

FACTUAL HISTORY

On March 14, 2002 appellant, then a 58-year-old immigration inspector, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition when he was subjected to hostility, harassment, abuse and stress while in the performance of duty. He noted that he first became aware of his emotional condition on June 8, 1998 and first attributed this condition to factors of his federal employment on April 30, 2001. On August 3, 2002 appellant provided a list of 35 events which he felt caused or contributed to his emotional condition. On November 6, 2002 OWCP accepted his claim for depression, anxiety, and stress. It paid appellant wage-loss compensation on the periodic rolls effective December 29, 2002.

In notes dated December 14, 2005 through June 4, 2012, Dr. Bruce T. Smith, a Board-certified psychiatrist, diagnosed anxiety and depression and found that appellant was totally disabled from work. On February 26, 2013 Dr. Grant Belnap, a Board-certified psychiatrist, examined appellant and opined that he continued to experience residuals and disability as a result of his employment-related conditions of anxiety and depression.

On October 15, 2013 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Camille A. LaCroix, a Board-certified psychiatrist, for a second opinion evaluation. The SOAF listed the accepted factors as working 70 hours a week and a December 24, 1998 assault.

In her December 3, 2013 report, Dr. LaCroix reviewed the SOAF and appellant's medical history. She administered diagnostic testing which indicated that appellant was depressed and anxious. Dr. LaCroix diagnosed chronic adjustment disorder with mixed anxiety and depressed mood as well as obsessive compulsive personality disorder (OCD), alcohol use disorder, and opioid use disorder. She found however, that appellant did not currently have any psychiatric disorder related to the accepted factors of employment. Dr. LaCroix further found that he did not meet the criteria for post-traumatic stress disorder (PTSD) due to his work at the employment establishment. She found that appellant was not currently experiencing a major depressive disorder and that his current depressive symptoms were likely related to his OCD rather than accepted work exposures. Dr. LaCroix found that appellant's primary disabling diagnosis was OCD which caused him to focus excessively on work, rules, and what others are doing. She indicated that appellant's OCD would make it impossible for him to return to work in a field that required extensive rules, regulations, and interaction with the public. Dr. LaCroix also opined that appellant would not likely do well working for the government. She completed a work capacity evaluation (Form OWCP-5) and determined that appellant could not work due to his OCD, alcohol use, and opioid use disorders.

On January 9, 2014, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. LaCroix's second opinion report. It afforded him 30 days to provide a written response if he disagreed with the proposed termination.

In a February 13, 2014 report, Dr. William D. Stratford, Jr., a Board-certified psychiatrist and appellant's physician, described his review of medical records and examination of appellant. He administered a diagnostic test for PTSD and found that appellant met the requirements of that diagnosis. Dr. Stratford also found generalized anxiety disorder and minimal alcohol abuse, based

on testing, but did not find significant opioid use. He diagnosed chronic PTSD due to appellant's employment history with the government, prolonged generalized anxiety disorder, recurrent major depression, dysthymia, and OCD. Dr. Stratford found that appellant continued to be symptomatic due to these diagnosed conditions and that appellant's current symptoms were work related. He further found that appellant was unable to work in any position due to his psychiatric issues.

On April 28, 2015 OWCP referred appellant for an impartial medical examination (IME) with Dr. Michael Friedman, a Board-certified psychiatrist, to resolve the conflict of medical opinion between Drs. LaCroix and Stratford regarding appellant's continuing employment-related disability and medical residuals.

In a June 11, 2015 report, Dr. Friedman reviewed appellant's history of injury, medical records, and the SOAF. He performed diagnostic testing and diagnosed adjustment disorder with mixed anxiety and depression, preexisting the accepted employment events; panic disorder, unrelated to employment events; OCD; and delusional disorder. In answers to questions posed by OWCP, Dr. Friedman initially recognized the accepted conditions, however, he opined that appellant's ongoing psychiatric pathology far exceeded what would be expected based on his history. He noted that appellant's ongoing distress and anxiety were not work related, but rather a chronic preexisting psychiatric disorder. In response to the issue of causal relationship and the return to baseline, Dr. Friedman opined that appellant's psychiatric condition was not precipitated or aggravated by his employment as enumerated in the SOAF.

On June 16, 2015 OWCP issued a notice of proposed termination based on Dr. Friedman's report. It afforded appellant 30 days to respond in writing if he disagreed with the proposed termination. In a letter dated July 14, 2015, appellant disagreed with the proposed termination and requested additional time to formulate a response.

By decision dated July 29, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective July 30, 2015 based on the special weight accorded Dr. Friedman's report as the IME. By decision dated August 10, 2015, it reissued the July 29, 2015 termination decision and amended the date of termination of appellant's wage-loss compensation and medical benefits to August 11, 2015 as the July 29, 2015 decision had not been sent to appellant's then counsel.

On August 9, 2016 appellant, through counsel, requested reconsideration of the August 10, 2015 termination decision. Counsel contended that the SOAF was deficient and that Dr. Friedman's report was not based on an accurate history of injury.

In notes dated April 20 and September 2, 2015, Dr. Karen L. McPeak, a psychiatrist, examined appellant due to depression and irritability. She diagnosed depressive disorder and anxiety disorder. Dr. McPeak noted that appellant attributed his condition to his work.

By decision dated November 7, 2016, OWCP denied modification of its August 10, 2015 decision.

On November 3, 2017 appellant requested reconsideration of the November 7, 2016 decision. He resubmitted factual information regarding his initial occupational disease claim. Appellant also provided additional factual evidence. He contended that Dr. Stratford's report was

entitled to the weight of the medical evidence and resubmitted his February 13, 2014 report. On March 27, 2018 appellant argued that the SOAF was deficient, that there was no conflict of medical opinion when OWCP referred the case to Dr. Friedman, such that he was improperly designated as IME, and that the November 7, 2016 decision was improper. On April 8, 2018 he again contended that the SOAF was insufficient and that OWCP wrongfully terminated his wage-loss compensation and medical benefits.

By decision dated October 25, 2018, OWCP denied modification of its November 7, 2016 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.² 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.³ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

Section 8123(a) 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.⁷ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.⁸

² *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *G.H.*, Docket No. 18-0414 (issued November 14, 2018); *Del K. Rykert*, 40 ECAB 294, 295-96 (1988).

⁵ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *R.P.*, Docket No. 18-0900 (issued February 5, 2019); *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ 5 U.S.C. § 8123(a); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *D.W.*, *supra* note 2.

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, effective August 11, 2015.

OWCP accepted appellant's claim for depression, anxiety, and stress on November 6, 2002. Appellant's attending physicians, Drs. Smith and Belnap, continued to support his disability from work and need for medical condition due to the accepted conditions through February 26, 2013. On October 15, 2013 OWCP referred appellant, a SOAF, and a series of questions to Dr. LaCroix for a second opinion examination. In her December 3, 2013 report, Dr. LaCroix diagnosed chronic adjustment disorder with mixed anxiety and depressed mood as well as OCD, alcohol use disorder, and opioid use disorder. Dr. LaCroix found that appellant did not currently have any psychiatric disorder related to the accepted factors of employment. She further found that appellant's current depressive symptoms were likely related to his OCD rather than accepted work exposures.

On January 9, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. LaCroix's report. In response, appellant provided a report dated February 13, 2014 from Dr. Stratford opining that he continued to experience employment-related disability and medical residuals due to his accepted emotional conditions. OWCP properly identified a conflict of medical opinion between Drs. LaCroix and Stratford, and referred appellant for an IME with Dr. Friedman. In his June 11, 2015 report, Dr. Friedman reviewed appellant's history of injury, medical records, and the SOAF. He performed diagnostic testing and diagnosed adjustment disorder with mixed anxiety and depression, preexisting the accepted employment events, panic disorder, unrelated to employment events, OCD, and delusional disorder. In answers to questions posed by OWCP, Dr. Friedman initially recognized the accepted conditions, however, that appellant's ongoing psychiatric pathology far exceeded what would be expected based on his history. He opined that appellant's ongoing distress and anxiety were not work related, but rather a chronic preexisting psychiatric disorder. In response to the issue of causal relationship and the return to baseline, Dr. Friedman opined that appellant's psychiatric conditions were not precipitated or aggravated by his employment as enumerated in the SOAF.

The Board finds that Dr. Friedman's report was inconsistent with the SOAF. OWCP accepted that appellant's diagnosed depression and anxiety were work related.⁹ It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.¹⁰

As noted, in his June 11, 2015 report, Dr. Friedman responded to questions posed by OWCP where he indicated that appellant's accepted conditions of depression and anxiety were not work related but a chronic preexisting psychiatric disorder which were not precipitated or aggravated by his employment.

⁹ *D.W., supra* note 2; *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁰ *Id.*; *V.C.*, Docket No. 14-1912 (issued September 22, 2015).

Medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹¹ When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on the accepted facts.¹²

In *Paul King*,¹³ the Board found that the report of an impartial medical examiner who disregarded a critical element of the SOAF was of diminished probative value. In *King*, the impartial medical examiner also disagreed with the medical basis for acceptance of a condition. The Board found that this defective report was insufficient to resolve an existing conflict of medical opinion evidence.¹⁴

Dr. Friedman likewise disregarded the SOAF¹⁵ and, as in *King*, did not rely on the SOAF regarding the accepted conditions. The Board therefore finds his report to be of diminished probative value. The Board further notes that it is the function of a medical expert to give an opinion only on medical questions, not to find facts.¹⁶

The Board therefore finds that Dr. Friedman's opinion is of limited value on the relevant issue in this case, and that OWCP improperly relied on his opinion to terminate appellant's wage-loss compensation and medical benefits for the accepted emotional conditions of depression and anxiety.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective August 11, 2015.¹⁷

¹¹ *Supra* note 9; *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

¹² *Supra* note 9; *J.H.*, Docket No. 16-0590 (issued September 12, 2016).

¹³ 4 ECAB 356 (2003).

¹⁴ *Id.*

¹⁵ The Board notes that the SOAF relied upon by the IME was from 2013 and is now stale and should therefore be updated.

¹⁶ *D.W.*, *supra* note 4; *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁷ Due to the disposition of Issue 1, Issue 2 is moot.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 27, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board