

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

_____)	
E.J., Appellant)	
)	
and)	Docket No. 20-0013
)	Issued: November 19, 2020
DEPARTMENT OF DEFENSE, DEFENSE)	
FINANCE & ACCOUNTING SERVICE,)	
Columbus, OH, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On October 2, 2019 appellant, through counsel, filed a timely appeal from a June 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 6, 2019 decision, OWCP received additional evidence. 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 30, 2018, as she no longer had residuals or disability due to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish continuing residuals or disability on or after October 30, 2018.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On November 13, 2003 appellant, then a 34-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that on that date a door closed on her left hand while in the performance of duty. She stopped work on November 13, 2003 and returned to light-duty work on November 24, 2003. Appellant worked part time beginning in January 2004 and stopped work completely on September 6, 2004. OWCP accepted the claim for contusion of the left hand, crush injury of the left hand, reflex sympathetic dystrophy (RSD) of the left arm, right carpal tunnel syndrome, bilateral tenosynovitis of the hands and wrists, anxiety and a single episode of moderate depression. It paid appellant intermittent wage-loss compensation on the supplemental rolls as of January 10, 2004 and on the periodic rolls as of December 26, 2004.

By decision dated October 5, 2009, OWCP terminated appellant's medical benefits finding that all of the accepted conditions had resolved.

On October 13, 2009 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on January 11, 2010. By decision dated March 30, 2010, an OWCP hearing representative affirmed the October 5, 2009 decision terminating medical benefits. OWCP further found, however, that a conflict in medical opinion had been created as to whether appellant had continuing residuals of her RSD condition.

OWCP then referred appellant, along with a statement of accepted facts (SOAF), to Dr. Michael S. Baugh, a Board-certified neurologist, for an impartial evaluation. In a report dated May 17, 2020, Dr. Baugh advised that she had symptoms of intractable left upper extremity pain, but his objective findings and her available diagnostic test results did not meet the diagnostic criteria for RSD.

By decision dated June 9, 2010, OWCP terminated appellant's medical benefits for her RSD condition.

On June 22, 2010 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on October 7, 2010. By decision dated December 28, 2010, an OWCP hearing representative affirmed the June 9, 2010 decision terminating appellant's medical benefits for the RSD condition based on the opinion of Dr. Baugh.

⁴ Docket No. 13-0517 (issued May 19, 2014); Docket No. 10-0743 (issued November 2, 2010).

Appellant continued to request reconsideration. By decisions dated March 8 and September 26, 2012, OWCP denied modification of its prior decisions regarding termination of her RSD condition.

Appellant continued to receive wage-loss compensation due to her accepted emotional condition. On January 3, 2013 appellant, through counsel, filed an appeal from the September 26, 2012 decision terminating medical benefits for her left arm RSD condition. By decision dated May 19, 2014, the Board found that OWCP had properly terminated appellant's medical benefits for her RSD condition and that she had not established continuing employment-related residuals of RSD after June 9, 2010.⁵

Subsequent to OWCP's September 26, 2012 decision, appellant submitted an August 20, 2012 report in which Urszula Klich, Ph.D., a clinical psychologist, noted appellant's history of chronic pain and described her pain management psychotherapy. Dr. Klich indicated that appellant was seeking referral to another provider for pain management. In reports dated August 22 and September 5, 2012, Kristina Seymour, M.A., a clinical doctoral student, described appellant's participation in group therapy sessions.

On November 6, 2014 OWCP referred appellant to Dr. Brian Teliho, a Board-certified psychiatrist, for a second opinion evaluation. In a December 8, 2014 report, Dr. Teliho noted seeing her for psychiatric evaluation on December 4, 2014 and he reported that she had not received psychological care since 2012. He performed a mental status examination and diagnosed pain disorder associated with both psychological factors and general medical condition, mild major depressive disorder, and anxiety and personality disorders, not otherwise specified.

In June 2015, OWCP referred appellant to Dr. Eric Furie, a Board-certified orthopedic surgeon. In an August 27, 2015 report, following physical examination and a left hand x-ray study, Dr. Furie advised that the crush injury of the fourth metacarpal head had resolved and diagnosed a left small finger proximal interphalangeal (PIP) joint contracture. He indicated that appellant's subjective complaints seemed to outweigh objective findings and opined that her complaints were likely related to her anxiety and depression. Dr. Furie advised that she could perform the duties of an accounting technician. On an attached work capacity evaluation (Form OWCP-5c), the only restriction provided was a 5-minute break every 30 minutes for fingers of the left hand.⁶

On July 24, 2018 OWCP referred appellant to Dr. Robert Michael Prudent, a Board-certified psychiatrist, for a second opinion evaluation. In an August 22, 2018 report, Dr. Prudent noted his review of the SOAF, medical record, and questions provided. He indicated that he had previously seen appellant in 2010.⁷ Dr. Prudent indicated that it was significant that she was not involved in psychiatric treatment and had not seen a psychologist on a regular basis, but had participated in some sort of therapy or support group at her church. Appellant also, continued to take a low dose of medication for her depression and anxiety, which was managed by a primary care physician and not a psychiatrist. Dr. Prudent diagnosed anxiety and depressive disorders, not otherwise specified, and chronic pain disorder. He opined that, given appellant's orthopedic

⁵ Docket No. 13-0517, *id.*

⁶ The SOAF provided Dr. Furie set forth the physical requirements of the accounting technician position.

⁷ Dr. Prudent had previously provided a second opinion evaluation on October 20, 2010.

injuries had largely resolved, it was difficult to believe that she continued to have a psychiatric diagnosis resulting from a hand injury that had occurred 15 years prior. Dr. Prudent noted that her symptoms outweighed the objective findings, indicating that, if anxiety and depression were so significant and precluded her from working, one would assume she would be more actively engaged in psychiatric and psychological treatment. He concluded that appellant's continued anxiety and depression were not the result of the employment injury. On an attached psychiatric work capacity evaluation (Form OWCP-5a), Dr. Prudent advised that she could perform her usual job strictly from a psychiatric prospective.

On September 28, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Prudent's second opinion report. It afforded her 30 days to provide a written response if she disagreed with the proposed termination. Nothing further was received.

By decision dated October 30, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that same day, based on Dr. Prudent's evaluation.

On November 7, 2018 appellant, through counsel, requested a hearing before an OWCP hearing representative.

In a February 25, 2019 report, Dr. Kela Y. Henry, a Board-certified family physician, noted that she was appellant's primary care physician. She noted that appellant was injured in November 2003 and subsequently diagnosed with RSD, which was a painful condition that could not be cured. Dr. Henry indicated that appellant's pain fluctuated in intensity and was worse during the cold weather months and could range from mild to extremely severe and disabling, and that attempts to use her hand and fingers caused increased pain such that she could not move her left upper extremity without assistance. She advised that, due to her chronic pain, appellant also suffered from moderate anxiety and depression, and appellant's ability to work was very limited, especially during the fall and winter. Dr. Henry opined that appellant would never fully recover from her injuries and was unable to perform her previous job duties and could not work a typical full-time schedule of 40 hours weekly.⁸

At the March 22, 2019 hearing, counsel asserted that Dr. Prudent's opinion was illogical because he provided no basis for his conclusion. He argued that appellant's left hand injury remained symptomatic after 15 years and that Dr. Henry's opinion supported that appellant's condition remained employment related. Appellant testified that she still had severe left hand and finger pain.

By decision dated June 6, 2019, an OWCP hearing representative affirmed the October 30, 2018 decision. She found that it was illogical to conclude that appellant's current reported symptoms of depression and anxiety were employment related because Dr. Henry advised that

⁸ In the interim, on December 11, 2018, OWCP issued a preliminary determination that an overpayment of compensation in the amount of \$2,853.35 had been created because appellant continued to receive wage-loss compensation after the October 30, 2018 termination. Appellant did not respond to the preliminary determination, and by decision dated January 14, 2019, OWCP finalized the overpayment. She did not file an appeal with the Board from the January 14, 2019 final overpayment decision.

appellant's emotional condition was due to RSD, however, OWCP and the Board had found that appellant's RSD condition had resolved.

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.⁹ 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.¹⁰ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹² 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.¹³

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 30, 2018, as she no longer had residuals or disability due to her accepted employment injury.

The Board finds that OWCP properly accorded the weight of the medical opinion evidence to Dr. Prudent. In his August 22, 2018 report, Dr. Prudent described appellant's November 13, 2003 employment injury, noted her extensive medical history and that her accepted orthopedic conditions and RSD had resolved. He noted that it was difficult to understand how she continued to have psychiatric diagnoses resulting from a hand injury that occurred 15 years prior. Dr. Prudent indicated that appellant's symptoms outweighed her objective findings. He explained that, if her anxiety and depression were so significant and precluded her from working, one would assume she would be more actively engaged in psychiatric and psychological treatment. Dr. Prudent concluded that appellant's continued anxiety and depression were not the result of the employment injury and advised that she could perform her usual job strictly from a psychiatric prospective.

Dr. Prudent based his opinion on a proper factual and medical history and physical examination findings. He provided medical rationale for his opinion that appellant did not have a current residual emotional condition related to the employment injury.¹⁴ Moreover, appellant did not respond to the notice of proposed termination, and there is no other medical evidence

⁹ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *S.F.*, 59 ECAB 642 (2008).

¹⁰ *V.S.*, Docket No. 19-1792 (issued August 4, 2020); *I.J.*, 59 ECAB 408 (2008).

¹¹ *A.C.*, Docket No. 19-1522 (issued July 27, 2020); *T.P.*, 58 ECAB 524 (2007).

¹² *D.B.*, *supra* note 9; *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹³ *A.J.*, Docket No 18-1230 (issued June 8, 2020); *T.P.*, *supra* note 11.

¹⁴ *T.C.*, Docket No. 19-1383 (issued March 2 2020); *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

contemporaneous with the termination on October 30, 2018. The last medical evidence submitted by her was an August 20, 2012 report from Dr. Klich who described pain management psychotherapy, and two treatment notes dated August 22 and September 5, 2012 in which Ms. Seymour indicated that appellant had attended group therapy sessions.¹⁵

The Board therefore finds that Dr. Prudent's opinion was the only medical evidence of record contemporaneous with the termination. Accordingly, OWCP properly relied on his well-rationalized September 22, 2018 second opinion report in terminating appellant's wage-loss compensation and medical benefits, effective October 30, 2018.¹⁶

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated appellant's wage-loss compensation and medical benefits, the burden of proof shifts to her to establish continuing disability or residuals, after that date, causally related to her accepted injury.¹⁷ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish continuing employment-related disability or residuals, on or after October 30, 2018, due to the accepted employment injury.

Following the termination of her wage-loss compensation and medical benefits, appellant submitted a February 25, 2019 report in which Dr. Henry noted that appellant was diagnosed with RSD, which was a painful condition that could not be cured. Dr. Henry advised that, due to appellant's chronic pain, appellant also suffered from moderate anxiety and depression, that she would never fully recover from her injuries, and that she was unable to perform her previous job duties and could not work 40 hours weekly. While she concluded that appellant could not return to her prior employment position or work for a 40-hour workweek, appellant did not provide rationale to explain why her continuing disability was causally related to her accepted conditions. The Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden

¹⁵ See *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

¹⁶ *T.C.*, *supra* note 14; see also *L.B.*, *id.*

¹⁷ *C.C.*, Docket No. 19-1062 (issued February 6, 2020).

¹⁸ *T.C.*, *supra* note 14.

of proof.¹⁹ Dr. Henry's report is therefore of diminished probative value and insufficient to meet appellant's burden of proof to establish continuing disability.²⁰

Appellant has not submitted sufficiently rationalized medical evidence establishing employment-related disabilities or residuals on or after September 17, 2017 due to an accepted condition. As such, the Board finds that she has not met her burden of proof.²¹

On appeal counsel argues that OWCP's decision was contrary to fact and law. As explained above, however, the medical evidence of record established that OWCP properly terminated appellant's wage-loss compensation and medical benefits for her anxiety and depression conditions on October 30, 2018. Furthermore, the record does not contain a rationalized medical opinion establishing continuing residuals or disability on or after that date.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for her anxiety and depression conditions on October 30, 2018. The Board further finds that appellant has not met her burden of proof to establish continuing residuals or disability, on or after October 30, 2018, causally related to her accepted November 13, 2003 employment injury.

¹⁹ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

²⁰ *L.S.*, Docket No. 19-0959 (issued September 24, 2019).

²¹ *T.C.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2020
Washington, DC

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

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

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