

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

J.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 20-0519
Issued: November 30, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 7, 2020 appellant filed a timely appeal from a December 6, 2019 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.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 7, 2019, as she no longer had residuals or disability causally related to her October 15, 2001 employment injury.

FACTUAL HISTORY

On November 6, 2001 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2001, she was attacked by a guard dog and sustained serious bite marks and scratches on her right thigh, right side, left hand, and sustained

¹ 5 U.S.C. § 8101 *et seq.*

scratches on her left knee, and right elbow while in the performance of duty. She stopped work on October 15, 2001.

OWCP accepted the claim for left hand dog bite, right thigh dog bite, chest dog bite, and post-traumatic stress disorder (PTSD). It paid appellant wage-loss compensation on the supplemental rolls as of June 15, 2002, and the periodic rolls as of June 15, 2003.

In October 2004 OWCP authorized vocational rehabilitation services, including training at the Cuyahoga Community College. After completing vocational services, appellant returned to work full time on July 10, 2006, as an account representative/billing clerk at the Cleveland Clinic.

By decision dated September 14, 2006, OWCP issued a formal loss of wage-earning capacity (LWEC) determination. It found that appellant's account representative/billing clerk position effective July 10, 2006, with wages of \$525.00 per week, fairly and reasonably represented her wage-earning capacity and was vocationally suitable. OWCP reduced her wage-loss compensation to net compensation of \$835.18 every 28 days, effective September 3, 2006.

In a report dated July 28, 2008, Deborah Koricke, a clinical psychologist, diagnosed PTSD and opined that appellant continued to suffer from residual symptoms indicative of PTSD. She indicated that appellant could never return to work as a letter carrier.

On January 5, 2011 OWCP referred appellant to Dr. Richard Friedell, a Board-certified psychiatrist, for a second opinion evaluation to determine the status of her accepted condition. In a report dated January 22, 2011, Dr. Friedell related appellant's history of injury and noted that appellant was embarrassed to have PTSD. He related that she continued with symptoms of avoidance and flashbacks. Dr. Friedell related that appellant was almost as phobic of treatment as she was of dogs and open spaces. He concluded that as with many patients, appellant was prone to a permanent illness stimulated by an acute trauma. Dr. Friedell concluded, however, that appellant's disability would most likely end if she reached an earnings potential equivalent to that of her former employment.

By development letter dated October 23, 2018, OWCP advised appellant that it required periodic medical reports to determine the status of the accepted medical condition. It requested that she provide an opinion from her treating physician regarding the status of her accepted condition, her ability to return to work as a letter carrier, and her current medical treatment plan.

In a letter dated November 20, 2018, appellant explained that she had moved to Brooklyn, New York in November 2015, and did not have a treating physician. She requested that OWCP refer her to a physician in New York to obtain the requested report.

On June 19, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case file, and a set of questions, to Dr. Tara Brass, a Board-certified psychiatrist, for a second opinion examination regarding the status of appellant's October 15, 2001 employment injury.

In a July 17, 2019 report, Dr. Brass noted appellant's history of injury and treatment and related that appellant reported subjective complaints of flashbacks, rated as moderate, despite the incident occurring 18 years prior. She conducted a psychiatric examination and reported findings which included that appellant was in no obvious pain or distress, appeared well-rested, and

ambulated without assistance. Dr. Brass opined that, from a psychiatric viewpoint, there was no disability or permanency with regard to the October 15, 2001 employment injury, no disabling residuals, and appellant was able to work in a full-time, full-duty capacity. He opined that appellant's PTSD had resolved.

On August 22, 2019 OWCP referred appellant, along with a SOAF, the case file, and a set of questions, to Dr. Paul Wein, Board-certified in internal medicine, for a second opinion examination regarding the status of appellant's October 15, 2001 accepted physical conditions.

In a September 18, 2019 report, Dr. Wein noted that appellant had subjective complaints of numbness in the right leg when sitting, and scarring on the right thigh. He examined appellant and noted that the scarring was almost negligible, she had no obvious physical limitations, was able to walk into the office and climb onto the examination table without any difficulty, no evidence of head trauma, no clubbing, cyanosis, or edema, had full range of motion of all joints, and good pedal pulses were present bilaterally. Dr. Wein indicated that appellant had normal physical examination findings and he found no disability and no active medical problems. He opined that appellant was capable of working her date-of-injury position in a full-time, full-duty capacity.

On October 17, 2019 OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on the second opinion evaluations of Dr. Brass and Dr. Wein who found that the accepted conditions had ceased without residuals. It afforded her 30 days to submit additional evidence. No additional evidence was received.

By decision dated December 6, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective December 7, 2019, finding that the weight of the medical evidence rested with Dr. Wein and Dr. Brass, the second opinion examiners, who concluded in reports dated July 17 and September 18, 2019, that appellant ceased to have residuals or disability causally related to her accepted October 15, 2001 employment injury.² It also noted that it had not received any additional evidence or argument from appellant in response to the notice of proposed termination.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of compensation benefits.³

It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ OWCP's burden of proof includes the necessity

² OWCP further found that, since it determined that appellant no longer had residuals of her accepted work-related injury and was no longer disabled from work, formal modification of her LWEC determination was unnecessary.

³ *E.K.*, Docket No.18-0835 (issued September 23, 2020); *see D.M.*, Docket No. 19-0749 (issued August 19, 2019); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *T.S.*, Docket No. 19-0476 (issued September 24, 2020); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 7, 2019, as she no longer had residuals or disability causally related to her October 15, 2001 employment injury.

OWCP referred appellant to Dr. Brass, a Board-certified psychiatrist, and Dr. Wein, a Board-certified internist, for second opinion examinations to determine the status of her accepted conditions and her work capacity.

In her comprehensive July 17, 2019 report, Dr. Brass, reviewed the SOAF provided by OWCP and noted the accepted conditions. She described the employment injury and appellant's continuing complaints. Dr. Brass provided findings from the evaluation she performed that day and noted that appellant was able to calmly and neutrally describe the employment incident which had occurred some 18 years previously. She opined that appellant's work-related PTSD had resolved and appellant was no longer disabled.

In his September 18, 2019 report, Dr. Wein reviewed the SOAF provided by OWCP and noted the accepted conditions. He related that appellant's physical examination revealed normal findings and he found no disability and no active medical problems. Dr. Wein determined that appellant was capable of working her date-of-injury position in a full-time, full-duty capacity.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Brass and Dr. Wein, who based their opinions on a proper factual and medical history and provided examination findings and medical rationale for their opinions. Their reports contain well-rationalized opinions based on medical evidence regarding the accepted conditions causally related to appellant's October 15, 2001 employment injury.⁸ Accordingly, OWCP properly relied on the second opinion reports of Dr. Brass and Dr. Wein in terminating appellant's wage-loss compensation and medical benefits.⁹

The record also contains the July 28, 2008 report from Dr. Koricke who opined that appellant continued to suffer from residual symptoms indicative of PTSD and that she could never return to work as a letter carrier, and the January 5, 2011 report from Dr. Friedell who also related

⁵ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁷ *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

⁸ *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *R.B.*, Docket No. 19-0204 (issued September 6, 2019).

⁹ *See T.C.*, Docket No. 19-1383 (March 27, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

that appellant continued to have residuals of her PTSD condition. However, the Board notes that these reports were not contemporaneous to the termination of appellant's compensation benefits. The Board has held that stale medical evidence cannot form the basis for a current evaluation of residual symptomology, disability determination, or other medical determinations.¹⁰ Therefore these reports are insufficient to support continuing work-related residuals and disability.¹¹

The Board thus finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective December 7, 2019.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 7, 2019, as she no longer had residuals or disability causally related to her October 15, 2001 employment injury.

ORDER

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

Issued: November 30, 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

¹⁰ See *B.J.*, Docket No. 18-1186 (issued July 9, 2019); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹¹ *Id.*