

<sup>1</sup> Docket No. 06-53 (issued August 7, 2006). On June 1, 2004 appellant filed a claim for an emotional condition. By decisions dated April 1 and September 21, 2005, the Office denied his claim.

the Office to review the medical evidence. The law and the facts of the previous Board decision are incorporated herein by reference.

Appellant alleged that on July 26, 2003 an unknown coworker placed four swastikas on equipment that he shared with Tanya Clark, a coworker, who confirmed the allegation and management did not dispute that this incident occurred. In its August 7, 2006 decision, the Board found that appellant established a factual basis for his allegation of harassment and discrimination with respect to the placement of swastikas at his workstation.

Appellant alleged that on January 24, 2004 Sherry Langham, a coworker, twice removed a photograph of him that was located in the workstation of Cindy Chambers, a coworker. On February 7, 2004 he was retrieving mail and heard a loud cry of “URGHH [d]amn [p]icture” and saw Ms. Langham removing the picture again. Appellant was “shocked and scared” and requested leave but it was denied. He informed management of Ms. Langham’s behavior but no action was taken. Ms. Chambers stated that Ms. Langham told her that she could not bear to look at appellant’s picture. In its August 7, 2006 decision, the Board found that the incident involving Ms. Langham tampering with the photograph was established as factual and constituted a compensable factor of employment.

On remand, the Office referred appellant, together with copies of the medical evidence, a statement of accepted facts, which included the two allegations accepted as compensable by the Board, and a list of questions, to Dr. John V. Custer, a Board-certified psychiatrist and neurologist.

In a report dated April 19, 2007, Dr. Custer reviewed appellant’s family, social and medical history and provided the results of a mental status examination. He indicated that he had reviewed the medical records and statement of accepted facts. Dr. Custer diagnosed an adjustment disorder with mixed anxiety and depression and possible paranoid personality traits. He stated:

“[I]t is my professional opinion that the events listed in the statement of accepted facts are not sufficient to have caused, precipitated or aggravated the diagnosed mental condition. It is my opinion that this condition is primarily [appellant’s] own personal issues with being gay and how others react to him being gay, that he is responsible for said emotional condition.”

By decisions dated May 30 and October 30, 2007, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that his emotional condition was causally related to the two compensable employment factors.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the

employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed compensable factors of employment and may not be considered.<sup>4</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>5</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.<sup>6</sup> Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.<sup>8</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision.

The Board found that two of appellant's allegations constituted compensable employment factors. This is not enough, however, to entitle him to benefits. Appellant must further establish a causal connection between these compensable factors of employment and his diagnosed medical conditions. He must establish that he sustained an injury "arising out of the employment."<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>5</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>6</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>8</sup> *See Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>9</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by the claimant.<sup>10</sup>

In a report dated April 19, 2007, Dr. Custer diagnosed an adjustment disorder with mixed anxiety and depression and possible paranoid personality traits. He stated that the events listed in the statement of accepted facts were not sufficient to have caused, precipitated or aggravated appellant's diagnosed mental condition. However, Dr. Custer did not discuss the two specific employment factors accepted as compensable. He provided no discussion of the two factors and no medical rationale explaining how he determined that the two accepted employment factors did not contribute to appellant's emotional condition. Dr. Custer's general statement that "the events listed in the statement of accepted facts" did not contribute to appellant's emotional condition is not sufficient to establish that his opinion on causal relationship was based upon careful consideration of the evidence. It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>11</sup> The Office has an obligation to see that justice is done.<sup>12</sup> Once it undertakes development of the record, it has the responsibility to do so in a proper manner.<sup>13</sup> On remand, the Office should further develop the medical evidence by obtaining a medical report that includes a thorough discussion of the two compensable employment factors in this case and a rationalized explanation as to whether these factors contributed to appellant's emotional condition.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision. Further development of the medical evidence is required on the issue of whether appellant's emotional condition was causally related to the two compensable factors of employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>10</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>11</sup> *See Udella Billups*, 41 ECAB 260 (1989).

<sup>12</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 30 and May 30, 2007 are set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: August 11, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board