

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 26, 2008 appellant, a 49-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to factors of her federal employment. This case is before the Board for the second time. In its October 1, 2010 decision, the Board found that appellant had established compensable factors of employment, in that she was required to work overtime in order to complete assignments, performed tasks which overlapped and required her to move quickly from one task to another and was required to use inadequate equipment. Accordingly, the Board remanded the case to OWCP for analysis and development of the medical evidence.<sup>2</sup> The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

Relevant medical evidence of record included disability slips and notes dated September 11, 2008 to February 26, 2009 from Dr. Andrea Pedano, a Board-certified osteopath specializing in family medicine. In a September 11, 2008 disability slip, Dr. Pedano stated that she had been treating appellant for an acute stress reaction since August 22, 2008.<sup>3</sup> She recommended that appellant stay out of work until she was evaluated by an occupational medicine network and had received counseling. On January 19, 2009 Dr. Pedano stated that appellant, who was under her care for post-traumatic stress disorder (PTSD) and “corruption in the U.S.P.S,” would be able to return to work full duty on January 21, 2009. On February 3, 2009 she restricted appellant to working only in her assigned installation. In a February 26, 2009 disability slip, Dr. Pedano stated that appellant would be out of work indefinitely for PTSD and workplace harassment.

Appellant submitted reports from Danielle Schur, a licensed social worker. In a December 4, 2008 report, Ms. Schur stated that she had been treating appellant since September 22, 2008 for anxiety related to work stressors and symptoms of anxiety, which manifested in insomnia, hives, skin rashes, headaches, difficulty breathing, stomach issues and an overall mistrust of others. She stated:

“[Appellant] is a very intelligent, highly motivated and insightful woman. [She] has been enduring significant workplace stress induced by harassment/intimidation and unethical/fraudulent practices. [Appellant] has been pressured to engage in these activities despite repeated refusal.”

Ms. Schur indicated that the employing establishment had blatantly ignored appellant’s concerns, thereby exacerbating her anxiety levels. She recommended that appellant remain out of work until her concerns were addressed.

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<sup>2</sup> Docket No. 10-181 (issued October 1, 2010).

<sup>3</sup> The record contains a September 4, 2008 hospital discharge instructions relating to the condition of stress reaction.

In a note dated February 3, 2009, Ms. Schur indicated that appellant had experienced a recurrence of PTSD symptoms and recommended that she return to work only in the 19050 installation.

By decision dated November 3, 2010, OWCP denied appellant's claim on the grounds that the medical evidence did not demonstrate that her emotional condition was causally related to the established factors of employment.

On November 8, 2010 appellant requested a telephone conference, which was later changed to a request for a decision on the written record. On March 22, 2011 her representative requested that appellant be granted a 30-day period to submit additional medical evidence. No additional evidence was submitted by appellant.

By decision dated June 7, 2011, an OWCP hearing representative affirmed the November 3, 2010 decision. He found that the evidence was insufficient to establish that appellant sustained an emotional condition as a result of established compensable factors of employment.

### **LEGAL PRECEDENT**

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 factors of employment and may not be considered.<sup>4</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>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete 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>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

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

<sup>5</sup> *Id.*

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

### ANALYSIS

In its October 1, 2010 decision, the Board determined that appellant established compensable employment factors with respect to her position, which required her to work overtime in order to complete assignments, perform tasks which overlapped and to move quickly from one task to another and to use inadequate equipment. Appellant's burden of proof is not discharged, however, by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. She must also submit rationalized medical evidence establishing that her claimed condition is causally related to the accepted compensable employment factors.<sup>9</sup> The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an emotional condition due to the accepted employment factors.

Appellant submitted disability slips and notes from her treating physician, Dr. Pedano, who diagnosed PTSD. To the extent that Dr. Pedano's reports failed to express an opinion on the issue of causal relationship, they lack probative value. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> In January 19, 2009 notes, Dr. Pedano attributed appellant's PTSD to "corruption in the U.S.P.S." In a February 26, 2009 disability slip, she stated that appellant would be out of work indefinitely for PTSD and workplace harassment. Neither report, however, contained a rationalized medical opinion explaining how appellant's PTSD was caused or exacerbated by the established employment factors, namely working overtime; performing overlapping tasks; and using inadequate equipment.<sup>11</sup> Therefore, they are of limited probative value and insufficient to establish her claim.

Appellant submitted reports from Danielle Schur, a licensed social worker. On December 4, 2008 Ms. Schur stated that she had been treating appellant since September 22, 2008 for anxiety related to work stressors and symptoms of anxiety, induced by "harassment/intimidation and unethical/fraudulent practices." She indicated that the employing establishment had blatantly ignored appellant's concerns, thereby exacerbating her anxiety levels. On February 3, 2009 Ms. Schur indicated that appellant had experienced a recurrence of PTSD symptoms and recommended that she return to work only in the 19050 installation. Although she suggested an employment-related cause of appellant's diagnosed condition, her reports did not provide a clear opinion that appellant's stress condition was related to the specific

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<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>10</sup> *Dennis M. Mascarenas*, *supra* note 8.

<sup>11</sup> In its October 1, 2010 decision, the Board found that appellant had not established a compensable factor of employment with regard to harassment or abusive conduct on the part of the employing establishment.

accepted employment factors, rather than to general perceptions of harassment or other perceived abuse.<sup>12</sup>

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by accepted factors of her employment, appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment. The Board, therefore, affirms OWCP's June 7, 2011 decision.

On appeal, appellant alleges that OWCP did not request additional medical evidence in the processing of her claim. As noted in the Board's October 1, 2010 decision, however, in a letter dated November 6, 2008, OWCP requested additional factual and medical evidence from appellant, including a physician's report containing a diagnosis and an opinion explaining how the diagnosed condition was causally related to the identified employment factors.

Appellant also contends that the medical evidence of record establishes that she sustained an emotional condition in the performance of duty. For reasons stated, the Board finds that she has failed to meet her burden of proof to establish that she developed an emotional condition in the performance of duty.

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 has not established that she sustained an emotional condition causally related to compensable factors of her federal employment.

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<sup>12</sup> A social worker is not a physician under FECA. 5 U.S.C. § 8101(2); see *Earnest St. Pierre*, 51 ECAB 623, 626 (200) (reports of a social worker do not constitute competent medical evidence as a social worker is not a physician as defined by 5 U.S.C. § 8101(2)).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board