

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

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<b>D.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0747</b>
	)	<b>Issued: June 2, 2021</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Portland, OR, Employer</b>	)	
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*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 February 5, 2020 appellant filed a timely appeal from a January 9, 2020 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.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation for all accepted conditions and medical benefits for her accepted major depressive disorder, temporary aggravation of cognitive communication deficit, and right knee strain, effective January 5, 2020.

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

## **FACTUAL HISTORY**

On October 26, 2017 appellant, then a 56-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2017 he sustained head and knee injuries when he was pulled from his truck and punched in the head while in the performance of duty. He stopped work on October 22, 2017. OWCP accepted the claim for right knee contusion, and subsequently expanded acceptance of the claim to include major depressive disorder single episode, unspecified, post-traumatic stress disorder (PTSD), unspecified, and temporary aggravation of cognitive communication deficit. It paid appellant wage-loss compensation on the supplemental rolls beginning December 7, 2017 and on the periodic rolls beginning April 29, 2018.

In progress notes dated December 19, 2017, Dr. Kathy Y. Chang, a Board-certified occupational medicine physician, diagnosed acute stress disorder, low back and right knee contusions, and right prepatellar bursa bursitis. She noted that appellant related that his anxiety issues had improved and that his right knee felt fine with no numbness or distal tingling and no problems walking. Physical examination of appellant's right knee revealed full range of motion and strength, no anterior swelling, no tenderness on palpation, several reddish erythematous patches, and normal anterior cruciate ligament stress.

Dr. Chang, in progress notes dated November 8, 2018, noted that appellant had returned to part-time modified work. She diagnosed acute stress disorder and memory loss. Dr. Chang advised that appellant was capable of working four hours a day with restrictions of no lifting/carrying/pushing/pulling more than 25 pounds and no commercial driving. In progress notes dated December 10, 2018, she noted diagnoses of acute stress disorder, depression, memory loss, and postconcussion syndrome. Dr. Chang noted that appellant had related that OWCP was not going to authorize a neuropsychological evaluation for concussion and postconcussion syndrome.

In a December 19, 2018 report, Dr. Bruce M. Stelmack, a Board-certified physiatrist and brain injury medicine physician, noted appellant's history of injury and diagnosed chronic PTSD, major depressive disorder, polysubstance use disorder in sustained remission, and mild unspecified neurocognitive disorder. Appellant related that he had labile mood and anger, with a personality change and a fear of people. He also noted that he required large amounts of tranquilizer medications to function. Both appellant and his wife related that his medications had been helpful with reducing his PTSD symptoms. Dr. Stelmack indicated that any return to work would have to be gradual due to appellant's anxiety regarding driving and being around large groups of people.

In progress notes dated January 7, 2019, Dr. Chang related that appellant's only concern about returning to work was having to work the night shift, as he remained afraid that he would be assaulted again. On February 18, 2019 she repeated his diagnoses and related that he was placed on modified duty, four hours a day, with no lifting/carrying/pushing/pulling over 25 pounds, no commercial driving, and minimal contact with other people.

In progress notes dated December 5, 2018, and January 14 and March 4, 2019, Dr. Mark A. Brown, a Board-certified psychiatrist and sleep medicine physician, diagnosed PTSD, unspecified depression, and severe polysubstance use disorder, in sustained remission. On January 14, 2019 he noted appellant's statement that the last month was the best month he had. In the March 4,

2019 report, Dr. Brown noted that appellant had some benefit from prescribed quetiapine and clonidine despite continued symptoms of anxiety and anger. He reported that appellant had associated concentration/memory impairment which appellant attributed to his PTSD. There was discussion between Dr. Brown and appellant about tapering off appellant's medication and a potential trial use of lithium. He also indicated that appellant related that he did not feel ready to return to commercial driving and that he had some anxiety when driving personally.

On February 14, 2019 Dr. Stelmack reported that appellant was off work as the employing establishment did not have "light duty" work for truck drivers.

In a report dated March 11, 2019, Dr. Danielle L. Erb, a Board-certified psychiatrist and brain injury medicine physician, summarized appellant's injury history and diagnosed chronic PTSD, mild unspecified neurocognitive disorder, and major depressive disorder. She advised that he had chronic PTSD and significant persistent anxiety, which was addressed by medication, and some mild neurocognitive deficits.

In progress notes dated March 18 and April 25, 2019, Dr. Chang diagnosed acute stress disorder, unspecified depression, and postconcussion syndrome. In the March 18, 2019 notes, she reported appellant's psychiatrist recommended a change in his medication from clonidine to propranolol.

On May 23, 2019 OWCP referred appellant to Loren Mallory, Ph.D., a neuropsychologist, for a second opinion evaluation. It requested that Dr. Mallory address whether he currently had any continued residuals of his accepted psychiatric employment conditions.

In progress notes dated May 30, 2019, Dr. Chang diagnosed acute stress disorder, depression, and postconcussion syndrome. She noted that appellant continued to take his psychiatric medication and was capable of working a modified job for four hours a day.

In a report dated June 18, 2019, Dr. Mallory diagnosed PTSD disorder in remission and unspecified depressive disorder. He found that appellant appeared to be exaggerating his cognitive and mental/emotional symptoms. Dr. Mallory explained that his opinion was based on observation of appellant, performance validity tests, specific symptom validity tests, and overall test score analysis. He noted that appellant currently did not report any flashbacks, nightmares, or other intrusion symptoms. Dr. Mallory opined that appellant's diffuse cognitive symptoms were mild. Next, he opined that appellant's PTSD, which had aggravated his depression, had likely resolved. In support of this conclusion, Dr. Mallory explained that appellant did not currently exhibit adequate symptoms to support a diagnosis of PTSD. He reported that appellant believed that he was unable to work and totally disabled. Dr. Mallory also noted that appellant was committed to the idea that he sustained a concussion or some sort of brain injury based on treatment provided by his various physicians and providers. He concluded that appellant's "current behavior and reported symptoms seem to be about defending his role or rights in this regard."

On July 26, 2019 OWCP requested clarification from Dr. Mallory as to whether there was any objective data supportive of continuing cognitive communication deficit. It noted that it had accepted a temporary aggravation of cognitive communication deficit while he concluded that there was no adequate data supporting that cognitive communication deficit ever existed.

Dr. Chang, in progress notes dated August 1, 2019, diagnosed acute stress disorder, postconcussion syndrome, and unspecified depression and provided permanent work restrictions of daytime driving due to appellant's anxiety with driving at night.

In an August 14, 2019 supplemental report, Dr. Mallory responded to OWCP's request for clarification. He answered "No" to the question posed by OWCP as to whether appellant continued to exhibit cognitive communication deficit. In support of this conclusion, Dr. Mallory explained that there was no objective data supporting the presence of cognitive communication disorder.

On October 21, 2019 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits as the weight of the evidence established that he no longer had any employment-related residuals or disability due to his accepted October 22, 2017 employment injury. It advised that the proposed termination of benefits was based on Dr. Mallory's reports. OWCP afforded appellant 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In a December 4, 2019 report, Dr. Brown disagreed with OWCP's proposal to terminate appellant's compensation benefits. He attributed appellant's improvement with his PTSD to pharmacologic treatment. Dr. Brown opined that appellant's accepted PTSD had not ceased and would worsen if he stopped his medication.

By decision dated January 9, 2020, OWCP terminated appellant's medical benefits, effective January 5, 2020, with regard to his accepted right knee contusion, major depressive disorder, and temporary aggravation of cognitive communication deficit as he no longer had employment-related residuals of those conditions.<sup>2</sup> It also terminated his wage-loss compensation, effective January 5, 2020, with regard to all of his accepted conditions as he no longer had employment-related disability due to his accepted conditions. OWCP found that the opinions of Drs. Mallory and Chang represented the weight of the evidence.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.<sup>3</sup> 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.<sup>4</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

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<sup>2</sup> OWCP advised that it was not terminating appellant's medical benefits related to the accepted PTSD.

<sup>3</sup> *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

<sup>4</sup> *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

<sup>5</sup> *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits with regard to the accepted major depressive disorder and temporary aggravation of cognitive communication deficit or wage-loss compensation with regard to all of his psychological conditions, including PTSD, effective January 5, 2020, based on the opinion of Dr. Mallory, OWCP's second opinion physician.

On July 26, 2019 OWCP requested clarification from Dr. Mallory as to whether there was any objective data supportive of continuing cognitive communication deficit. It noted that it had accepted a temporary aggravation of cognitive communication deficit while he concluded that there was no adequate data supporting that cognitive communication deficit ever existed. In an August 14, 2019 supplemental report, Dr. Mallory responded to OWCP's request for clarification. He answered "No" to the question posed by OWCP as to whether appellant continued to exhibit cognitive communication deficit. In support of this conclusion, Dr. Mallory explained that there was no objective data supporting the presence of cognitive communication disorder.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>8</sup> Dr. Mallory did not acknowledge that OWCP had accepted a temporary aggravation of cognitive communication deficit, as stated within the SOAF. As he failed to rely upon a complete and accurate SOAF, his opinion is of diminished probative value and is not entitled to the weight typically afforded to a second opinion physician. OWCP, therefore, did not meet its burden of proof to terminate appellant's medical benefits for the accepted major depressive disorder and temporary aggravation of cognitive communication deficit or wage-loss compensation for all accepted psychological conditions, including PTSD, effective January 5, 2020.

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<sup>6</sup> *E.S.*, Docket No. 20-0673 (issued January 11, 2021); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>7</sup> *E.S.*, *id.*; *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>8</sup> *A.D.*, 20-0553 (issued April 19, 2021); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.3(f) (June 2015); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *M.D.*, Docket No. 18-0468 (issued September 4, 2018); *Paul King*, 54 ECAB 356 (2003).

The Board further finds, however, that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits for the accepted right knee contusion based on the opinion of Dr. Chang, appellant's treating physician.

The record reflects that Dr. Chang was familiar with appellant's injury and medical history. In a December 19, 2017 report, she, reported that appellant related having no knee complaints including no numbness or distal tingling, no problems walking and that his knee felt fine. Physical examination findings of the right knee revealed full range of motion and strength, no anterior swelling, and no tenderness on palpation.

The Board finds that OWCP properly accorded the weight of the medical evidence to Dr. Chang, appellant's attending physician, who opined that appellant no longer had residuals or disability as a result of his accepted right knee contusion. As Dr. Chang's December 19, 2017 report was sufficiently rationalized and based on an accurate factual history and the complete medical record, her opinion constitutes the weight of the medical evidence with regard to appellant's accepted right knee contusion.

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits with regard to the accepted major depressive disorder and temporary aggravation of cognitive communication deficit or wage-loss compensation with regard to all of appellant's psychological conditions, including PTSD, effective January 5, 2020, based on the opinion of Dr. Mallory, OWCP's second opinion physician. The Board further finds, however, that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the accepted right knee contusion based on the opinion of Dr. Chang, appellant's treating physician.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: June 2, 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