

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

M.R., Appellant)	
)	
and)	Docket No. 20-1654
)	Issued: June 22, 2021
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, San Francisco, CA,)	
Employer)	
)	

Appearances:
Shannon Bravo, Esq., for the appellant¹
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 September 22, 2020 appellant filed a timely appeal from a June 12, 2020 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 12, 2020 decision, appellant submitted additional evidence to OWCP. 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 12, 2020, as he no longer had residuals or disability causally related to his accepted employment injury.

FACTUAL HISTORY

On March 21, 1995 appellant, then a 41-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained an acute stress disorder due factors of his federal employment in particular the actions and comments of supervisors and coworkers between 1991 and 1995. OWCP accepted the claim for anxiety state, unspecified. Appellant stopped work in 2005.

On December 6, 2007 OWCP referred appellant, together with a statement of accepted facts (SOAF) and a series of specific questions, for a second opinion examination with Dr. Donald H. Stanford, a Board-certified psychiatrist. It requested that Dr. Stanford provide an opinion regarding whether appellant continued to have residuals or disability from work causally related to his accepted employment injury, *i.e.*, anxiety state, unspecified.

In a January 22, 2008 report, Dr. Stanford detailed his examination findings that he obtained on that date. He opined that appellant had a cognitive disorder, not otherwise specified, and probably continued to have anxiety and depressive disorders, not otherwise specified, which were related to appellant's work at the employing establishment. Dr. Stanford advised that appellant was totally disabled from work due to his psychiatric conditions.

In a September 9, 2019 attending physician's report (Form CA-20), Dr. Elizabeth Padilla, a clinical psychologist, opined that appellant had been totally disabled from work since March 12, 2011 due to employment-related generalized anxiety disorder/depression.

On October 9, 2019 OWCP again referred appellant, and a series of specific questions, for a second opinion examination with Dr. Stanford. It also provided Dr. Stanford with an October 9, 2019 document, which advised that the SOAF provided the only factual framework for his opinion. The October 9, 2019 document indicated, "Your opinion should not refute the facts, including accepted condition(s), listed in the SOAF." The October 9, 2019 document listed the following conditions as the accepted conditions in appellant's case: adjustment reaction, not otherwise specified; paranoid personality; and schizo-affective disorder. OWCP requested that Dr. Stanford provide an opinion on whether appellant continued to have employment-related residuals/disability. An October 29, 2019 SOAF listed the accepted condition in appellant's case as "anxiety state, unspecified."

In a February 21, 2020 report, Dr. Stanford discussed appellant's factual and medical history and reported the findings of his evaluation he conducted on the same date. Appellant reported that he had nightmares two or three times per week regarding the employing establishment. He also reported that he generally did not feel anxious or fearful at home, but that he did feel "a little fear" when he thought about his former supervisors. Dr. Stanford summarized the medical evidence of record since the mid-1990s, noting that a number of physicians had diagnosed appellant with such conditions as generalized anxiety disorder, panic attacks, agoraphobia, and depression. He noted that an October 9, 2019 "SOAF" provided to him had

indicated that OWCP had accepted appellant's claim for adjustment disorder, not otherwise specified; paranoid personality disorder; and schizo-affective disorder. Dr. Stanford indicated that the most prominent of appellant's "three new accepted diagnoses" was paranoid personality disorder. He opined that, based on the provided definition of the condition, "it must be concluded that [appellant's] paranoid personality disorder was not the result of his employment. Rather, it is probable his paranoid personality disorder led to his series of difficulties within his employment, *i.e.*, feeling harassed and bullied..." Dr. Stanford advised that the diagnosis of schizo-affective disorder "is probably accurate." He further indicated that the diagnosis of adjustment disorder, not otherwise specified, "may have been applicable" to appellant at one time, basically as a manifestation of his paranoid personality and schizo-affective disorders. Dr. Stanford further noted, "By definition the condition is no longer present." He opined that appellant's continuing psychiatric symptoms and conditions were self-generated rather than caused by, or a result of, appellant's work at the employing establishment. Dr. Stanford asserted that paranoid personality and schizo-affective disorders are not situationally caused.

Dr. Stanford asserted that the work assignment that appellant left in 2005 "could not in any manner result in an individual developing a paranoid personality disorder or schizo-affective disorder or any other serious disabling psychiatric condition." He noted, "There may have been a temporary aggravation as a result of [appellant's] perception of unfair treatment that might be considered an adjustment disorder, which then was concluded probably within a few months of his departure from work." Dr. Stanford advised that OWCP had requested that he list all of appellant's current diagnoses causally connected to the work injury. He noted, "Whether any of [appellant's] diagnoses are related causally to his employment is an issue that is questionable. There may have been a temporary aggravation in an adjustment disorder, unspecified, which probably resolved within 6 to 12 months of his departure from work in 2005. Otherwise there are no diagnoses causally connected to his work injury or work experience." Dr. Stanford also advised that he had been asked if the work-related condition had resolved. He indicated, "In my opinion this condition resolved long ago." Dr. Stanford further opined that appellant's present level of disability was not a direct result of accepted work-related conditions. He indicated that it was unlikely that appellant was capable of working, possibly due to motivation problems and cognitive compromise, but noted that these reasons for not working were not "a direct result of accepted work-related conditions." In a February 24, 2020 work capacity evaluation report (Form OWCP-5c), Dr. Stanford advised that reference should be made to his February 21, 2020 report regarding appellant's inability to work.

In a March 25, 2020 notice, OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as he no longer had residuals or disability causally related to his accepted employment injury, *i.e.*, anxiety state, unspecified. It indicated that the weight of the medical opinion evidence regarding employment-related residuals/disability rested with the February 21, 2020 report of Dr. Stanford. OWCP afforded appellant 30 days to present evidence or argument challenging the proposed termination action.

In an April 11, 2010 letter to OWCP, appellant requested a 30-day extension to submit additional medical evidence. On April 27, 2020 OWCP granted him a 30-day extension. Appellant did not submit any additional evidence within the afforded period.

By decision dated June 12, 2020, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 12, 2020, as he no longer had residuals or disability causally related to his accepted employment injury.

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 benefits.⁴ 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.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁷ 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.⁸

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 12, 2020, as he no longer had residuals or disability causally related to his accepted employment injury.

On October 9, 2019 OWCP referred appellant, and a series of specific questions, for a second opinion examination with Dr. Stanford. It provided an October 9, 2019 document, which advised that the SOAF provided the only factual framework for his opinion and indicated, "Your opinion should not refute the facts, including accepted condition(s), listed in the SOAF." The October 9, 2019 document listed the following conditions as the accepted conditions in appellant's case: adjustment reaction, not otherwise specified; paranoid personality; and schizo-affective disorder. OWCP requested that Dr. Stanford provide an opinion on whether appellant continued to have employment-related residuals/disability. It subsequently provided a SOAF dated October 29, 2019 which listed "anxiety state, unspecified" as the only accepted condition in appellant's case.

In a February 21, 2020 report, Dr. Stanford asserted that an October 9, 2019 "SOAF" indicated that OWCP had accepted appellant's claim for adjustment disorder, not otherwise specified; paranoid personality; and schizo-affective disorder. He indicated that the most prominent of appellant's "three new accepted diagnoses" was paranoid personality disorder. Dr. Stanford opined that, based on the provided definition of the condition, "it must be concluded that [appellant's] paranoid personality disorder was not the result of his employment. Rather, it is

⁴ *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).

⁵ *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).

⁶ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

probable his paranoid personality disorder led to his series of difficulties within his employment, *i.e.*, feeling harassed and bullied....” He advised that the diagnosis of schizo-affective disorder “is probably accurate.” Dr. Stanford further indicated that the diagnosis of adjustment disorder, not otherwise specified, “may have been applicable” to appellant at one time, basically as a manifestation of his paranoid personality and schizo-affective disorders. He further noted, “By definition the condition is no longer present.” Dr. Stanford opined that appellant’s continuing psychiatric symptoms and conditions were self-generated rather than caused by, or a result of, appellant’s work at the employing establishment. He asserted that paranoid personality and schizo-affective disorders are not situationally caused. Dr. Stanford noted, “Whether any of [appellant’s] diagnoses are related causally to his employment is an issue that is questionable. There may have been a temporary aggravation in an adjustment disorder, unspecified, which probably resolved within 6 to 12 months of [appellant’s] departure from work in 2005. Otherwise there are no diagnoses causally connected to his work injury or work experience.” He also advised that he had been asked if the work-related condition had resolved. Dr. Stanford indicated, “In my opinion this condition resolved long ago.” He further opined that appellant’s present level of disability was not a direct result of accepted work-related conditions. Dr. Stanford indicated that it was unlikely that appellant was capable of working, possibly due to motivation problems and cognitive compromise, but noted that these reasons for not working were not “a direct result of accepted work-related conditions.”

The Board has held that the findings of an OWCP referral physician or impartial medical examiner must be based on the factual underpinnings of the claim, as set forth in the SOAF.⁹ OWCP’s procedures provide that when an OWCP referral physician or impartial medical examiner renders a medical opinion based on an 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.¹⁰

Dr. Stanford based his opinion on the October 9, 2019 document, which listed the accepted conditions as: adjustment reaction, not otherwise specified; paranoid personality; and schizo-affective disorder. The October 29, 2019 SOAF also provided, however, noted only accepted “anxiety state, unspecified” as the accepted condition. Because Dr. Stanford was presented with conflicting information regarding the accepted conditions and it remains unclear whether the acceptance of the claim was expanded to include additional conditions, his opinion is of limited probative value regarding continuing employment-related residuals/disability.¹¹

Due to the lack of probative value of Dr. Stanford’s report, the Board finds that OWCP erred in relying on his opinion as the basis to terminate appellant’s wage-loss compensation and medical benefits for the accepted conditions. The Board therefore finds that OWCP has not met its burden of proof.

⁹ See *A.D.*, Docket No. 20-0553 (issued April 19, 2021).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3a(10) (October 1990).

¹¹ See *supra* notes 9 and 10.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 12, 2020, as he no longer had residuals or disability causally related to his accepted employment injury..

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 22, 2021
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