

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

B.W., Appellant)	
)	
and)	Docket No. 18-0949
)	Issued: July 23, 2019
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Los Angeles, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2018 appellant filed a timely appeal from a December 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 10, 2017 as she no longer had residuals or disability casually related to her accepted employment injury; and (2) whether appellant has met her burden of proof to establish residuals or continuing disability due to her accepted employment injury on or after January 10, 2017.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 1, 1988 appellant, then a 48-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she sustained a stress-related condition due to factors of her federal employment including hearing male coworkers making comments of a sexual and sexist nature. She indicated that she first became aware of her claimed condition on May 15, 1988 and first became aware of its relation to her federal employment on June 20, 1988. Appellant stopped work on June 8, 1988.

OWCP accepted appellant's claim for depressive reaction.² In reaching its determination, it accepted several compensable employment factors including that some of the men in appellant's work group and a nearby group (including appellant's manager) made remarks and jokes that were of a sexual nature or were demeaning to women.³

The case record contains a limited amount of medical records from the late 1980s through the early 2000s regarding the treatment of appellant's psychiatric condition. In the early 1990s, appellant began to treat with Dr. Irvin D. Godofsky, a Board-certified psychiatrist. In an October 15, 1991 report, Dr. Godofsky indicated that appellant's employment-related depressive condition had been compounded by nonwork-related conditions, including bipolar disorder, alcoholism (now in remission), and personality disorder (mixed) with schizotypal and narcissistic features.

Dr. Godofsky continued to treat appellant throughout the 1990s and into the early 2000s. In a report dated November 22, 2004, he noted that appellant was suffering from depressive disorder with atypical features, alcohol abuse (in remission), personality disorder (not otherwise specified), and post-traumatic stress disorder (PTSD). Dr. Godofsky noted that appellant's condition was chronic and recurring with periods of relative remission and periods of significant relapse and dysfunction. He discussed appellant's difficulties with tolerating relationships with supervisors or "authority." Dr. Godofsky indicated that he did not believe that appellant or anyone could return to the premorbid state after suffering from a severe depressive disorder complicated by a serious personality disorder for over 16 years. He opined that appellant would not be psychologically capable of functioning in a work or vocational rehabilitation setting. Dr. Godofsky indicated that appellant had tried and failed to function in at least three nonstressful volunteer jobs over the years.

In a November 11, 2008 report, Dr. Godofsky noted that appellant was suffering from depressive disorder with atypical features, alcohol abuse (in remission), personality disorder (not otherwise specified), and PTSD. He explained that the PTSD condition was related to childhood trauma which was compounded by a physically and emotionally abusive marriage and which was "magnified and made chronic by the trauma the patient experienced while working for the [employing establishment]." Dr. Godofsky continued to find that appellant was disabled from all work.

² OWCP began to pay appellant appropriate wage-loss compensation on the periodic rolls.

³ OWCP also accepted employment factors with respect to appellant's seeking of medical treatment in February 1988 and a May 16, 1988 meeting regarding complaints of sexual harassment in the workplace.

In an August 25, 2008 report, Dr. Godofsky reported that appellant was suffering from recurrent major depressive disorder of moderate severity, PTSD, alcohol abuse (in remission), and personality disorder (not otherwise specified). He indicated that appellant's PTSD was magnified and made chronic by "trauma" she experienced while working for the employing establishment. Dr. Godofsky continued to find that appellant was totally disabled.

In August 2016 OWCP referred appellant for a second opinion examination to Dr. Edward R. Ritvo, a Board-certified psychiatrist. It requested that he provide an opinion regarding whether appellant continued to have residuals or disability causally related to her accepted employment condition of depressive reaction.

In a September 28, 2016 report, Dr. Ritvo detailed appellant's factual and medical history. He provided summaries of reports which described the treatment of her multiple psychiatric problems over the years. Dr. Ritvo detailed the findings of the evaluation he conducted noting appellant reported that sometimes she became depressed, but that she was currently taking the medication Duloxetine which she felt was helpful. Appellant indicated that she had her own apartment and was able to take care of all her basic needs. Dr. Ritvo noted that appellant drove her own car and had friends with whom she attended movies and plays. He advised that appellant denied delusions, hallucinations, morbid mood changes, suicidal ideation, and any evidence of psychosis. During the evaluation, appellant made good eye contact and exhibited coherent thought processes. Dr. Ritvo felt that appellant was pleasant and friendly during the evaluation and he observed that she showed no signs of anxiety or depression.

Dr. Ritvo provided a diagnosis of major depressive order, resolved. He noted that appellant had been in psychiatric treatment for many years, but apparently had responded well to such treatment. In response to a question regarding whether appellant continued to suffer from the depressive reaction as a result of the compensable factors of her former federal employment, Dr. Ritvo responded, "The claimant has minimal if any residual symptoms of depression at this time." He indicated that appellant was capable of working and noted that, given her apparent ability to function appropriately in her daily activities, she did not presently appear to be disabled. Dr. Ritvo advised that appellant did not appear to have any work-related limitations at that time. In an attached work capacity evaluation psychiatric/psychological conditions (Form OWCP-5a) dated October 5, 2016, he noted that appellant could perform her usual job on a full-time basis.

In a letter dated October 18, 2016, OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits because she ceased to have residuals or disability causally related to her accepted employment injury. It informed her that the proposed termination action was based on the September 28, 2016 report of Dr. Ritvo, OWCP's referral physician. OWCP afforded appellant 30 days to submit evidence or argument to challenge the proposed action. Appellant did not submit any evidence or argument within the allotted period.

By decision dated January 10, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits effective January 10, 2017 as she no longer had residuals or disability causally related to her accepted employment injury. It found that the weight of the medical evidence with respect to employment-related residuals/disability rested with the September 28, 2016 report of the referral physician, Dr. Ritvo.

On December 8, 2017 appellant requested reconsideration of the January 10, 2017 decision.

Appellant submitted a November 17, 2017 report from Dr. Godofsky who advised that it remained his opinion that appellant continued to suffer from major depressive disorder, PTSD, and personality disorder (unspecified). He indicated that the major depressive disorder was a chronic, recurrent condition of “exacerbation and remission over a lifetime.” Dr. Godofsky noted that Dr. Ritvo’s September 28, 2016 report was based on the day he spent with appellant in September 2016 while she was in a period of remission. He believed that Dr. Ritvo disregarded the years of ongoing experience he had with appellant throughout which he documented appellant’s recurrent exacerbations of depression, somatization, anxiety, and detachment. Dr. Godofsky posited that these recurrences were triggered by stressors that often replicated the trauma she experienced at the employing establishment of not being “heard” and being treated in ways that left her feeling helpless and demeaned.

By decision dated December 18, 2017, OWCP denied modification of its January 10, 2017 decision, noting that appellant had not submitted medical evidence after the January 10, 2017 termination action establishing that she had continuing residuals/disability of her accepted employment injury on or after January 10, 2017.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ OWCP may not terminate compensation without establishing that the disability ceased or that it was 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

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant’s wage-loss compensation benefits effective January 10, 2017, but it has not met its burden of proof to terminate her medical benefits effective January 10, 2017.

The Board finds that the weight of the medical evidence with respect to whether appellant has employment-related disability is represented by the opinion of Dr. Ritvo, OWCP’s referral physician. The September 28, 2016 report of Dr. Ritvo establishes that appellant had no disability due to her accepted employment injury, depressive reaction, after January 10, 2017.

⁴ *L.L.*, Docket No. 18-1426 (issued April 5, 2019); *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

⁶ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018).

In his September 28, 2016 report, Dr. Ritvo advised that appellant denied delusions, hallucinations, morbid mood changes, suicidal ideation, and any evidence of psychosis. During the evaluation, appellant made good eye contact and exhibited coherent thought processes. Dr. Ritvo felt that appellant was pleasant and friendly during the evaluation and he observed that she showed no signs of anxiety or depression. He provided a diagnosis of major depressive order, resolved. In response to a question regarding whether appellant continued to suffer from the depressive reaction as a result of the compensable factors of her former federal employment, Dr. Ritvo responded, “The claimant has minimal if any residual symptoms of depression at this time.” He indicated that appellant was capable of working and noted that, given her apparent ability to function appropriately in her daily activities, she did not presently appear to be disabled. Dr. Ritvo advised that appellant did not appear to have any work-related limitations at the present time and, in an attached October 5, 2016 form report, he noted that appellant could perform her usual job on a full-time basis.

The Board has reviewed the opinion of Dr. Ritvo and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding appellant’s employment-related disability. Dr. Ritvo provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion regarding appellant’s employment-related disability by explaining that he saw nothing in the medical history or his direct evaluation of appellant to show that she had continuing disability due to the accepted employment injury.⁷

For these reasons, OWCP has met its burden of proof to terminate appellant’s wage-loss compensation effective January 10, 2017.

The Board further finds that Dr. Ritvo’s September 28, 2016 report does not contain a clear opinion that appellant ceased to have residuals of her accepted employment injury as he advised that appellant had some, albeit minor, residuals of this employment injury.

Appellant relied upon the medical opinions of Dr. Godofsky. However, the case record does not contain a medical evaluation of appellant’s psychiatric condition which is contemporaneous with the September 28, 2016 evaluation by Dr. Ritvo. The last prior evaluation occurred more than two years prior, *i.e.*, the August 25, 2014 evaluation of Dr. Godofsky. In addition, although Dr. Godofsky referenced “trauma” at the employing establishment in his August 25, 2014 report, he did not provide a clear opinion that appellant continued to have residuals/disability causally related to the accepted condition of depressive reaction.⁸

Therefore, the Board finds that OWCP has not met its burden of proof to terminate appellant’s medical benefits effective January 10, 2017.

⁷ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician’s knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion).

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018) (finding that medical evidence which does not offer an opinion regarding the cause of an employee’s condition/disability is of no probative value on the issue of causal relationship).

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.⁹ In order to prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish residuals or continuing disability due to her accepted employment injury on or after January 10, 2017.¹¹

After OWCP's January 10, 2017 decision terminating appellant's compensation effective the same date, appellant submitted additional medical evidence to show she was entitled to wage-loss compensation after January 10, 2017 due to her accepted employment injury. Given that the Board has found that OWCP properly relied on the opinion of Dr. Ritvo in terminating appellant's wage-loss compensation effective January 10, 2017, the burden shifts to appellant to establish that she is entitled to wage-loss compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had disability due to her accepted employment injury after January 10, 2017.

Appellant submitted a November 17, 2017 report from Dr. Godofsky who advised that it remained his opinion that appellant continued to suffer from major depressive disorder, PTSD, and personality disorder (unspecified). He noted that Dr. Ritvo's September 28, 2016 report was based on the day he spent with appellant in September 2016, while she was in a period of remission, and he believed that the report disregarded the years that appellant had recurrent exacerbations of depression, somatization, anxiety, and detachment. Dr. Godofsky posited that these recurrences were triggered by stressors that often replicated the trauma she experienced at the employing establishment of not being "heard" and being treated in ways that left her feeling helpless and demeaned.

The Board finds that Dr. Godofsky's November 17, 2017 report is of limited probative value on the underlying issue of this case because he failed to provide adequate medical rationale in support of his opinion on causal relationship. Dr. Godofsky did not provide any discussion of the specific condition for which appellant's claim was accepted, *i.e.*, depressive reaction which was caused by several factors including exposure to sexual and sexist comments in the workplace. He made general references to "trauma" from her experience in the workplace, but he did not discuss specific findings on examination or diagnostic testing which supported his ostensible opinion that appellant had continuing residuals or disability from a condition which was suffered almost 30 years prior. The Board has held that a medical report is of limited probative value on the

⁹ *C.V.*, Docket No. 17-1159 (issued April 6, 2018); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁰ *Id.*

¹¹ For the reasons described above, OWCP did not meet its burden of proof to terminate appellant's medical benefits effective January 10, 2017. Therefore, it is not necessary to discuss appellant's entitlement to medical benefits when addressing the second issue of the case.

issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹² Therefore, Dr. Godofsky's November 17, 2017 report is insufficient to establish appellant's claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation effective January 10, 2017, but it has not met its burden of proof to terminate her medical benefits effective January 10, 2017. The Board further finds that she has not met her burden of proof to establish residuals or continuing disability due to her accepted employment injury on or after January 10, 2017.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that OWCP did not meet its burden of proof to terminate appellant's medical benefits effective January 10, 2017.

Issued: July 23, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹² *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).