

FACTUAL HISTORY

OWCP accepted that on or before September 30, 2000, appellant, then a 50-year-old claims examiner/insurance specialist, sustained an aggravation of hypertension due to a stressful workload and overwork. It also accepted bilateral carpal tunnel syndrome and bilateral trigger thumbs.² Appellant received wage-loss compensation for intermittent work absences beginning on May 18, 2001. She stopped work on July 12, 2002 and did not return. Appellant received wage-loss compensation for total disability beginning on July 16, 2002.³

From January 2001 to July 2002 appellant's supervisors submitted September 14 and 16, 2002 statements noting appellant's concern about her workload and that she was assigned a mentor. In December 2001 supervisors assigned additional claims as the office was short staffed during the holiday season. Appellant was unable to process the additional cases.

Dr. Karen Collins, an attending Board-certified family practitioner, submitted reports from July 1999 to December 2003 diagnosing hypertension aggravated by job stress. She opined that appellant had been totally disabled since July 2002. Dr. Collins submitted reports through December 2008 finding appellant's hypertension unchanged.

Dr. Douglas Gurman, an attending Board-certified hand surgeon, performed a left median nerve release on May 15, 2003.

On July 19, 2004 appellant filed an occupational disease claim (Form CA-2) alleging that on or before September 30, 2000, she sustained anxiety and depression due to overwork, as well as a pattern of harassment and discrimination.

In a July 16, 2004 report, Dr. Krishna Gupta, an attending Board-certified psychiatrist, diagnosed depressive disorder and adjustment disorder with mixed emotional features. He checked a box "yes" indicating his support for causal relationship. Dr. Gupta indicated that appellant was totally disabled for work from July 15, 2002 onward. He referred appellant to Gail Avery, a counselor, for psychotherapy.⁴

In a June 12, 2006 statement of accepted facts, OWCP accepted as compensable that appellant "was required to manage a voluminous workload in addition to her normal assigned duties, assignments and special tasks within established time frames and constraints." It found

² OWCP initially denied the claim by December 18, 2002 decision, vacated on June 4, 2004.

³ The employing establishment terminated appellant on October 17, 2003 due to excessive absenteeism. On February 16, 2005, the Social Security Administration approved appellant's application for disability retirement benefits. On March 22, 2006, appellant elected to receive FECA benefits in lieu of Office of Personnel Management (OPM) disability retirement benefits effective July 12, 2006. OWCP placed appellant's case on the periodic rolls effective July 1, 2006.

⁴ On July 13, 2005 OWCP obtained a second opinion from Dr. Kurt Bruckmeier, a Board-certified internist, who found appellant permanently disabled from her date-of-injury job as the accepted aggravation of hypertension had not resolved.

that appellant did not establish as factual her allegations of harassment, discrimination and unfair working conditions.⁵

On February 8, 2010 OWCP obtained a second opinion from Dr. Benjamin Root, a Board-certified psychiatrist. It requested that Dr. Root explain whether the accepted work factor caused or aggravated any psychiatric condition, and whether appellant had continuing residuals of such condition. Dr. Root reviewed the medical record and statement of accepted facts OWCP provided for his use. On psychiatric examination, he observed anxious mood with despondency but found appellant's responses were within normal limits. Dr. Root diagnosed generalized anxiety disorder, a history of depression, and a history of adjustment disorder with mixed anxiety and depressed mood. He opined that the statement of accepted facts and appellant's responses on examination demonstrated that the generalized anxiety disorder and hypertension continued to be related to her federal employment. Dr. Root found appellant unable to perform her date-of-injury job as anxiety and depression impaired her concentration and problem solving abilities. He opined that appellant had reached maximum medical improvement but required continued medication and psychotherapy.

On February 19, 2010 OWCP obtained a second opinion from Dr. Parvesh Goel, a Board-certified internist, who reviewed the medical record and statement of accepted facts provided. On examination, Dr. Goel noted muscle atrophy in both hands and obtained a blood pressure reading of 141/78. He diagnosed hypertension, bilateral carpal tunnel syndrome, bilateral trigger thumb, anxiety and depression. Dr. Goel opined that appellant's continuing hypertension was "likely" or "possibly" caused by labile hypertension that progressed to essential hypertension. He also stated that appellant did not have hypertension. Dr. Goel found that appellant's bilateral carpal tunnel syndrome and trigger thumb remained active. He commented that he was unaware of appellants' job duties but that she "should be able to resume her preinjury position considering hypertension as her only work-related injury."

In a June 3, 2010 file memorandum, OWCP found that Dr. Root's opinion should be disregarded as he did not provide medical rationale and OWCP had not accepted an emotional condition.

By notice dated June 4, 2010, OWCP advised appellant that it proposed to terminate her compensation benefits on the grounds that the accepted conditions had ceased without residuals, based on Dr. Goel's opinion as the weight of the medical evidence. It afforded her 30 days to submit additional evidence or argument.

In response, appellant submitted a June 25, 2010 letter reiterating her account of overwork and harassment, a June 25, 2010 release of records, and Ms. Avery's June 24, 2010 comments on appellant's workplace. She also provided an undated letter from Dr. Collins explaining that appellant had no hypertensive symptoms prior to the accepted workload increase. Dr. Collins opined that appellant's hypertension remained disabling.

⁵ On July 16, 2006 OWCP obtained a second opinion from Dr. Elizabeth Henderson, a Board-certified psychiatrist, who diagnosed a resolved adjustment disorder with mixed anxiety and depressed mood, caused by the accepted factors of a heavy workload and overwork. In an April 23, 2007 letter, Dr. Gupta opined that the adjustment disorder had not resolved as appellant had frequent decompensations when reminded of her limitations.

By decision dated August 23, 2010, OWCP terminated appellant's wage loss and medical compensation benefits on the grounds that the accepted conditions had resolved without residuals. It found that the new medical evidence submitted did not establish continuing residuals of the accepted condition. OWCP denied appellant's emotional condition claimed on the grounds that she did not submit sufficient medical evidence to establish causal relationship.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ 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.⁹

The fact that OWCP accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on OWCP to demonstrate an absence of employment-related disability during the period subsequent to the date when compensation is terminated or modified.¹⁰ OWCP's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome, bilateral trigger thumbs and an aggravation of hypertension. Appellant submitted medical evidence regarding her treatment for hypertension through June 2010 from Dr. Collins, an attending Board-certified family practitioner, who found appellant's hypertension was caused by and continued to be related to the accepted employment factors of a heavy workload and overwork. She underwent a left median nerve release on May 15, 2003.

On February 19, 2010 OWCP obtained a second opinion from Dr. Goel, a Board-certified internist, who found a blood pressure reading of 141/78 but stated that appellant did not have hypertension, or had labile or essential hypertension or both. Dr. Goel noted that he was unfamiliar with appellant's job duties. OWCP terminated appellant's compensation effective

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *Roger G. Payne*, 55 ECAB 535 (2004).

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹⁰ *Raymond W. Behrens*, 50 ECAB 221 (1999).

¹¹ *Id.*

August 29, 2010 based on Dr. Goel's opinion. The Board finds that the termination was improper as there was a conflict of medical opinion between Dr. Goel, for the government, and Dr. Collins, for appellant.

Dr. Collins stated that appellant's hypertension was ongoing through June 2010 and continued to be related to the accepted work factors. Dr. Goel opined both that appellant had and did not have hypertension, that the condition could be related to undiagnosed preexisting conditions, and that he was unfamiliar with appellant's work. The two physicians thus disagree on the presence and etiology of the accepted condition. Their opinions are fundamentally at odds.

FECA, at 5 U.S.C. § 8123, states 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. OWCP did not do this. At the time of the termination, there was an outstanding conflict of medical opinion. The termination was thus improper as OWCP did not meet its burden of proof in terminating compensation.¹²

On appeal, counsel asserted that OWCP's August 23, 2010 decision is "contrary to fact and law." As stated, OWCP did not meet its burden of proof in terminating appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

FECA provides for payment of compensation for personal injuries sustained while in the performance of duty.¹³ Where disability results from an employee's reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹⁴ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁵ 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.¹⁶

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.¹⁷ The Board has held that a variety of work factors are

¹² *Raymond W. Behrens*, *supra* note 10.

¹³ 5 U.S.C. § 8102(a).

¹⁴ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁵ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁶ *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁷ *See Norma L. Blank*, 43 ECAB 384 (1992).

compensable under FECA. Among them, overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.¹⁸ If a claimant implicates 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, the Office must base its decision on an analysis of the medical evidence.¹⁹

The Board has held that incidents of discrimination or retaliation by supervisors and coworkers, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.²⁰ The issue is whether the claimant has submitted evidence sufficient under FECA to establish an injury arising in the performance of duty.²¹ For discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.²² Mere perceptions of harassment, retaliation or discrimination are not compensable under FECA.²³

ANALYSIS -- ISSUE 2

Appellant claimed that she sustained anxiety and depression due to overwork, harassment and discrimination. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. Overwork is a compensable employment factor if substantiated by the evidence.²⁴ In support of her allegations, appellant submitted supervisory statements confirming that in December 2001, appellant was assigned additional duties when the office was short staffed, in addition to an already heavy workload. OWCP accepted as factual that appellant was required to manage a heavy workload and additional duties under deadlines. The Board finds that appellant has established her allegations of a heavy workload and overwork as factual and compensable.

Appellant also attributed her condition to a pattern of supervisory harassment and discrimination. Harassment and discrimination may also be compensable if arising from assigned duties and corroborated by sufficient evidence.²⁵ However, appellant did not submit

¹⁸ *Bobbie D. Daly*, 53 ECAB 691 (2002); *Robert W. Wisenberger*, 47 ECAB 406, 408 (1996); *Chester R. Henderson*, 42 ECAB 352 (1991); *Manuel W. Vetti*, 33 ECAB 750 (1982). See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984) (the Board held that an unusually heavy workload is covered under the Federal Employees' Compensation Act).

¹⁹ *Marlon Vera*, 54 ECAB 834 (2003).

²⁰ *Janice I. Moore*, 53 ECAB 777 (2002). See *David W. Shirey*, 42 ECAB 783 (1991).

²¹ See *Martha L. Cook*, 47 ECAB 226 (1995).

²² *Janice I. Moore*, *supra* note 20.

²³ *Kim Nguyen*, 53 ECAB 127 (2001).

²⁴ *Bobbie D. Daly*, *supra* note 18; *Georgia F. Kennedy*, *supra* note 18.

²⁵ *Janice I. Moore*, *supra* note 20; *Martha L. Cook*, *supra* note 21.

evidence substantiating any incidents of harassment or discrimination at work. Therefore, she has not established a compensable factor in this regard.²⁶

As appellant established compensable factors of employment, the Board must examine if the medical evidence supports that she sustained an emotional condition as a result of those factors. Dr. Gupta, an attending Board-certified psychiatrist, diagnosed an adjustment disorder with mixed emotional features. He checked a box “yes” on a July 16, 2004 form report indicating his support for causal relationship. As this opinion was insufficiently rationalized,²⁷ OWCP obtained a second opinion on February 8, 2010 from Dr. Root, a Board-certified psychiatrist. OWCP prepared a statement of accepted facts, accepting as factual that appellant managed a large workload and additional assignments under time constraints.

OWCP asked Dr. Root to determine if appellant sustained a work-related emotional condition and if such condition had resolved. Dr. Root conducted a psychiatric examination and diagnosed generalized anxiety disorder with a history of depression and adjustment disorder. He explained that appellant’s responses, when correlated to the accepted employment factor of overwork, demonstrated that the generalized anxiety disorder continued to be work related and disabling. Dr. Root opined that appellant had reached maximum medical improvement and required continued treatment.

In a June 3, 2010 file memorandum, OWCP stated it would disregard Dr. Root’s opinion because he did not explain his reasoning. It asked Dr. Root to determine if appellant had a work-related emotional condition. To discount his opinion because he did exactly as OWCP asked is contrary to logic. Additionally, Dr. Root provided medical rationale explaining the causal relationship between the diagnosed anxiety disorder and overwork. His opinion is based on the complete medical record and statement of accepted facts. It is entitled to the weight of the medical evidence.²⁸ The evidence establishes that appellant sustained an emotional condition in the performance of duty due to the accepted employment factor of overwork. OWCP’s August 23, 2010 decision finding that appellant did not establish a work-related emotional condition will be reversed.

CONCLUSION

The Board finds that OWCP improperly terminated appellant’s wage-loss and medical benefits as there was a conflict of medical opinion regarding the presence of continuing injury-related residuals. The Board further finds that appellant has established that she sustained an emotional condition in the performance of duty.

²⁶ *Kim Nguyen, supra* note 23.

²⁷ *Calvin E. King*, 51 ECAB 384 (2000) (the Board held that form reports from a physician who checked a yes box indicating a causal relationship between the claimant’s spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation). *Debra S. King*, 44 ECAB 203 (1992).

²⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 23, 2010 is reversed.

Issued: September 21, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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