



## **FACTUAL HISTORY**

This case was previously before the Board. In an April 23, 2010 decision,<sup>2</sup> the Board accepted that appellant established several compensable employment factors in connection with her claim for a work-related emotional condition and remanded the case to OWCP for further development.<sup>3</sup> The Board found that she had established employment factors related to her duties as a tax-examining assistant beginning around January 2004.<sup>4</sup> Appellant was responsible for making adjustments to taxpayers' accounts and calculating the tax effects of such adjustments, inputting the proper computer codes for adjustments and determining if statutes of limitation applied to cases. She had to make these determinations quickly due to various applicable deadlines and making these adjustments to taxpayers' accounts required familiarity with a variety of different types of cases, including those for trust fund recovery and innocent spouse cases. Appellant also had to perform mail and new receipt carding duties and take telephone calls to answer questions from taxpayers and different offices. The Board found that other claimed employment factors, mostly related to claims of errors in administrative matters, had not been established by her.<sup>5</sup> The Board further found that, as appellant established compensable employment factors, the case should be remanded to OWCP for analysis of whether the medical evidence showed that she sustained an emotional condition due to the established emotional conditions.

On remand, an OWCP claims examiner sent appellant a May 6, 2010 letter asking her to give details of all prior emotional conditions and to provide medical records of any such conditions. She requested that appellant submit a medical report from an attending physician that described her symptoms, results of examinations and tests, medical diagnoses, effects of treatment and a reasoned opinion on the cause of her condition. The claims examiner stated, "Specifically, if your doctor feels that exposure or incidents in your federal employment contributed to your condition, an explanation of how such exposure contributed should be provided."

In a July 18, 2005 note, Dr. Piyush Buch, an attending Board-certified psychiatrist, advised that appellant was hospitalized from June 27 to July 4, 2005. In a January 17, 2006 disability slip, he noted that appellant could not work until further notice, but he did not indicate a cause for this disability.

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<sup>2</sup> Docket No. 09-1479 (issued April 23, 2010).

<sup>3</sup> On June 2, 2008 appellant, then a 47-year-old tax-examining assistant, filed an occupational disease claim alleging that she sustained depression, anxiety and panic attacks due to various incidents and conditions at work. She indicated that she first became aware of her claimed condition and its relationship to her work on June 7, 2005.

<sup>4</sup> See *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> The Board found that appellant did not establish employment factors regarding her claims that the employing establishment did not provide adequate training to perform her duties as a tax-examining assistant, that she was assigned job duties for which she was unprepared, that managers ignored her requests for help with her job duties, that a supervisor mistreated her in connection with her attempts to receive benefits and engaged in negligence which caused her to not receive compensation for a month and that she feared being disciplined or fired if she made mistakes in her work duties.

In a July 25, 2005 disability slip, Dr. Rafael Vargas, an attending Board-certified family practitioner, stated that appellant was totally disabled beginning June 8, 2005 but could return to regular work on July 25, 2005. He did not address why she was disabled for this period. On May 14, 2010 Dr. Vargas indicated that appellant had been treated with Zoloft on June 11, 2005 for “panic attacks/anxiety/depression.” He stated, “These panic attacks/anxiety/depression [were] caused by the extreme pressure she felt from her job. [Appellant] felt she was not trained adequately for the job she was asked to do. She felt helpless.” Dr. Vargas stated that appellant’s symptoms became so severe that she needed to be hospitalized in the mental department of Advocate Christ Hospital. Appellant was discharged and instructed to attend the partial hospitalization program. Dr. Vargas indicated that she was better now, but she continued to take medication for her anxiety and depression on a regular basis.

In a June 21, 2010 report, Dr. Buch stated that appellant was under his care from June 2005 to January 2007. He indicated that her diagnosis was major depression with anxiety and panic attacks and noted that the symptoms experienced by appellant were frequent depressed mood, anxiety with frequent panic attacks, helpless and hopeless feelings, poor appetite, poor sleep, loss of energy and tiredness, loss of motivation, decreased ability to think and to make decisions while at work, and excessive concerns about her health. Dr. Buch stated, “These symptoms were exacerbated by the stressfulness of her job. [Appellant] felt pressured to do a job that she was not adequately trained for.” He indicated that, due to her severe depression and anxiety, appellant was hospitalized at Advocate Christ Hospital from June 28 to July 4, 2005. Appellant attended the partial hospitalization program beginning July 5, 2005 and she was seen in Dr. Buch’s office on an outpatient basis until January 2007 when she could no longer afford medication and visit charges. Dr. Buch stated that he saw her on June 21, 2010 and she informed him that her condition had improved under continuing treatment by Dr. Vargas, but she continued to suffer from migraines even though she was no longer exposed to her previous work environment.<sup>6</sup>

In an August 11, 2010 decision, OWCP denied appellant’s emotional condition claim on the grounds that she did not submit sufficient rationalized medical evidence to establish that she sustained an emotional condition due to the established compensable employment factors.

Appellant requested a hearing before an OWCP hearing representative. At the November 3, 2010 hearing, she testified that before 2004 she had no emotional problems and no medical treatment or examination for such. Appellant asserted that, beginning in 2004, she was confused, anxious and depressed about her work, for which she did not receive proper training. Beginning in June 2005, she saw Dr. Vargas and Dr. Buch for her emotional problems.

Appellant submitted handwritten and illegible treatment notes from Dr. Buch dated August 2005 to June 2010. She also submitted handwritten treatment notes from Dr. Vargas

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<sup>6</sup> Appellant also submitted a June 28, 2005 report from Advocate Christ Hospital which appears to indicate a diagnoses of depression and anxiety plus another illegible diagnosis. It is unclear who produced this report. In July 4 and 24, 2005 reports, a registered nurse indicated that appellant had been hospitalized for increased anxiety, depressed mood, hopelessness, helplessness, fears and inability to eat.

dated June 2005 to November 2010. In a June 11, 2005 treatment note, Dr. Vargas stated that appellant felt anxious and confused and had chest pain, palpitations, difficulty swallowing, and panic attacks. He stated that she “has pressure from work and family problems.” The diagnoses were anxiety and panic attacks.

In a December 3, 2010 typewritten report, Dr. Vargas stated that appellant was treated beginning in June 2005 for panic attack, anxiety and depression with Zoloft. He indicated that appellant’s symptoms became so severe that she had to be hospitalized in the psychiatric department of Advocate Christ Hospital and that, after she recovered sufficiently to be discharged, she was instructed to attend the partial hospitalization program. Dr. Vargas indicated that appellant was doing better and she continued to take her medication and follow up with her psychiatrist. He stated:

“These panic attacks/anxiety/depression were caused by the extreme pressure [appellant] was under from her work circumstances. This stress comes from having a large caseload up to 40 cases at times, with several pressuring deadlines. [Appellant] was recently promoted to this new position. Therefore she was afraid of being disciplined or even being fired if she made mistakes. [Appellant] felt helpless. She did not have the support of her supervisors.

In a January 19, 2011 decision, OWCP’s hearing representative affirmed OWCP’s August 11, 2010 decision. He indicated that none of the medical evidence of record contained a rationalized medical opinion relating the claimed emotional conditions to accepted 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 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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>7</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>8</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, 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

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<sup>7</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, supra note 4.

<sup>8</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

factors of employment and may not be considered.<sup>9</sup> If a claimant does implicate a factor of employment, OWCP 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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>10</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 rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, 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 claimant.<sup>11</sup>

### ANALYSIS

On June 2, 2008 appellant filed an occupational disease claim alleging that she sustained depression, anxiety and panic attacks due to various incidents and conditions at work. The Board has previously determined that appellant has only established compensable employment factors regarding some aspects of her job duties as a tax-examining assistant beginning around January 2004. The established factors included the fact that she was responsible for making adjustments to taxpayers' accounts and calculating the tax effects of such adjustments, inputting the proper computer codes for adjustments and determining if statutes of limitation applied to cases. Appellant had to make these determinations quickly due to various applicable deadlines and making these adjustments to taxpayers' accounts required familiarity with a variety of different types of cases, including those for trust fund recovery and innocent spouse cases. She also had to perform mail and new receipt carding duties and take telephone calls to answer questions from taxpayers and different offices.

The Board finds that appellant has not submitted rationalized medical evidence establishing that she sustained an emotional condition due to the accepted compensable employment factors.

In a June 11, 2005 note, Dr. Vargas indicated that appellant had "pressure from work and family problems." However, this report is of little probative value on the relevant issue of the present case because he did not provide any details showing that the mentioned work problems constituted any of the accepted compensable employment factor. On May 14, 2010 Dr. Vargas indicated that appellant was treated on June 11, 2005 for panic attacks, anxiety and depression

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<sup>9</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>10</sup> *Id.*

<sup>11</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

caused by “extreme pressure she felt from her job,” including her belief that she was not trained adequately for the job she was asked to do. This report does not show that appellant had any medical condition causally related to the established employment factors but rather relates her condition to her belief that she was not adequately trained, a claimed factor that the Board has previously found was not established. In a June 21, 2010 report, Dr. Buch, an attending psychiatrist, indicated that appellant had stress from the noncompensable factor of being “pressured to do a job that she was not adequately trained for.” This report also is of limited probative value because he related appellant’s emotional problems to a noncompensable factor, her unsubstantiated belief that her training was inadequate.

In a December 3, 2010 report, Dr. Vargas stated that appellant had stress from having a large caseload of up to 40 cases at times, with several pressuring deadlines. He indicated that she had been promoted to a new position and therefore she was afraid of being disciplined or even being fired if she made mistakes. Dr. Vargas noted that appellant felt helpless and believed that she did not have the support of her supervisors. Although he mentioned appellant’s caseload and deadlines, he did not provide any detailed description of these matters and it is unclear whether he had a complete and accurate picture of the work duties that were accepted as compensable employment factors, nor did he provide a detailed explanation of how these duties could have contributed to appellant’s diagnosed psychiatric problems. In fact, it appears from Dr. Vargas’ report that appellant essentially attributed her emotional problems to the stress she experienced from her belief that she did not get adequate support from her supervisors and her fear that she would be disciplined or even being fired if she made mistakes. However, the Board previously made explicit findings that these matters did not constitute compensable employment factors. For these reasons, Dr. Vargas did not provide a rationalized medical opinion relating appellant’s emotional condition to specific, established employment factors.

Appellant submitted other medical evidence for consideration but none of this evidence contained a clear opinion on the cause of her emotional condition. She has not submitted rationalized medical evidence establishing that her claimed condition was related to the accepted employment factors and therefore OWCP properly denied her claim.

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.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board