

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

C.D., Appellant)	
)	
and)	Docket No. 22-0089
)	Issued: August 15, 2022
DEPARTMENT OF THE ARMY, ARMY)	
NATIONAL GUARD, Latham, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 28, 2021 appellant, through counsel, filed a timely appeal from a July 29, 2021 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.

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.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 23, 2021, as he no longer had disability or residuals causally related to the accepted May 21, 2015 employment injury.

FACTUAL HISTORY

On July 7, 2015 appellant, then a 29-year-old tools and parts attendant, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 2015 he sustained anxiety, depression, and post-traumatic stress disorder after a verbal altercation with his supervisor while in the performance of duty. He stopped work on May 21, 2015. OWCP accepted the claim for a single episode of mild major depressive affective disorder. It paid appellant wage-loss compensation on the supplemental rolls effective September 5, 2016, and on the periodic rolls effective November 12, 2017.

On July 6, 2018 a nurse practitioner advised that appellant was disabled from work and indicated that he continued to be harassed by his former employer.

In a report dated November 5, 2018, Dr. Jeffrey S. Aronowitz, a Board-certified psychiatrist and OWCP referral physician, noted that appellant had sustained an injury to his low back on May 20, 2015. On May 21, 2015 he went to work to file paperwork and informed his supervisor who accused him of lying. Dr. Aronowitz diagnosed a single episode of mild major depressive disorder with anxious distress and other problems related to employment. He opined that appellant was currently disabled due to his major depressive disorder resulting from his chronic back pain and encounter with his manager on May 21, 2015 after his May 20, 2015 employment injury. Dr. Aronowitz recommended medication and more frequent therapy.

In a duty status report (Form CA-17) dated November 26, 2018, a nurse practitioner advised that appellant was unable to work.

On April 4, 2019 OWCP informed appellant that a nurse practitioner was not considered a physician under FECA. It advised him to either treat with a clinical psychologist or physician to provide treatment or have the reports from the nurse practitioner cosigned by a doctor or psychologist.

In an attending physician's report (Form CA-20) dated September 6, 2019, a nurse practitioner diagnosed major depressive disorder and generalized anxiety disorder and advised that appellant was disabled from employment. The nurse practitioner continued to provide form reports finding him disabled from employment.

On July 14, 2020 OWCP again referred appellant to Dr. Aronowitz for a second opinion examination.

In a report dated August 3, 2020, Dr. Aronowitz referred to his prior evaluation of appellant and noted that he was no longer participating in psychotherapy and had refused antidepressants after a trial of medication caused grogginess. He found that appellant was no longer disabled from work due to his mild major depressive disorder with anxious distress. Dr. Aronowitz opined that

appellant had reached maximum medical improvement (MMI), noting that he was not receiving therapy and had refused medication. He related, “[Appellant] has had ample opportunity to avail himself to effective treatment and thus it seems that elements of noncompliance and secondary gain have contributed to his suboptimal response to treatment.” Dr. Aronowitz advised that most individuals with mild major depressive disorder with anxious distress could function in the workplace. He related, “From a psychiatric standpoint, [appellant] is felt to be fit for duty with a favorable prognosis and is capable of gainful employment.” In a work capacity evaluation (Form OWCP-5a), Dr. Aronowitz indicated that appellant could return to work without restrictions from a psychiatric standpoint.

In a duty status report dated September 16, 2020, a nurse practitioner diagnosed major depression/anxiety and advised that appellant was unable to work.

On December 16, 2020 OWCP notified appellant of its proposed termination of his compensation as the weight of the evidence established that he no longer had employment-related disability or need for further medical treatment due to his accepted employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

In a report dated January 11, 2021, Dr. Edward Reason, an osteopath Board-certified in internal medicine, opined that appellant was unable to return to work at this time as a result of major depressive disorder and anxiety. He noted that appellant also had radiculopathy from a low back injury.

By decision dated January 22, 2021, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective January 23, 2021. It found that Dr. Aronowitz’s opinion represented the weight of the evidence and established that appellant no longer had disability or residuals due to his accepted employment injury.

On January 28, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

A hearing was held on May 14, 2021.

By decision dated July 29, 2021, OWCP’s hearing representative affirmed the January 22, 2021 decision.

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.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To

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

⁴ *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.⁵

OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective January 23, 2021, as he no longer had disability causally related to the accepted May 21, 2015 employment injury.

Second opinion physician Dr. Aronowitz found that appellant had no further disability due to his mild major depressive disorder with anxious distress. He noted that he was not receiving therapy or treatment with medication. Dr. Aronowitz advised that appellant had ample opportunity to avail himself to effective treatment and appellant's failure to do so may have been caused by elements of noncompliance and secondary gain. He opined that, from a psychiatric standpoint, appellant was fit for duty with a favorable prognosis and was capable of gainful employment. He asserted that most individuals with mild major depression could function in the workplace. Dr. Aronowitz opined that appellant had obtained MMI and could return to work without psychiatric restrictions.

Dr. Aronowitz based his opinion on a proper factual and medical history and findings on physical examination. He provided medical rationale for his opinion that appellant had no further disability and had reached MMI, noting that he was not receiving any treatment for his condition.⁷ The Board therefore finds that OWCP properly relied upon the opinion of Dr. Aronowitz in terminating appellant's wage-loss compensation.⁸

There is no probative contemporaneous medical evidence supporting continued disability. In a report dated January 11, 2021, Dr. Reason found that appellant was unable to return to work due to major depressive disorder and anxiety. However, he is an osteopath specializing in internal medicine. The Board has held that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinion of other physicians.⁹ Dr. Reason's report is, therefore, of limited probative value. Appellant also submitted reports from a nurse practitioner, however, these reports

⁵ *Id.*

⁶ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *See E.J.*, Docket No. 20-0013 (issued November 19, 2020).

⁸ *See L.S.*, Docket No. 20-1204 (issued October 4, 2021); *L.B.*, Docket No. 19-1380 (issued February 11, 2020).

⁹ *See T.G.*, Docket No. 18-1718 (issued May 9, 2019); *A.A.*, Docket No. 17-1027 (issued June 18, 2018). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6a(3) (September 2010).

are of no probative value as nurse practitioners are not considered physicians as defined under FECA.¹⁰

The Board further finds, however, that OWCP failed to meet its burden of proof to terminate appellant's medical benefits, effective January 23, 2021.

Dr. Aronowitz indicated that appellant had not received effective treatment for his condition primarily due to noncompliance and secondary gain. He, however, did not find that appellant's accepted condition had resolved, or that he no longer required medical treatment. As Dr. Aronowitz did not specifically address whether appellant continued to have residuals of his accepted mild major depressive affective disorder, his opinion is insufficient to support the termination of appellant's medical benefits.¹¹

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective January 23, 2021, as he no longer had disability causally related to the accepted May 21, 2015 employment injury. The Board further finds, however, that OWCP failed to meet its burden of proof to terminate appellant's medical benefits, effective January 23, 2021.

¹⁰ Section 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

¹¹ *C.O.*, Docket No. 16-1905 (issued May 25, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: August 15, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board