United States Department of Labor Employees' Compensation Appeals Board

L.A., Appellant)	
and)	Docket No. 13-2150 Issued: May 2, 2014
DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS MEDICAL CENTER,)	155ucu. 141ay 2, 2014
Phoenix, AZ, Employer))	
Appearances: Toby Rubenstein, for the appellant Office of Solicitor, for the Director		Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge ALEC J. KOROMILAS, Alternate Judge

On September 30, 2013 appellant, through her representative, filed a timely appeal from a July 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim that she sustained an emotional condition in the performance of duty. The appeal was docketed as No. 13-2150.

The Board has duly considered the matter and finds that this case is not in posture for decision. Upon review of the case record submitted by OWCP, the Board finds that the record before it is incomplete. On appeal, appellant's representative asserts that audio evidence in the form of a recording of voicemail was not considered by OWCP in rendering its decisions, maintaining that the transcript of the recording, relied upon by OWCP, is missing words and does not allow consideration that a listener would have to hear the tone, inflection and accent of the caller. Appellant, a psychiatrist, filed a traumatic injury claim alleging an acute stress disorder due to a threatening message left on her office telephone on August 16, 2012 by one of her patients. A staff assistant, Sharron Gibson, indicated that the message was received on July 20, 2012 but that she did not listen to it for two weeks and then called appellant to report the contents of the telephone voicemail. At that time, appellant was on Family Medical Leave Act for a nonemployment-related illness.¹ The employing establishment police investigated the

¹ The record indicates that appellant was on leave for trigeminal neuralgia.

recorded threat and forwarded a recording to appellant to try and identify the caller. In an October 20, 2012 statement and in hearing testimony, appellant indicated that she identified the caller after listening to the voicemail that was forwarded to her by employing establishment police. She stated that, since she knew of the caller's criminal past, she declined to press charges because she was fearful of retaliation by him and had since felt unsafe and was unable to return to work. Dr. Clint W. Anthony, a Board-certified psychiatrist and appellant's supervisor, reviewed a transcript of the message and disagreed with her assertion that she was in danger.

On January 9, 2013 OWCP denied the claim on the grounds that appellant did not establish a compensable factor of employment. Following a hearing, held on May 14, 2013, in a July 29, 2013 decision, OWCP's hearing representative affirmed the January 9, 2013 decision. Both decisions indicated that only a transcript of the recorded message was reviewed and that neither the claims examiner nor the hearing representative listened to the recording itself before rendering their decisions. Copies of the transcript are in the record before the Board. A copy of the recording itself, however, is not.²

The Board agrees with appellant that listening to the recording itself would be beneficial in rendering an informed opinion in this case. Hence, the Board finds this case is not in posture for decision as the record before the Board is incomplete and would not permit an informed adjudication of the case by the Board. The case must therefore be remanded to OWCP to obtain the aforementioned physical recording of the voicemail message and for further reconstruction and assemblage deemed necessary, to be followed by a *de novo* decision on the merits of appellant's claim.

² The record indicates that a compact disc was forwarded to OWCP by appellant's representative and is kept in the video storage area in San Diego, California.

IT IS HEREBY ORDERED THAT the July 29, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: May 2, 2014 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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