

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

<hr/>	)	
<b>E.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 09-1150</b>
	)	<b>Issued: February 19, 2010</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE</b>	)	
<b>FINANCE &amp; ACCOUNTING SERVICE,</b>	)	
<b>Indianapolis, IN, Employer</b>	)	
<hr/>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On March 25, 2009 appellant filed a timely appeal from a January 9, 2009 merit decision of the Office of Workers' Compensation Programs and a February 27, 2009 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.

**ISSUE**

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

## **FACTUAL HISTORY**

This is the second time this case has been before the Board.<sup>1</sup> On March 21, 2008 the Board found that, because appellant alleged her emotional condition was aggravated by the requirements of her work as an accountant, she had established a compensable factor of employment. The Board further found that the medical evidence appellant submitted was sufficient to raise an inference of causal relationship between appellant's emotional condition and her accepted employment factor. Accordingly, the Board set aside the Office's September 15, 2006 decision and remanded the case to the Office to prepare a statement of accepted facts and to further develop the medical evidence. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

On December 29, 2004 Dr. Michael Chan, a Board-certified psychiatrist, reported that appellant believed that communication and direction she received concerning the inter-fund transactions was nonspecific, inaccurate and sparse during her OCONUS training. Because of these factors, she was unable to complete this segment of her work assignment. Dr. Chan advised that appellant's inability to complete this portion of her assignment and the prolonged stress she endured in her office environment caused a relapse of major depression, recurrent and severe. He stated:

“Prior to this relapse, she had been stabilized on Effexor. This relapse manifested itself in the following manner: poor concentration, erratic sleeping patterns, high blood sugars [due to her diabetes], anxiety, depressive moods and chest pains. In addition to the above symptoms, [appellant's] relapse has put an inordinate amount of strain on her current marriage. She believes that what she wants and needs is unimportant, therefore, she hesitates to communicate fully with her husband and children. This causes misunderstandings in her marriage.”

On March 14, 2005 Dr. Sorabh Khandelwal, Board-certified in emergency medicine, reported findings on examination and diagnosed major depression. On June 13, 2005 Dr. Frank Birinyi, Board-certified in emergency medicine, reported findings on examination and diagnosed depression with suicidal ideation.

On June 24, 2005 Dr. Yiu-Chung Chan, a Board-certified psychiatrist, reporting findings following neuropsychiatric testing and diagnosed major depressive disorder, panic attacks with agoraphobia disorder traits, diabetes mellitus and hyperlipidemia. On August 12, 2005 Dr. Chan reported that in addition to the aforementioned conditions, appellant also unsuccessfully attempted suicide. He opined that because of the severe nature of appellant's condition, appellant should remain off work and receive disability indefinitely. Appellant submitted reports from a social worker.

---

<sup>1</sup> *E.M.*, 60 ECAB \_\_ (Docket No. 07-1074, issued March 21, 2008). On November 22, 2004 appellant filed an occupational disease claim (Form CA-2) alleging that she became depressed and developed anxiety due to factors of her employment. She attributed her condition inadequate training, job procedures and oral communication by management over a period of months caused job stress, profound depression and anxiety.

On February 9, 2005 Dr. Sarah Jonaus, a Board-certified internist, reported that appellant's depression prevented her from working. Dr. Jonaus reported:

“[Appellant] has been a patient of this clinic for many years. She was first diagnosed with depression in 1994, and was stable until October 2004. At that time, [appellant] had fairly acute and significant worsening of her anxiety and depression. This was due to changes that occurred at work as well as social stressors at home with her family. Unfortunately, at that time she was unable to function well, and I did advise her to take some time off of work to facilitate her recovery. Since that time, [appellant] has required multiple changes in medication including increasing her dose of Effexor and use of benzodiazepines including both Xanax and Ativan. She was evaluated at M[oun]t Carmel East hospital for profound depression and has been treated in group therapy as well as private therapy and evaluations by a psychiatrist. Because of her profound depression, the patient was unable to work.

“In addition to causing significant mental strain, [appellant's] worsening depression and anxiety also affected her diabetic control. During the time of her increased anxiety and depression, [appellant's] blood sugars were elevated and much more difficult to control as was her blood pressure.”

Appellant submitted a January 17, 2006 report from Dr. Janet Clark, Ph.D, in psychology, who noted that appellant was involved in a dysfunctional marriage from 1969 to 2000 in which she received minimal emotional support from her husband. This led to a total loss of self-esteem, including a suicide attempt in 1980. Dr. Clark related that appellant began to experience physical problems in 1992, which were diagnosed as symptoms of diabetes in 1993. As noted earlier, appellant was diagnosed as having major depression in 1994. Dr. Clark further noted that at the time of the breakdown from job stress around September 2004, the only other issue she was experiencing was her mother's need for heart surgery.

Dr. Clark related that appellant experienced irritability, sleeplessness, lack of contact with other family members, low energy level, mood swings, crying spells and feelings of hopelessness and helplessness. She diagnosed major depression, recurrent, severe, panic disorder with agoraphobia, deferred, obsessive-compulsive features. Dr. Clark noted that appellant returned to work in January 2005, but attempted suicide in June 2005. She concluded:

“It is my opinion that [appellant's] disability is directly related to her employment as accountant [with the employing establishment] as is typical of people who are accountants, [appellant's] personality characteristics include perfectionism, devotion to work and productivity and overconscientiousness. When [appellant] was unable to perform her job correctly, this placed a great deal of stress on her. She attempted to solve the problem through a number of means, but she had no experience and inadequate training in this specific area, so that she was still unable to complete her job assignment with nonretail interfund transactions. Over time, she felt more and more stressed, leading to her emotional breakdown and her inability to function at work. Following return to work, she remained stressed and soon relapsed, which led to an inability to perform job duties and a suicide

attempt.... There are major disruptions in recreation and relationships as a function of her psychological difficulties and self-esteem is low. She is unable to work.”

On remand, the Office referred appellant, together with a statement of accepted facts and list of questions, to Dr. Lee Howard, psychologist, for a second opinion examination. By report dated May 15, 2008, Dr. Howard presented findings on examination, a review of appellant’s medical history and diagnosed major depression and panic disorder with agoraphobia in remission. He reported that test results indicated that appellant was simulating physical and emotional symptoms as well as cognitive dysfunction. Dr. Howard reported that test results revealed appellant “probably has legitimate psychopathology but [was] also exaggerating the extent of the same psychopathology ... for secondary gain.”

Dr. Howard opined that appellant’s condition was produced by life stressors, not a single reaction to a single environmental stressor from work. He opined that the active stressors in 2004 were her mother’s bad heart surgery and in 2007 the stressor was her separation from her second husband. Appellant’s depression was a preexisting condition, first documented in 1980 after an attempted overdose and psychiatric hospitalization caused by marital problems. Dr. Howard concluded:

“A. Major depression clearly predates the industrial accident in question.

“B. Panic disorder with agoraphobia is reported to have a contemporary onset, although the overall clinical history is revealing multifaceted problems.

“C. Thus there is no evidence to support that the 2004 industrial accident has caused [*sic*] a specific psychological or psychiatric disorder.”

By decision dated June 25, 2008, the Office accepted that appellant’s transition to a new accounting system in March 2004 as a compensable employment factor but denied the claim because the evidence of record did not demonstrate that the claimed medical condition was caused by the identified employment factor.

On September 11, 2008 appellant requested reconsideration.

Appellant submitted a note, dated July 16, 2008 signed by Dr. Janet Clark, Ph.D, in psychology, who listed the dates she treated appellant and diagnosed appellant with major depression and panic disorder with agoraphobia. Dr. Clark reported that she continued to treat appellant for these conditions.

Appellant submitted an August 14, 2008 note in which Dr. Marc Clemente, Board-certified psychiatrist, reported the dates when he treated appellant and diagnosed major depressive disorder. In another note, dated November 22, 2005, Dr. Jerold H. Altman, psychiatrist, diagnosed the same condition.

Appellant also submitted a note, dated August 22, 2008, signed by a family member.

By decision dated January 9, 2009, the Office denied modification of its prior decision because the evidence appellant submitted was insufficient to warrant modification.

On January 20, 2009 appellant requested reconsideration.

Appellant submitted a note dated February 20, 2006.

By decision dated February 27, 2009, the Office denied appellant's reconsideration request because appellant did not demonstrate the Office erroneously applied or interpreted a specific point of law, raise a new legal argument not previously considered by the Office or submit new relevant and pertinent evidence not previously considered by the Office.

### **LEGAL PRECEDENT -- ISSUE 1**

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 the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.

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 rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employment factors identified by the employee.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds this case not in posture for decision because an unresolved conflict of medical opinion exists between appellant's attending physicians, on one side, and Dr. Howard, the Office's second opinion physician, on the other, concerning whether appellant's condition was caused by the accepted employment factor.

The reports from Drs. Jonaus and Chan indicated that appellant experienced increasing anxiety, self-doubt, hopelessness and crying spells related to stress at work since being transferred to a new position in January 2004. Drs. Jonaus and Chan attributed an aggravation of her condition, in part, to the work requirements of her position. Furthermore, appellant's psychologist, Dr. Clark, opined that appellant's difficulties in performing her job duties regarding nonretail interfund transactions led to an aggravation of her emotional condition. These physicians noted that she felt overwhelmed, stressed and concerned about her ailing mother, who had recently undergone open heart surgery. Dr. Jonaus diagnosed depression and anxiety and released appellant from work. Dr. Chan stated that appellant experienced poor concentration, erratic sleeping patterns, high blood sugar level due to her diabetes, anxiety, depressive moods and chest pains. He noted that she had endured an emotionally abusive 30-year marriage and had developed a major depression condition, for which she had been prescribed Effexor. Dr. Chan advised that appellant's problems with completing her assignments and the prolonged stress she endured in her office environment caused a relapse of major depression, recurrent and severe.

On the other side of the conflict is Dr. Howard, the Office's second opinion physician, who diagnosed major depression and panic disorder with agoraphobia. He opined that appellant's depression was a preexisting condition. Dr. Howard opined that appellant's condition was produced by life stressors and not a single environmental stressor from work. He did not specifically address the accepted employment factor or whether or not it contributed to, caused or aggravated appellant's condition.

Thus, the Board finds a conflict of medical opinion exists concerning whether appellant's condition was caused by the accepted employment factor of April 27, 2004 or, as Dr. Howard

---

<sup>7</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

put it, “life stressors.” Section 8123 of the Federal Employees’ Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>8</sup> The case will be remanded to the Office to refer appellant, a statement of accepted facts and the medical record to an appropriate specialist or specialists to resolve the conflict of opinion. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

**CONCLUSION**

The Board finds this case not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27 and January 9, 2009 decisions of the Office of Workers’ Compensation Programs are set aside and the case remanded for further development consistent with this decision.

Issued: February 19, 2010  
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

---

<sup>8</sup> 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).