Benson opined that the work-related condition of adjustment disorder with depressed mood had been superseded by appellant's diagnosis of major depressive disorder, single episode. He noted that she had that diagnosis for most of her treatment history and that there was no indication to change the diagnosis. Dr. Benson advised that, when appellant was evaluated in 2010, she was experiencing significant emotional distress, but noted that she was not experiencing significant emotional distress at the time of his current evaluation. There was little indication of impairment in her current function and she had appropriate relationships with others. Dr. Benson noted that there had been no changes in appellant's treatment plan in the past seven years suggesting that she had reached maximum medical improvement (MMI). He indicated that appellant's current level of symptoms was having little impact on her daily function.

Dr. Benson noted that appellant did not have any current disabling residuals related to her "accepted work injury of January 13, 2000." He indicated that she appeared stable on her current regimen of medication and had adequate function in the community and in her relationships with others. Appellant had experienced some relationship issues over the course of her treatment and she currently was distressed over her inability to have a continuing relationship with her grandchildren. Dr. Benson opined that this level of distress was not causing significant impairment and noted that she would be able to participate in a variety of limited-duty assignments. Appellant would be able to participate in vocational rehabilitation services to help her find other employment activities that would be consistent with her education and training. Dr. Benson indicated that she had reached MMI for treatment of her problem with major depressive disorder and she currently reported mild symptoms of depression. There had been no change in appellant's medication regimen except for reductions in the past seven years and she was not actively involved in any psychotherapy associated with her depression or work-related issues.

In an August 18, 2017 work capacity evaluation form (Form OWCP-5c), Dr. Benson noted that appellant was capable of performing her regular work for the employing establishment on a full-time basis, but advised that she had no interest in returning to such work at the present time. He indicated that she could function in a variety of work settings or training opportunities.

In a November 17, 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 justified by the opinion of Dr. Benson, OWCP's referral physician. OWCP afforded appellant 30 days to submit evidence or argument challenging the proposed termination action.

In an undated letter received by OWCP on December 14, 2017, appellant expressed disagreement with Dr. Benson's opinion that she could return to her regular work as a supervisor of customer services at the employing establishment.

By decision dated February 20, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective March 4, 2018 based on the opinion of Dr. Benson, OWCP's referral physician.

### **LEGAL PRECEDENT**

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 4, 2018.

OWCP accepted in August 2001 that appellant sustained employment-related post-traumatic stress disorder and adjustment reaction with depressed/anxious mood and reactive depression. Appellant received disability compensation commencing in June 2002, but OWCP terminated her wage-loss compensation and medical benefits effective March 4, 2018 based on August 17 and 18, 2017 reports of Dr. Benson, OWCP's referral physician.

In an August 17, 2017 narrative report, Dr. Benson determined that appellant ceased to have residuals of her accepted employment conditions, post-traumatic stress disorder and adjustment reaction with depressed/anxious mood and reactive depression. In an August 18, 2018 form report, he determined that appellant was capable of performing her regular work for the employing establishment on a full-time basis. The Board notes, however, that Dr. Benson failed to provide adequate medical rationale in support of these conclusions. Dr. Benson repeatedly noted in his August 17, 2017 report that appellant had a continuing diagnosis of major depressive disorder at the time of his August 17, 2017 evaluation, although he also reported that appellant appeared stable on her current regimen of medication and had adequate function in the community and in her relationships with others. However, he failed to explain why this major depressive disorder was no longer related, at least in part, to appellant's accepted condition of adjustment reaction with depressed/anxious mood and reactive depression.

Dr. Benson also indicated in his August 17, 2017 report that the "work-related condition of adjustment disorder with depressed mood has been superseded by her diagnosis of major depressive disorder, single episode." However, he did not provide an indication when this major depressive disorder superseded the identified employment-related depressive condition. Dr. Benson did not identify any specific treatment records to support his ostensible opinion that

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<sup>4</sup> *J.H.*, Docket No. 18-0103 (issued October 15, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>5</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Charles E. Minniss*, 40 ECAB 708 (1989).

<sup>6</sup> *Del K. Rykert*, 40 ECAB 284 (1988).

appellant's accepted condition of adjustment reaction with depressed/anxious mood and reactive depression had completely resolved before it was "superseded" by the diagnosis of major depressive disorder.<sup>7</sup> Importantly, he made no mention in the analysis portion of his August 17, 2017 report of appellant's accepted condition of post-traumatic stress disorder. Dr. Benson provided no specific discussion of whether this condition had resolved. In addition, he failed to adequately explain why appellant could perform her regular work as a supervisor of customer services given her current psychiatric condition. In sum, Dr. Benson's opinion is of limited probative value on the underlying issue of this case because he failed to provide a rationalized medical opinion that appellant ceased to have residuals of her accepted employment-related conditions.<sup>8</sup>

For these reasons, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 4, 2018.

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 4, 2018.

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<sup>7</sup> Dr. Benson only generally noted that, when appellant was evaluated in 2010, she was experiencing significant emotional distress.

<sup>8</sup> See *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 20, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 8, 2019  
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