

December 3, 1993 the Office issued a wage-earning capacity determination and reduced her compensation to reflect her monetary actual earnings as a receptionist.

The Office referred appellant, together with her medical record and a statement of accepted facts, to Dr. Alberto G. Lopez, a Board-certified psychiatrist, for an updated opinion on whether she continued to have a psychiatric condition causally related to factors of her employment.

Dr. Lopez interviewed and examined appellant on February 6, 2009. He related her history and noted that she had no current psychiatric complaints. Appellant received psychotherapy from her attending psychiatrist from 1984 to 1988. She saw him in the early 1990s when she had difficulties at school and again in 1994. Dr. Lopez reported the results of mental status examination and psychological testing. He reviewed appellant's medical records and offered a primary diagnosis of major depression, single episode, severe, in remission.

Dr. Lopez explained that appellant did not in the past meet the criteria for post-traumatic stress disorder. Appellant was significantly anxious and certainly very depressed to the point of being nonfunctional and suicidal; therefore, she suffered from major depression. Dr. Lopez explained, however: "There are no findings of a major depression at this time, because she is in remission." He added that there was no diagnosis of an emotional or psychiatric condition currently present. Dr. Lopez found that work factors did not contribute to appellant's condition after more than 20 years because she had no correct psychiatric condition. He found appellant's prognosis to be excellent; she was functioning well. Dr. Lopez reviewed the position description the Office supplied and found that she was capable of performing the duties of her usual job.

In a May 5, 2009 decision, following notice, the Office terminated appellant's compensation. It found that the weight of the medical opinion evidence rested with Dr. Lopez and established that she no longer had any disability or residuals due to the accepted employment injury.

By decision dated September 25, 2009, an Office hearing representative reviewed the written record and affirmed the termination of appellant's compensation. The hearing representative found that Dr. Lopez's opinion represented the weight of the medical evidence.

Appellant requested reconsideration and submitted a statement and evidence from 1983. The Office also received a 1996 report, a neighbor's statement dating possibly from the early 1980s and a 1983 statement from a coworker.

In a decision dated February 8, 2010, the Office reviewed the merits of appellant's case and denied modification of its prior decision. It found that appellant failed to provide any additional current medical opinion to oppose the opinion given by Dr. Lopez.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ Once the Office accepts a

¹ 5 U.S.C. § 8102(a).

claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

ANALYSIS

The Office accepted appellant's claim in the 1980s for adjustment disorder with depressed mood. It is therefore its burden to justify the termination of her benefits in 2009.

The Office relied on a February 2009 report from Dr. Lopez, a Board-certified psychiatrist. It provided Dr. Lopez with appellant's medical records and a statement of accepted facts so he could base his opinion on a proper factual and medical background. Dr. Lopez interviewed and examined appellant and obtained psychiatric testing. Based on his familiarity with appellant's history of injury and treatment, her current complaints and the results of psychiatric testing, Dr. Lopez concluded that appellant no longer had a psychiatric condition causally related to the established factors of her federal employment.

Dr. Lopez reasoning was sound and logical. Appellant currently had no diagnosable psychiatric condition. There were no findings of a major depression, no diagnosis of an emotional or psychiatric condition currently present. Dr. Lopez concluded that the work factors that led to appellant's psychiatric injury more than 20 years earlier no longer contributed to her current psychiatric condition. Appellant was functioning well and her prognosis was excellent.

The Board finds that Dr. Lopez offered a rational medical opinion based on a proper factual and medical history, one that supports appellant's recovery from the events that took place in the early 1980s. Appellant submitted statements that do not competently address this medical issue. There are also medical reports dating years earlier, sometimes decades earlier, which do not reliably reflect appellant's current psychiatric condition or whether established factors of employment from the early 1980s continue to cause a diagnosable psychiatric injury in 2009 or beyond. In short, there is no reasonably contemporaneous or more current rationalized medical opinion evidence to rebut Dr. Lopez's findings and conclusion. For that reason, the Board finds that the weight of the medical opinion evidence rests with Dr. Lopez.

The Office met its burden of proof. The weight of the medical evidence establishes that appellant is no longer disabled due to her accepted condition causally related to the established factors of her federal employment. The Board will affirm the Office's February 8, 2010 decision.⁴

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ With a formal wage-earning capacity determination in place since 1993, the Office has the parallel burden of justifying a modification of that decision by showing a material change in the nature and extent of the injury-related condition. *Daniel J. Boesen*, 38 ECAB 556 (1987). Dr. Lopez's psychiatric examination of appellant meets that burden.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2010
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board