

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

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**A.P., Appellant** )

**and** )

**DEPARTMENT OF TRANSPORTATION,** )  
**U.S. COAST GUARD, Alameda, CA, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-0155**  
**Issued: July 22, 2022**

*Appearances:*  
*Maynard Pilapil, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 11, 2021 appellant, through his representative, filed a timely appeal from a July 9, 2021 merit decision. 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.<sup>2</sup>

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 9, 2021, as he no longer had disability or residuals causally related to his accepted employment injury.

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

<sup>2</sup> The Board notes that, following the issuance of OWCP's decision appellant submitted 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 evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On October 26, 1988 appellant, then a 44-year-old architect technician, filed an occupational disease claim (Form CA-2) alleging that he experienced palpitations, insomnia, nervousness, tension headaches, and abdominal pain with diarrhea due to factors of his federal employment, including the way management assigned and demanded jobs outside his job description and training. He stopped work on October 20, 1988 and did not return. OWCP accepted the claim for cyclothymic disorder on July 14, 1989. It paid appellant wage-loss compensation on the supplemental rolls beginning October 25, 1988 and on the periodic rolls beginning September 24, 1989.

A medical note by Dr. Caroline O. Garcia, a family medicine specialist dated September 30, 2008 related diagnoses of chronic anxiety, depression, and somatization.

In a second opinion report dated July 13, 2013, Dr. Charles Debattista, a Board-certified psychiatrist, diagnosed major depressive disorder, moderate, generalized anxiety disorder, and cognitive impairments. He opined that appellant appeared to continue to have problems with depression and anxiety, and although it was hard to imagine that these could be related to job stress 25 years ago, it was possible. Dr. Debattista noted that appellant had no nonindustrial stress situation that contributed to his current condition. He further opined that he saw no evidence appellant was able to continue to work, as he was markedly impaired in even answering basic questions and felt overwhelmed. Dr. Debattista rated appellant's prognosis as poor, noting that appellant had not pursued treatment because it was too stressful for him to get treatment, and that appellant had made no significant improvement since the 1980s. He opined that appellant would benefit from more active treatment with a psychiatrist and psychotherapist, but appellant seemed unable to do so, and that as such, his long-term prognosis was poor. In an accompanying psychological assessment dated July 10, 2013, Dr. Jillian Daly, a psychologist, attempted to administer the Minnesota Multiphasic Personality Inventory-2. She stated that it was impossible to determine if appellant was responding accurately or in a random manner. As such, Dr. Daly could offer no diagnostic impressions.

In a work capacity evaluation for psychiatric/psychological conditions (Form OWCP-5a) dated May 31, 2006, Dr. Caroline O. Garcia, a family medicine specialist, diagnosed chronic depression with anxiety and somatic symptoms. She indicated that appellant was incapable of work, explaining that he had low reading comprehension and reacted to stress with headaches and abdominal pain.

In a January 28, 2009 letter, Dr. Garcia, informed appellant that she found it necessary to withdraw from his further medical care.

In work excuse notes dated June 12, 2017, July 16, 2018, and June 3, 2019, Dr. Christi Cheng, a family medicine specialist, indicated next to the heading "Restricted as follows" that appellant was "under [her] care" and "still ha[d] [a] chronic medical condition." She did not indicate the nature of the chronic medical condition, nor did she indicate the nature of his work restrictions.

On January 28, 2021 OWCP referred appellant along with a statement of accepted facts (SOAF) and a series of questions to Dr. Donald Stanford, a Board-certified psychiatrist, for a second opinion examination to determine his disability status and ability to return to work.

In a report dated April 14, 2021, Dr. Stanford reviewed the SOAF and the medical record, and conducted a psychiatric examination. He diagnosed cyclothymia. Dr. Stanford noted that appellant told him that he had a Bachelor of Science degree from a secondary educational institution in the Philippines and served as a lieutenant in the Philippine Army. He opined that it was difficult to reach conclusions about appellant's history and diagnoses because appellant was unable to explain his condition. Appellant stated repeatedly that he could not describe or explain his employment injury. Dr. Stanford noted that, to a significant degree, appellant's inability and refusal to respond had been documented by appellant's supervisors when he worked for the employing establishment. Appellant told Dr. Stanford that his principal complaint was that he became anxious and irritable whenever he had to attend an evaluation related to his workers' compensation claim or whenever he received any communications regarding the claim. He told Dr. Stanford that he had been discriminated against by a supervisor at the employing establishment, but was unable to describe or provide examples of this hostile behavior. Appellant noted that he left his position in October 1988 when he "passed out" at work. Dr. Stanford noted that medical records did not indicate that appellant had "passed out" at any point, including records from Dr. Garcia. Appellant stated that this supervisor had a pattern of "hiring many Filipino employees in order to fire them." Dr. Stanford stated that appellant's account that he was harassed and discriminated against had not been corroborated by the case record and was not an accepted fact. He noted that, after pondering the case for several days, he had untimely begun to question whether appellant actually did achieve the claimed Bachelor of Science degree earlier in life. Dr. Stanford explained that appellant seemed to manifest a form of dementia that was present even upon examination in 1989. He noted that appellant's negative response to questions and criticism may reflect passive-aggressive or narcissistic behavior or malingering. Dr. Stanford stated that if there had been a massive decline in his cognitive functioning, rather than his having had a low level of functioning all along, possible explanations could be dementia, covert alcohol abuse, or some other unidentified cause or factor. He noted that appellant probably had sleep apnea, which could cause numerous cognitive problems including impaired memory, concentration, and executive functioning, but it was doubtful that sleep apnea alone could explain the level of impairment appellant demonstrated at least 30 years ago and probably previous to that. Dr. Stanford stated that appellant's level of impairment as described on initial examination was probably present during his employment with the employing establishment, resulting in his performance problems. He explained that appellant then denied these problems and dismissed them by projecting blame in the form of appellant's claim that he was discriminated against and harassed. Dr. Stanford noted that appellant did file a complaint concerning discrimination with the U.S. Equal Employment Opportunity Commission, but that the outcome was not described in any records.

Dr. Stanford opined that appellant's stress overall had been entirely nonindustrial resulting from a combination of his cognitive impairment and maladaptive personality features. He noted that appellant was generally passive and unable to respond meaningfully to standard mental status questions. Although there were signs of possible significant cognitive impairment, it was difficult to determine whether these signs were produced voluntarily or involuntarily. Dr. Stanford further opined that the accepted diagnosis of cyclothymia could not by definition have been caused by

appellant's employment, although it was possible that a preexisting condition had been worsened by criticism of work performance that was either provided appropriately, as the SOAF appeared to indicate, or in a discriminatory manner -- the latter of which, if true, Dr. Stanford noted, may have temporarily aggravated his questionable diagnosis of cyclothymia.

Dr. Stanford opined that there was no question that appellant's work-related condition had resolved. He noted that Dr. Debattista, in his 2013 report, as much made this statement, but that he was not fully explicit in stating that it was "hard to imagine that this could be related to job stress from 25 years ago." Dr. Stanford noted that, based on a review of the SOAF, it would appear that appellant was probably incapable of performing his job as an architecture technician all along as a result of his cognitive and personality disorder problems. He further opined that it would be unlikely that appellant would be capable of performing effectively in any job. Dr. Stanford concluded by stating that he did not believe that appellant's psychiatric conditions were the results of his negative employment experience, but instead, they were the cause of that negative employment experience.

On April 22, 2021 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits, finding that the report of the second opinion physician, Dr. Stanford, represented the weight of the medical evidence that appellant no longer had any residuals or continuing disability from work due to his accepted work-related injury. It afforded him 30 days to submit additional evidence or argument.

By decision dated July 9, 2021, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective July 9, 2021. It found that the weight of the medical evidence, represented by Dr. Stanford's report, established that appellant no longer had residuals or disability from work due to his accepted employment injury.

### **LEGAL PRECEDENT**

According to FECA,<sup>3</sup> once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.<sup>4</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, OWCP

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 9, 2021, as he no longer had disability or residuals causally related to his accepted employment injury.

In order to determine the extent and degree of any disability or residuals, OWCP referred appellant, a SOAF, and the medical evidence of record to Dr. Stanford, for a second opinion examination. In his April 14, 2021 report, Dr. Stanford noted that it was difficult to reach conclusions about appellant's history and diagnoses because appellant was unable to explain his problems in person in multiple contexts. He noted that appellant's negative response to questions and criticism may reflect passive-aggressive or narcissistic behavior or malingering. Dr. Stanford opined that appellant's stress overall had been entirely nonindustrial resulting from a combination of his cognitive impairment and maladaptive personality features. He noted that appellant was generally passive and unable to respond meaningfully to standard mental status questions. Dr. Stanford further opined that the accepted diagnosis of cyclothymia could not by definition have been caused by appellant's employment, although it was possible that a preexisting condition had been worsened by criticism of work performance that was either provided appropriately, as the SOAF appeared to indicate, or in a discriminatory manner -- the latter of which, if true, he noted, may have temporarily aggravated his questionable diagnosis of cyclothymia.

Dr. Stanford opined that there was no question that appellant's work-related condition had resolved. He further opined that it would be unlikely that appellant would be capable of performing effectively in any job.

Dr. Stanford accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions about appellant's condition which rationally and logically comported with his findings.

The Board thus finds that Dr. Stanford's opinion is sufficiently well-rationalized and based on a proper factual and medical history such that his opinion is entitled to the weight of the medical evidence, establishing that appellant had no ongoing employment-related disability or residuals.<sup>9</sup>

### CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 9, 2021, as he no longer had disability or residuals causally related to his accepted employment injury.

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<sup>8</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

<sup>9</sup> *K.S.*, Docket No. 19-0082 (issued July 29, 2019); *see also R.R.*, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board