

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

S.M., Appellant)	
)	
and)	Docket No. 19-0989
)	Issued: May 12, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Denver, CO, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 29, 2019 appellant filed a timely appeal from December 20, 2018 and February 7, 2019 merit decisions 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.²

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying claims for travel reimbursement for medical treatment; and (2) whether OWCP has met its burden of proof to

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 7, 2019 decision, OWCP received additional evidence, and that appellant also submitted evidence with her appeal to the Board. 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.*

terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2019, as she no longer had residuals or disability causally related to her employment injuries.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 9, 1999 appellant, then a 50-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment resulted in respiratory conditions. She explained that she was allergic to dust and had been exposed to dust in the performance of duty due to construction at the employing establishment. Appellant noted that she first became aware of her condition and its relation to factors of her federal employment on February 10, 1997. The claim was adjudicated by OWCP under OWCP File No. xxxxxx900.

Following the initial denial of the claim, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. During a January 4, 2000 hearing before OWCP's Branch of Hearings and Review, she testified that she began smoking at age 19, but quit smoking in about 1986. By decision dated June 23, 2000, the hearing representative set aside the initial denial of the claim and remanded the case for further development. On June 9, 2001 OWCP accepted the claim for allergic rhinitis and chronic sinusitis and later expanded acceptance of the claim to include extrinsic asthma, other diseases of vocal cords, chronic asthma, chronic frontal, ethmoidal and sphenoidal sinusitis, other chronic sinusitis, chronic obstructive asthma, and other diseases of nasal cavity and sinuses.⁴

In a claim adjudicated by OWCP under OWCP File No. xxxxxx600, OWCP accepted appellant's September 13, 1999 occupational disease claim for aggravation of preexisting manic-depressive illness, and expanded acceptance of the claim to include bipolar disorder and post-traumatic stress disorder (PTSD).⁵ Under that claim appellant received medical benefits and wage-loss compensation commencing September 1, 1999. On March 21, 2006 OWCP administratively combined OWCP File Nos. xxxxxx900 and xxxxxx600, with OWCP File No. xxxxxx900 serving as the master file.

Following further development of both claims, OWCP received an individual psychotherapy note from Dana Gruber, Ph.D., dated October 21, 2015, in which she noted seeing appellant for anxiety.

In a report dated April 22, 2016, Dr. Betty Lo, Board-certified in internal medicine, described appellant's active problems and her current medications. She provided physical

³ *Order Dismissing Appeal*, Docket No. 20-0231 (issued January 27, 2020); Docket No. 18-0771 (issued January 31, 2019); *Order Dismissing Appeal*, Docket No. 17-0513 (issued April 25, 2017).

⁴ The record indicates that appellant was exposed to fumes from paints and cleaning materials and was subjected to a construction environment, which resulted in her employment-related respiratory problems.

⁵ On September 13, 1999 appellant filed an occupational disease claim (Form CA-2) alleging that she had developed an emotional condition due to years of harassment in the performance of duty.

examination findings. Dr. Lo's diagnoses included hypertension, gastric reflux, a sleep disturbance, and anxiety.

OWCP continued to develop the claims, and in November 2017 referred appellant to Dr. Glenn M. Gomes, Board-certified in internal and pulmonary medicine, for a second opinion evaluation regarding her accepted pulmonary conditions. The statement of accepted facts (SOAF) OWCP provided to him indicated that she began smoking at age 19 and continued to smoke until 1996.

In a January 11, 2018 report, following his review of the medical record, Dr. Gomes described physical examination and pulmonary function study findings. He diagnosed mild intermittent asthma, eosinophilic sinusitis, gastroesophageal reflux with vocal cord dysfunction, borderline obstructive sleep apnea, and history of cigarette smoking from 1969 to 1996. Dr. Gomes opined that it was unlikely that the employment-related exposures from decades ago were the cause of appellant's present pulmonary complaints, which were more likely than not due to recent environmental exposures. He noted that she had related that she had a hobby of working with dogs and cats and that her allergist in recent years was treating her with immunotherapy to dog and cat dander. Dr. Gomes further noted that this underlined the problem with determining the etiology of appellant's asthma/airway obstruction after so many years had passed. He also noted that it was quite possible that her cigarette smoking alone was the cause of her airway obstruction noted on pulmonary function studies. Dr. Gomes advised that from a pulmonary standpoint appellant was capable of sedentary or light work and concluded that her current therapy was appropriate. He also concluded that her sleep apnea was not work related. Dr. Gomes attached copies of laboratory studies, including pulmonary function studies.

In August 2018, OWCP referred appellant to Dr. Talaat H. Mohamed, a Board-certified psychiatrist, for a second opinion evaluation. In an August 30, 2018 report, Dr. Mohamed described her psychiatric history. Following mental status examination, he diagnosed chronic depressive reaction, depression, generalized anxiety, and personality pattern disorder mixed type with schizoid and paranoid major tendencies. Dr. Mohamed opined that, at that time, appellant had no major mental disorder and there were no signs of symptoms of PTSD. He concluded that she had no disability. On an attached work capacity evaluation, Dr. Mohamed advised that appellant was retired and did not want to return to work, but could work part time.

Appellant submitted a request for travel reimbursement for the dates of September 7, 22, 24, and 30, October 17 and 30, and November 2 and 28, 2017, and August 1 and 2, 2018 for mileage reimbursement for 140 to 160 miles, including a request for mileage to attend her second opinion appointments.

In a letter dated September 24, 2018, OWCP noted that it had received appellant's request for travel reimbursement on the above dates, but that she had not provided verification that she obtained medical treatment of the dates requested. It advised her that she should submit the requested documentation within 30 days.

By letter dated October 29, 2018, OWCP again informed appellant of the evidence needed to support her claim for travel reimbursement.⁶ It afforded her an additional 30 days to respond.

On November 27, 2018 appellant submitted an undated ambulatory summary document listing her name. The document contained a list of diagnoses, but did not contain any dates of treatment. Appellant also submitted copies of laboratory results dated October 22, 2018. These reports did not identify a patient.

By decision dated December 20, 2018, issued under OWCP File No. xxxxxx900 and OWCP File No. xxxxxx600, OWCP denied authorization for travel reimbursement for medical treatment for September 7, 22, and 30, October 30, and November 2 and 28, 2017, and August 1 and 2, 2018. It noted that it had researched both OWCP File Nos. xxxxxx600 and xxxxxx900, but found no evidence to support that appellant received medical treatment for her accepted conditions on those dates.⁷

On December 20, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits under both OWCP File Nos. xxxxxx900 and xxxxxx600. It reviewed her medical history and found that the weight of the medical evidence rested with the second-opinion evaluations performed by Dr. Gomes and Dr. Mohamed who both advised that residuals of the accepted employment-related conditions had ceased.

Appellant responded noting her disagreement with the proposed termination, but submitted no additional medical evidence.

By decision dated February 7, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective February 8, 2019, finding that the weight of the medical opinion evidence rested with the opinions of Dr. Gomes and Dr. Mohamed, OWCP referral physicians, who concluded that she had no residuals or disability due to her accepted conditions.

LEGAL PRECEDENT -- ISSUE 1

OWCP's regulations provide that the employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies.⁸ To determine a reasonable travel distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.⁹ If round-trip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written

⁶ In this letter, OWCP additionally informed appellant that it had also received travel reimbursement claims for 160 miles on September 14 and October 17, 2017, dates that are not at issue in the present appeal.

⁷ OWCP also informed appellant that, in accordance with its regulations, travel limitations had been reduced to 100 miles round trip, effective December 12, 2012.

⁸ 20 C.F.R. § 10.315(a).

⁹ *Id.*

request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary and are related to obtaining authorized medical services, appliances, or supplies.¹⁰

Pursuant to FECA Bulletin No. 14-02 (January 29, 2014), when a claimant submits a travel reimbursement in excess of 100 miles for a single date of service, the bill will automatically be suspended, and the Central Bill Processing provider will send notification to OWCP's claims examiner.¹¹ FECA Bulletin No. 14-02 notes that in some limited circumstances it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as when the claimant lives in a remote area.¹²

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.¹³ The only limitation on OWCP's authority is that of reasonableness. OWCP may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not abused its discretion in denying appellant's request for travel reimbursement for medical treatment.

On December 20, 2018 OWCP denied authorization for travel reimbursement for medical treatment for the dates September 7, 22, and 30, October 30, and November 2 and 28, 2017, and August 1 and 2, 2018. There is no evidence of record in either claim file to support that appellant attended medical treatment on those dates.

In letters dated September 24 and October 29, 2018, OWCP informed appellant of the evidence needed to establish her travel reimbursement claims. The only evidence appellant subsequently provided consisted of an undated ambulatory summary document listing her name, which merely contained a list of diagnoses, but did not contain any dates of treatment. She also submitted copies of laboratory results dated October 22, 2018. These reports did not identify a patient.

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.¹⁵ As the only limitation on its authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or

¹⁰ *Id.* at § 10.315(b).

¹¹ FECA Bulletin No. 14-02 (January 29, 2014).

¹² *Id.*

¹³ *G.C.*, Docket No. 19-0298 (issued June 24, 2019).

¹⁴ *Id.*

¹⁵ *Id.*

actions taken which are contrary to both logic and probable deduction from known facts.¹⁶ Appellant did not submit evidence to support that she attended medical appointments for her accepted conditions on September 7, 22, and 30, October 30, and November 2 and 28, 2017, and August 1 and 2, 2018, the dates at issue in the present appeal. The Board thus finds that OWCP has not abused its discretion by denying her travel reimbursement requests for these dates.¹⁷

With regard to the issue of travel reimbursement, 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.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.¹⁸ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹⁹ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²⁰ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.²¹ 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.²²

OWCP's procedures provide that an SOAF should include a complete record of all pertinent facts related to the injury or medical condition. The omission of a critical fact diminishes the validity of a medical opinion or decision as much as an incorrect statement. Avoiding selective inclusion of facts in the SOAF prevents a perception of bias and maintains neutrality and objectivity in the management of the case.²³ The procedures continue that, when a medical opinion is needed to resolve an issue in a case, an SOAF usually accompanies the case and provides the factual background for the physician's opinion.²⁴ OWCP is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. When the district medical adviser, second opinion specialist, or referee physician renders a medical opinion based on an SOAF which is incomplete

¹⁶ *Id.*

¹⁷ *D.C.*, Docket No. 18-0080 (issued May 22, 2018).

¹⁸ *D.M.*, Docket No. 19-0749 (issued August 19, 2019).

¹⁹ *E.O.*, Docket No. 19-0472 (issued August 15, 2019).

²⁰ *Id.*

²¹ *L.W.*, Docket No. 19-0173 (issued May 2, 2019).

²² *Supra* note 18.

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.4a(2) (September 2009).

²⁴ *Id.* at Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

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.²⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 8, 2019.

OWCP referred appellant to Dr. Gomes in November 2017 for a second opinion evaluation regarding her accepted pulmonary conditions. However, the July 6, 2017 SOAF provided him did not accurately address her smoking history. The SOAF listed a history that appellant began smoking at the age of 19 and continued until 1996. Appellant, however, testified at a January 4, 2000 hearing that she began smoking at age 19 and quit in about 1986. While Dr. Gomes noted his review of the medical record including the SOAF in his January 11, 2018 report, as noted, the smoking history in the July 6, 2017 SOAF contains a smoking history that was contradicted by her January 4, 2000 hearing testimony.

As noted, a SOAF should include a complete record of all pertinent facts related to the medical condition. The omission or incorrect presentation of a critical fact diminishes the validity of a medical opinion or decision.²⁶ The Board finds that the question of appellant's smoking history is pertinent to the accepted pulmonary conditions. Dr. Gomes opined that it was quite possible that her cigarette smoking alone was the cause of her airway obstruction noted on pulmonary function studies. Because he relied on an incorrect SOAF, the Board finds his opinion is insufficient to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits.²⁷

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.²⁸ As the SOAF contains a smoking history that is inconsistent with appellant's hearing testimony the Board finds that OWCP improperly terminated her wage-loss compensation and medical benefits effective February 8, 2019 without clarifying her smoking history.²⁹

CONCLUSION

The Board finds that OWCP has not abused its discretion in denying appellant's requests for travel reimbursement for medical treatment. The Board further finds that OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits, effective February 8, 2019.

²⁵ *Id.* at Chapter 3.600.3a.

²⁶ *Supra* note 23.

²⁷ *See R.P.*, Docket No.18-0900 (issued February 5, 2019); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

²⁸ *Supra* note 18.

²⁹ *See D.L.*, Docket No. 19-1255 (issued January 24, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed. It is further ordered that the February 7, 2019 decision is reversed.

Issued: May 12, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board