

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

P.T., Appellant)	
)	
and)	Docket No. 21-0328
)	Issued: May 2, 2022
DEPARTMENT OF TRANSPORTATION,)	
OFFICE OF THE SECRETARY, OFFICE OF)	
PERSONNEL & TRAINING, Washington, DC,)	
Employer)	
)	

Appearances:
Andrew Douglas, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2021 appellant, through counsel, filed a timely appeal from a December 2, 2020 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.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 21, 2019, as he no longer had disability or residuals causally related to his accepted October 1, 1985 employment injuries; and (2) whether appellant has met his burden of proof to establish continuing disability or residuals causally related to his accepted October 1, 1985 employment injury on or after February 21, 2019.

FACTUAL HISTORY

On May 22, 1992 appellant, then a 39-year-old accountant, filed an occupational disease claim (Form CA-2) alleging major depression and recurrent anxiety disorder due to factors of his federal employment. He alleged that he first became aware of and realized that his condition was caused by his employment in October 1985. Appellant stopped work on July 22, 1992 and has not returned. OWCP accepted the claim for recurrent depressive disorder, anxiety, and classical migraine. It paid appellant wage-loss compensation on the periodic rolls effective June 16, 2002.

On August 9, 2018 OWCP referred appellant, together with a statement of accepted facts (SOAF) dated August 6, 2018, list of questions, and medical record to Dr. Eduardo Sanchez, a Board-certified psychiatrist and neurologist, for a second opinion evaluation regarding the status of appellant's accepted conditions, extent of disability, and appropriate treatment. In an attachment to the referral letter, OWCP noted that appellant's accepted conditions were depressive disorder, anxiety state, and classical migraines.

In a report dated August 28, 2018, Dr. Sanchez noted the SOAF, appellant's history of injury and medical treatment. Diagnoses included history of major depressive disorder, currently in remission, opioid use disorder of moderate intensity, cocaine stimulant use disorder, and sedative hypnotic anxiolytic use disorder. A mental status examination revealed no evidence of cognitive deficit or memory defect, appropriate affect, and no perceptual abnormalities or any type of psychoticism. Dr. Sanchez observed that appellant received treatment for the accepted conditions over many years resulting in a severe addiction to sedative hypnotics. He noted that appellant's treating physician was apparently unaware of the severity of appellant's sedative hypnotic use disorder. Dr. Sanchez also noted that appellant had abused oxycodone, together with Xanax. The high doses of opioids were allegedly for treatment of appellant's migraines, which stemmed from a head injury in 1978. Dr. Sanchez concluded that, based on appellant's history of substance abuse, multiple detoxification/rehabilitation facility stays, and noncompliance with treatment that the diagnosed mood disorder and anxiety were offshoots of his substance abuse. In addition, he attributed appellant's current subjective cognitive impairment and anxiety to opioid and sedative hypnotic use. Dr. Sanchez opined that appellant's diagnosed condition of major depressive disorder was currently resolved/in remission. He concluded that appellant was capable of performing his date-of-injury job provided he had sufficient knowledge and training for reentry to his employment. In support of this conclusion, Dr. Sanchez explained that the factors that triggered appellant's psychiatric disorder were not a convincing stressor to cause a depressive disorder that lasted for many years. He also concluded that he did not believe appellant had significant depressive symptomology justifying disability or work restrictions. Dr. Sanchez concluded that the accepted depressive disorder was resolved/in remission with no further therapeutic changes in regimen required. He attributed appellant's current emotional state to

nonwork-related factors including his polysubstance dependence/abuse. Thus, Dr. Sanchez opined that the depressive, multiple anxiety, and bipolar symptoms exhibited by appellant were most likely attributable to substance abuse.

On November 26, 2018 OWCP referred appellant, together with a SOAF, list of questions, and medical record to Dr. Gerard M. Gerling, a Board-certified psychiatrist and neurologist, regarding whether the accepted condition of classical migraine supported temporary total disability.

In a report dated December 14, 2018, Dr. Gerling diagnosed severe depression, bipolar disorder, and anxiety. He noted that appellant had been treated for migraines with the last migraine occurring 15 years ago. Dr. Gerling found no objective evidence on clinical examination of any memory or cognitive impairment. He concluded that appellant had no objective neurological, mental, or physical condition, which would interfere with his ability to work as an accountant. However, Dr. Gerling noted that appellant related feeling a lack of confidence in his ability to work in the accounting profession due to his diagnosed depression, anxiety, and bipolar disorder.

In a January 18, 2019 notice, OWCP advised appellant of its proposed termination of his wage-loss compensation and medical benefits as he no longer had residuals or disability causally related to his accepted employment injuries. It indicated that the weight of the medical opinion evidence regarding employment-related residuals/disability rested with the August 28, 2018 report of Dr. Sanchez and December 14, 2018 report of Dr. Gerling. OWCP afforded appellant 30 days to present evidence or argument challenging the proposed termination action. No response was received.

By decision dated February 20, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 21, 2019, as he no longer had residuals or disability due to his accepted conditions.

Subsequent to the February 20, 2019 decision, appellant submitted a February 2, 2018 work capacity evaluation for psychiatric/psychological conditions (Form OWCP-5a) from Dr. Eneida Gomez, a Board-certified psychiatrist, advising that appellant was totally disabled from work. Dr. Gomez explained that the side effects of medication prescribed for appellant's diagnosed bipolar disorder included low energy, mood swings, poor sleep, and inability to concentrate for more than 10 minutes at a time.

OWCP also received a February 11, 2019 report from Dr. Basant Farghaly, a Board-certified family medicine physician, who advised that appellant has been under his care since 2010 and that he has not seen any evidence of any drug addiction or a drug-seeking issue. Dr. Farghaly explained that, while under his care, appellant had undergone several drug tests, which results were consistent with his prescribed medications.

In a March 12, 2019 report, Dr. Gomez indicated that she had treated appellant since April 29, 2013 for bipolar disease, generalized anxiety disorder, and insomnia. She noted medications used to treat appellant's psychiatric diagnoses.

On March 14, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review, which was subsequently changed to a request for an

oral hearing. In a statement, he noted his disagreement with Dr. Sanchez's assessment that he was currently using illicit drugs. Appellant noted that his last drug use was in 2005.

In an evaluation/outpatient report dated April 29, 2019 and progress notes dated May 20, 2019, Heather Hartley, an advanced registered nurse practitioner, diagnosed major recurrent severe depressive disorder without psychotic features, generalized anxiety disorder, and bipolar disorder of mild-or-moderate severity. She noted appellant's medical and psychiatric histories.

A telephonic hearing was held on June 25, 2019. By decision dated September 6, 2019, OWCP's hearing representative affirmed the February 20, 2019 decision.

On November 26, 2019 and February 21, 2020 appellant requested reconsideration. OWCP continued to receive medical evidence.

In a report dated November 12, 2019, Dr. Emanuel Martinez, a Board-certified psychiatrist and neurologist, diagnosed bipolar disorder, depressed, mild-to-moderate severity, and generalized anxiety disorder. He listed the medication prescribed and noted that appellant had been under continuous psychiatric care for years. Dr. Martinez indicated that appellant was nonresponsive to psychiatric treatment despite aggressive treatment and complex psychopharmacological interventions. He found appellant totally disabled due to his severe mental illness.

In a report dated November 12, 2019, Denise Verones, Ph.D. and licensed clinical psychologist, noted that she had provided individual treatment for appellant since mid-August 2013. Diagnoses included bipolar I disorder and generalized anxiety disorder. Dr. Verones opined that appellant was not cured as bipolar disorder was considered a life-long disorder. She opined that appellant that was disabled from work as he continued to experience symptoms of the disorders for which he is receiving treatment.

By decision dated March 9, 2020, OWCP denied appellant's request for reconsideration.

On September 4, 2020 counsel requested reconsideration of the September 16, 2019 hearing representative's decision affirming the termination of appellant's benefits. He asserted that the SOAF provided to Dr. Sanchez lacked information required by the Federal (FECA) Procedure Manual. Counsel also asserted that Dr. Sanchez's opinion was speculative and unrationalized, and, thus, insufficient to support termination of appellant's benefits.

By decision dated December 2, 2020, OWCP denied modification.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate

³ See *T.C.*, Docket No. 20-1163 (issued July 13, 2021); *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly terminated appellant's wage-loss compensation and medical benefits for the conditions of recurrent depressive disorder and anxiety, effective February 21, 2019.

OWCP based its termination of appellant's wage-loss compensation and medical benefits for the conditions of recurrent depressive disorder and anxiety on the August 28, 2018 report of Dr. Sanchez, OWCP's referral physician.

In a report dated August 28, 2018, Dr. Sanchez reported findings from the evaluation he conducted on that date. He observed that appellant had received treatment for the accepted conditions over many years resulting in a severe addiction to sedative hypnotics. Dr. Sanchez attributed appellant's current subjective cognitive impairment and anxiety to opioid and sedative hypnotic use. He opined that appellant's major depressive disorder was currently resolved/in remission and that he was capable of performing his date-of-injury job provided he had sufficient knowledge and training for reentry to his employment. Dr. Sanchez explained that the accepted factors that triggered appellant's psychiatric disorder were not a convincing stressor to cause a depressive disorder that has lasted for many years.

The Board finds that Dr. Sanchez failed to provide adequate medical rationale for the opinion expressed in his August 28, 2018 report that appellant ceased to have residuals of his accepted employment-related conditions.⁸ Dr. Sanchez noted that appellant's accepted depressive disorder was in remission/resolved. However, he did not adequately identify objective evidence

⁴ See *T.C., id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *T.C., id.*; *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *T.C., id.*; *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *T.C., id.*; see *A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

⁸ See *J.D.*, Docket No. 20-1167 (issued January 26, 2021); *T.F.*, Docket No. 11-0763 (issued November 7, 2011); *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value if it contains an opinion on a medical matter, which is unsupported by medical rationale).

to support his opinion that appellant's accepted condition of major depressive disorder had resolved. Dr. Sanchez placed great emphasis on relating appellant's present psychiatric condition to what he diagnosed as a severe addiction to sedative hypnotics and substance abuse. The Board also notes that Dr. Sanchez provided no specific discussion of how he had determined that appellant's accepted anxiety had resolved other than attributing it to appellant's unsubstantiated substance abuse. While Dr. Sanchez denied that appellant had residuals or disability of his accepted October 1, 1985 employment injury, he failed to provide a rationalized explanation to support his opinion.⁹

For these reasons, OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective February 21, 2019, for the conditions of recurrent depressive disorder and anxiety.

The Board further finds, however, that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits for the accepted condition of migraines based on the opinion of Dr. Gerling, an OWCP referral physician.

In a report dated December 14, 2018, Dr. Gerling noted that appellant related that his last migraine occurred 15 years prior. Thus, he concluded that the accepted migraine condition had resolved. There is no evidence in the record establishing that appellant continued to receive any treatment for the accepted migraine condition. Therefore, the Board finds that OWCP properly found that appellant no longer had residuals or disability as a result of his accepted migraine condition.

CONCLUSION

The Board finds that OWCP did not meet its burden to terminate appellant's wage-loss compensation and medical benefits for the conditions of recurrent depressive disorder and anxiety, effective February 21, 2019.¹⁰ However, the Board finds that OWCP met its burden of proof to terminate wage-loss compensation and medical benefits for the accepted condition of migraines.

⁹ See *C.S.*, Docket No. 20-0621 (issued December 22, 2020); see also *B.W.*, Docket No. 20-1033 (issued November 30, 2020).

¹⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: May 2, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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