

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

J.D., Appellant

and

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

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**Docket No. 20-1167
Issued: January 26, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 18, 2010 appellant filed a timely appeal from an April 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted to enable her to explain the discriminatory and harassing acts levied against her by the employing establishment. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 27, 2020 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.*

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective May 24, 2020.

FACTUAL HISTORY

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

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. On August 15, 2001 OWCP accepted appellant's claim for post-traumatic stress disorder and adjustment reaction with depressed/anxious mood and reactive depression. Commencing June 16, 2002, it paid her wage-loss compensation for disability from work on the periodic rolls.

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.

On August 27, 2010 OWCP referred appellant for a second opinion examination with Dr. Robert S. Benson, a Board-certified psychiatrist. It requested that he evaluate whether she 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 indicated that appellant continued to have residuals of her accepted employment-related conditions.

On July 27, 2017 OWCP again referred appellant for a second opinion examination with Dr. Benson and asked him to evaluate whether she 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. Dr. Benson advised that 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. He indicated that, given her self-reported measures, she had consistently endorsed mild-to-moderate levels of anxiety and depression. Dr. Benson advised that

⁴ Docket No. 18-0958 (issued January 8, 2019).

appellant currently was in treatment for depression with medication appropriate for the diagnosis. He noted that she 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 employment-related condition of adjustment disorder with depressed mood had been “superseded” by the diagnosis of major depressive disorder, single episode.

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. He noted that there had been no changes in her treatment plan in the past seven years suggesting that she had reached maximum medical improvement (MMI). Dr. Benson maintained 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 employment-related issues.

In an August 18, 2017 work capacity evaluation (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 August 18, 2017 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.

Appellant appealed to the Board and, by decision dated January 8, 2019,⁵ the Board reversed OWCP's February 20, 2018 termination decision. The Board found that Dr. Benson failed to provide adequate medical rationale to support his August 17, 2017 opinion that she ceased to have residuals of her accepted employment-related emotional conditions. The Board noted that he maintained in his August 17, 2017 report that appellant had a continuing diagnosis of major depressive disorder at the time of the August 17, 2017 evaluation, but found that he failed to explain why this major depressive disorder was no longer related, at least in part, to her accepted condition of adjustment reaction with depressed/anxious mood and reactive depression. The Board also noted that Dr. Benson indicated in his August 17, 2017 report that the employment-related condition of adjustment disorder with depressed mood had been "superseded" by her diagnosis of major depressive disorder, single episode. However, Dr. Benson did not provide an indication of when this major depressive disorder superseded the identified employment-related depressive condition. The Board further maintained that he did not identify any specific treatment records to support his ostensible opinion that 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. It also noted that Dr. Benson made no mention in the analysis portion of his August 17, 2017 report of her accepted condition of post-traumatic stress disorder, and that he 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.

On July 1, 2019 OWCP again referred appellant for a second opinion examination with Dr. Benson. It requested that he evaluate whether she continued to have residuals of her accepted employment-related emotional conditions. OWCP provided Dr. Benson a copy of the case record, which included a recent statement of accepted facts.

In an August 6, 2019 report, Dr. Benson discussed appellant's factual and medical background and reported the findings of the evaluation he performed on that date. He noted that she was quite distressed when there was a change in her workers' compensation benefits and remained angry about the matter even though her benefits had recently been reinstated. Dr. Benson noted that appellant was aware of her current circumstances and there was no evidence of memory deficit. Appellant's fund of knowledge was appropriate for her education and age, and she discussed her present situation in a logical and coherent manner. Dr. Benson advised that she was distressed and angry about having to have a reevaluation and she was concerned about the impact the reevaluation would have on her benefits. There was no indication of unusual sadness or evidence of delusional thinking or hallucinations. Dr. Benson noted that appellant denied feeling hopeless and denied any suicidal thoughts. He indicated that she completed a PHQ-9 test and her score of 19 indicated the presence of moderately severe symptoms of depression. Appellant also completed a GAD-7 test and her score of 20 indicated the presence of severe symptoms of anxiety. Dr. Benson indicated that these results were not consistent with her clinical presentation. He noted that, during the evaluation, appellant reported severe psychiatric symptoms, a marked change from her August 17, 2017 assessment. The increase in appellant's distress was primarily focused on the disruption of her workers' compensation benefits and the financial consequences. Dr. Benson diagnosed major depressive disorder, single episode; anxiety disorder, not otherwise specified; and hypertension. He noted that, in conjunction with the August 17, 2017 evaluation, it was his opinion that appellant's employment-related condition had resolved. At the time of that

⁵ *Id.*

evaluation, appellant reported few symptoms and was being treated with medication for her previous diagnosis of major depressive disorder. Dr. Benson reported that she was stable on that regimen of medication and there was no evidence at that time that her employment-related condition was still active or causing objective findings. He indicated that at the time of appellant's evaluation on August 6, 2019 she reported marked intensification of her symptoms. There had been a change in appellant's medication due to an increase in symptoms and it was clear that the increase in her symptoms was an expected reaction to the financial consequences of losing her workers' compensation benefits. Dr. Benson noted that there was no indication that the increase in her symptoms was related to her "original date of injury, [January 13, 2000]."

Dr. Benson noted that appellant's treating physician made a decision to change her medication and opined that it is unlikely that a change in medication would have a beneficial effect on her symptoms. He indicated that she endorsed a high level of symptoms in the present evaluation which was primarily related to her distress over losing her workers' compensation benefits and the financial consequences of that loss of income. Dr. Benson advised that appellant did not have any additional conditions that were directly causally related to the employment-related events. He asserted that she had an expected emotional reaction to the loss of her financial benefits. Dr. Benson noted that, in the August 17, 2017 evaluation, it was his opinion that appellant had reached MMI for treatment of her problem with major depressive disorder. Appellant had no interest in returning to her date-of-injury position as a customer service supervisor and there was no treatment that would likely change her mind in that regard. Dr. Benson indicated that there was no indication in the present evaluation that she had any intention of returning to full employment. He noted that appellant appealed the decision regarding her workers' compensation claim and it was clear that she did not intend to return to work. Dr. Benson indicated that she had fully recovered from her work injury at the time of evaluation on August 17, 2017. He opined that there was no medical reason that appellant's initial employment-related condition had changed from the findings obtained on August 17, 2017. Dr. Benson noted that it was his opinion with a reasonable medical certainty that she had reached full recovery from her employment-related conditions at the time of her evaluation on August 17, 2017. However, appellant did experience a new onset of symptoms after her financial benefits were cut and she experienced significant financial problems.

In an August 6, 2019 work capacity evaluation (Form OWCP-5c), Dr. Benson indicated that appellant could perform her usual job, but he added the notation, "[Appellant] has no interest in returning to work at this time." He noted that she had an increase in symptoms due to loss of her workers' compensation benefits and advised that this increase was unrelated to her original employment-related injury. Dr. Benson noted that appellant could participate in a work retraining program.

In an October 22, 2019 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 August 6, 2019 opinion of Dr. Benson, OWCP's referral physician. OWCP afforded appellant 30 days to submit evidence or argument challenging the proposed termination action.

In a November 21, 2019 letter received by OWCP on November 26, 2019 appellant advised that she disagreed with Dr. Benson's opinion that she ceased to have residuals of her accepted employment-related emotional conditions. She asserted that he did not spend much time

evaluating her and argued that the testing he obtained on August 9, 2019 actually demonstrated that she continued to suffer symptoms related to her accepted employment-related emotional conditions.

By decision dated April 27, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective May 24, 2020, based on the August 6, 2019 report of Dr. Benson, OWCP's referral physician.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's compensation benefits.⁶ 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.⁷ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

ANALYSIS

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective May 24, 2020.

OWCP based its termination of appellant's wage-loss compensation and medical benefits on the August 6, 2019 report of Dr. Benson, OWCP's referral physician. However, the Board finds that this report does not contain adequate medical rationale in support of its opinion that she ceased to have residuals of her accepted employment conditions and, therefore, is insufficient to serve as the basis for OWCP's termination action.⁹

In an August 6, 2019 report, Dr. Benson reported the findings of the evaluation he conducted on that date. He noted that appellant was quite distressed when there was a change in her workers' compensation benefits and remained angry about the matter even though her benefits had recently been reinstated. Dr. Benson advised that she also was distressed and angry about having to have a reevaluation and she was concerned about the impact the reevaluation would have on her benefits. He noted that appellant completed a PHQ-9 test and her score of 19 indicated the presence of moderately severe symptoms of depression. Appellant also completed a GAD-7 test and her score of 20 indicated the presence of severe symptoms of anxiety. Dr. Benson indicated that these results were not consistent with her clinical presentation. He noted that, during the evaluation, appellant reported severe psychiatric symptoms, a marked change from her August 17, 2017 assessment. The increase in appellant's distress was primarily focused on the disruption of her workers' compensation benefits and the financial consequences. Dr. Benson diagnosed major

⁶ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁷ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁸ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ *See id.*

depressive disorder, single episode; anxiety disorder, not otherwise specified; and hypertension. He noted that, in conjunction with the August 17, 2017 evaluation, it was his opinion that appellant's employment-related condition had resolved by the time of the evaluation. Dr. Benson indicated that at the time of her evaluation on August 6, 2019 she reported marked intensification of her symptoms and that the increase in her symptoms was an expected reaction to the financial consequences of losing her workers' compensation benefits. He maintained that there was no indication that the increase in appellant's symptoms was related to her "original date of injury, [January 13, 2000]." Dr. Benson advised that she did not have any additional conditions that were directly causally related to the employment-related events. In an August 6, 2019 Form OWCP-5c, he indicated that appellant could perform her usual job, but he added the notation, "[Appellant] has no interest in returning to work at this time."

The Board finds that Dr. Benson failed to provide adequate medical rationale for the opinion expressed in his August 6, 2019 report that appellant ceased to have residuals of her accepted employment-related conditions.¹⁰ Dr. Benson noted that she had a continuing diagnosis of major depressive disorder and anxiety disorder at the time of the August 6, 2019 evaluation, but he failed to explain why these disorders were no longer related, at least in part, to her accepted condition of adjustment reaction with depressed/anxious mood and reactive depression. He advised that appellant's PHQ-9 test results indicated the presence of moderately severe symptoms of depression and that her GAD-7 test results indicated the presence of severe symptoms of anxiety. However, Dr. Benson did not describe these test results in detail or otherwise explain why they would not show that she had still some residuals of her accepted employment-related conditions. He did not adequately identify specific treatment records to support his opinion that appellant's accepted condition of adjustment reaction with depressed/anxious mood and reactive depression had completely resolved. Dr. Benson placed great emphasis on relating her present psychiatric condition to her concern over possibly losing her workers' compensation benefits, but he did not adequately explain his ostensible opinion that her present psychiatric condition was solely related to this concern. The Board notes that the fact he reported that appellant had increased symptoms between the August 17, 2017 and August 6, 2019 evaluations only highlights the need for increased medical rationale to explain why these symptoms were not in any way related to the accepted employment-related conditions. The Board also notes that Dr. Benson made no mention in the analysis portion of his August 6, 2019 report of her accepted condition of post-traumatic stress disorder, and that he provided no specific discussion of how this condition had resolved. Although Dr. Benson generally indicated that appellant's employment-related conditions resolved by the time of the prior August 17, 2017 evaluation, the Board has already explained the multiple deficiencies of the August 17, 2017 report with respect to its opinion on continuing employment-related residuals/disability. In addition, he failed to adequately explain in his August 6, 2019 report why she could perform her regular work as a supervisor of customer services given her current high level of psychiatric symptoms.

For these reasons, OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective May 24, 2020.

¹⁰ See *T.F.*, Docket No. 11-0763 (issued November 7, 2011); *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value if it contains an opinion on a medical matter which is unsupported by medical rationale).

CONCLUSION

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective May 24, 2020.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 26, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board