

FACTUAL HISTORY

On April 14, 2010 appellant, then a 48-year-old clerk, filed an occupational disease claim alleging that her emotional condition was related to her federal employment.² She indicated that her work with the public placed her in stressful situations and that she was threatened on the job either directly or indirectly more than three times over the last five years. Appellant stated that her condition was caused or aggravated by her employment on March 8, 2010. The employing establishment noted that she had been on Family and Medical Leave Act leave since a March 8, 2010 incident, which the Postal Inspection Service was investigating.

In an April 14, 2010 statement, appellant stated on March 8, 2010 that a customer came into the employing establishment and asked a window clerk, Deborah Miller, to speak with a Joyce White. Although Ms. Miller attempted to reach Ms. White by telephone, she was unable to come to the phone. The man became very upset when he could not speak to Ms. White. Appellant stated that the customer began to yell at her and stated "It's been a long time since something bad has happened at the Post Office." She stated that this was witnessed by two customers. Appellant indicated that she did not feel comfortable at the employing establishment and that, as their facility was the main post office, she was the first line of defense with many angry customers. A copy of the Postal Police Incident Report of the March 8, 2010 incident was provided.

Appellant indicated that this incident was similar to the facts in her prior claim in 2005 when a fellow employee at another station telephoned appellant to inform her about how she planned to wage war against the employing establishment. She also referred to an incident on October 31, 2006 when she took a call from a customer who stated that he was Osama Bin Laden and that he was going to blow up the employing establishment. Appellant stated that the Postal Inspection Service was called and the office was evacuated for a bomb threat. She also referenced another incident when a man came into the lobby, left a package and ran out of the building. Appellant indicated that the postal police were called to inspect the package.

By letters dated May 20, 2010, OWCP requested additional factual and medical information from appellant and the employing establishment to establish the claim.

In a March 8, 2010 report, James Ingram, Ph.D., a psychologist, noted the customer incident that occurred that day. He noted other stressors that exacerbated this incident were that appellant's father had died from an overdose the previous week and that he had been buried the prior weekend. Dr. Ingram opined that appellant's prior condition, accepted under case number xxxxxx535, was aggravated due to the employment incident of March 8, 2010. He noted that appellant had received a previous threat on October 31, 2006 when a customer called saying he was Osama Bin Laden and threatened to blow up the employing establishment.

² Appellant has a prior accepted claim for recurrent major depression due to a threatening call from a coworker in 2005 under case number xxxxxx535. She also has an accepted claim for a right shoulder condition under case number xxxxxx767 and injuries to the right shoulder, elbow, hip, thigh, knee and foot under case number xxxxxx709.

In a June 1, 2010 report, Dr. Thomas Varghese, a Board-certified psychiatrist, noted that appellant had been his patient since 2007 and that she saw Dr. Ingram for therapy. He noted the March 8, 2010 incident and that appellant felt overwhelmed as a result. Dr. Varghese discussed appellant's treatment.

In a June 3, 2010 statement, appellant stated that she had not filed any grievances or Equal Employment Opportunity complaints. She disputed that her father's death was stressful claiming they were not close. Appellant stated that she was constantly afraid of being in any employing establishment facility and also felt constantly threatened at or by her job.

The employing establishment controverted the claim as the investigation by its inspection service into the March 8, 2010 incident revealed no threat. It noted that just prior to this incident on March 5, 2010, appellant had been notified that she "had been excused" or involuntarily transferred to a facility in Tyler, Texas. The employing establishment also noted that she claimed that working in the current position was outside her work restrictions. It claimed that appellant had never raised that concern with management. Witness statements dated June 8, 2010 provided by the Postal Inspection Service confirmed that on March 8, 2010 appellant was involved with a customer who was upset, raised his voice, was very persistent to be seen by somebody else, and after he gave appellant his information, stated that he did not want something bad to happen. A review of the video at the employing establishment revealed that appellant handled six additional passport customers for approximately 42 minutes before she gathered her property and left the building.

By decision dated September 2, 2010, OWCP denied the claim finding that the injury did not occur in the performance of duty. It found that the March 8, 2010 incident was factual but noncompensable as the investigation found a threat was not present as the customer neither raised his voice, made any threatening gestures, nor invaded appellant's space. OWCP concluded that appellant's stress was not related to her employment.

Appellant requested a hearing by form dated September 9, 2010.

By decision dated December 13, 2010, an OWCP hearing representative found the case not in posture for a decision and remanded the case for further development. The hearing representative found that OWCP appeared to deny the claim because the Postal Inspection Service found the March 8, 2010 incident was not a threat. The hearing representative found that, while the threat assessment was not credible, witness statements supported that the customer was upset, yelled at appellant, raised his voice and stated something about hoping nothing happened to the postal service. Furthermore, appellant had to deal with this customer as part of her duties and, thus, this occurred in the performance of duty. The hearing representative also noted that the employing establishment did not challenge appellant's statement regarding other incidents she perceived as threatening: the October 31st incident when someone called claiming to be Osama Bin Laden and blowing up the office, causing the building to be evacuated; or, when a man subsequently left a package in the lobby and ran away. The hearing representative found that appellant was subject to the described two incidents and had to deal with customer complaints as part of her work duties. She found that those two factors were compensable work factors and remanded the case to OWCP to amend the statement of accepted facts to include relevant information from her previous claims and refer appellant for a second

opinion examination to determine whether the accepted work factors contributed to her current medical condition.

On March 2, 2011 OWCP updated the statement of accepted facts. It contained a description of appellant's job duties; that under case number xxxxxx535 it had accepted a recurrent episode of depression due to the compensable employment factor that she had received a threatening telephone call from another postal employee while answering the telephone at the Spring Valley Post Office. For the instant claim, the March 8, 2010 incident³ was noted to be compensable only to the extent that the customer had yelled at appellant and stated that it had been a long time since something bad had happened at the employing establishment. OWCP found that the other incidents alleged by appellant that occurred were not factors of employment and that it was not accepted as factual that she was constantly threatened on the job.

In a March 25, 2011 report, Dr. Tarakumar Reddy, a Board-certified psychiatrist and second opinion physician, noted, concerning the March 8, 2010 incident, that the customer neither raised his voice nor made any threatening gestures or invaded appellant's personal space. He noted that appellant's coworkers reportedly were of the opinion that there was no truth to what she stated and the factual medical evidence did not establish her claim. Dr. Reddy noted that she reportedly worked for six hours after that customer's visit. He noted that appellant had depression and anxiety since 1994 and stated that other environmental factors probably could have resulted in her depression. Dr. Reddy noted his examination of appellant and opined that the compensable factor of "yelling, screaming and verbal threat outlined in the statement of accepted facts" did not materially contribute by actual cause, precipitation or aggravation to her condition. He indicated that there was no clear evidence per the postal service that anything like this occurred and indicated appellant may be paranoid.

By decision dated May 11, 2011, OWCP denied the claim finding that the claimed condition did not arise in the performance of duty. In an August 19, 2011 decision, an OWCP hearing representative set aside the May 11, 2011 decision and remanded for further action. The hearing representative found that, while the March 8, 2010 customer incident was not a threat, appellant still had to deal with this customer as part of her federal duties and this occurred in the performance of duty. The hearing representative noted that the previous hearing representative found this to be a compensable factor of employment and the statement of accepted facts did not reflect this. The hearing representative found that Dr. Reddy's opinion was based on an incorrect conclusion and inaccurate statement of accepted facts. OWCP was instructed to prepare a new and accurate statement of accepted facts and thereafter refer appellant to a new second opinion psychiatric examination for an opinion regarding whether the accepted work factors contributed to her condition.

On October 20, 2011 OWCP prepared a new statement of accepted facts and referred it along with appellant and a list of questions to Dr. Marty Bennett, a Board-certified psychiatrist, for a second opinion examination. In a November 23, 2011 report, Dr. Bennett noted the history of injury, his review of the records and his examination of appellant. He diagnosed major depressive disorder recurrent episode. Dr. Bennett opined that the compensable factors of

³ OWCP erroneously noted that March 8, 2010 incident was March 28, 2010.

yelling, screaming and verbal threat did not precipitate or aggravate appellant's preexisting condition of depression and anxiety.

OWCP determined that a conflict in medical opinion existed between Dr. Ingram, the attending physician, and Dr. Bennett, the second opinion physician, as to whether the compensable factors of employment caused appellant's work-related condition. Accordingly, OWCP sent appellant's medical record, a list of questions and a statement of accepted facts to Dr. Andrew Brylowski, a Board-certified psychiatrist, for an impartial medical opinion. In a May 6, 2012 report, Dr. Brylowski noted his review of the evidence along with the psychiatric testing appellant underwent. He diagnosed major depressive disorder with recurrent psychotic features. Dr. Bennett opined that the compensable factors of yelling, screaming, and verbal threats did not cause, aggravate, precipitate or aggravate appellant's condition. He stated that there were multiple comorbid conditions and multiple co-occurring variables that were more likely to have precipitated her current behavior relative to employment and that objective neuropsychiatric measures were consistent with chronic mental illness. Dr. Brylowski opined that the accepted factor from the statement of accepted facts would not cause or aggravate appellant's condition. He noted that she was receiving psychiatric care concurrent with employment which would not have prevented employment.

By decision dated May 22, 2012, OWCP denied appellant's emotional condition claim on the basis that the medical evidence failed to support that her medical conditions were causally related to the accepted factors of employment. Determinative weight was accorded to the opinion of Dr. Brylowski, the impartial medical specialist.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁴ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁵

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.⁶ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job

⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁵ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁷

A claimant's burden of proof is not discharged by the fact that he or she has identified an employment factor which may give rise to a compensable disability under FECA. He or she also has the burden of submitting sufficient medical evidence to support his or her claim that the compensable factors resulted in an employment-related emotional condition.⁸ The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.⁹

When the medical evidence of record gives rise to a conflict in opinion between the physician for the employee and the physician making the examination for the United States, a third physician shall be appointed to make an examination as an impartial medical specialist.¹⁰ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist will be given special weight when based on a proper factual and medical history and if sufficiently well rationalized.¹¹

ANALYSIS

In the May 22, 2012 decision, OWCP relied on the May 6, 2012 report of Dr. Brylowski, the impartial medical examiner, to find that appellant's diagnosed major depressive disorder with recurrent psychotic features was not causally related to the accepted employment factors. Dr. Brylowski explained that there were multiple comorbid conditions and multiple co-occurring variables that were more likely to have precipitated her current behavior relative to employment and that objective neuropsychiatric measures were consistent with a chronic mental illness, for which she was receiving psychiatric care concurrent with employment. He reviewed extensive psychological testing, reviewed the medical record and reported no basis to find that the accepted work factors caused or aggravated a diagnosed emotional condition.

The Board finds that Dr. Brylowski's impartial opinion negated a causal relationship between the accepted employment factors and appellant's major depression condition. Dr. Brylowski's medical report was thorough, well rationalized and based on an accurate factual and medical background. He explained why appellant's major depression condition was not caused or aggravated by the accepted employment factors. Dr. Brylowski's report is entitled to the special weight accorded an impartial medical specialist.¹² OWCP therefore properly found that it represented the weight of the medical evidence in its May 22, 2012 decision.

⁷ *Id.*

⁸ *Chester R. Henderson*, 42 ECAB 352 (1991).

⁹ *See L.R., (E.R.)*, 58 ECAB 369 (2007).

¹⁰ *See Guiseppe Aversa*, 55 ECAB 164 (2003). *See* 5 U.S.C. § 8123(a).

¹¹ *See Richard R. LeMay*, 56 ECAB 341 (2005).

¹² *See B.T.*, Docket No. 08-1885 (issued June 3, 2009).

On appeal, appellant alleged that she was constantly threatened by her job and on the job. She also stated that several accepted facts were not true or pertinent to her case. OWCP developed the factual evidence of appellant's claim and determined which facts were accurate and considered to be within the performance of duty. It found that she was not constantly threatened by her job. Appellant's disagreement of how OWCP classified the evidence in her claim without supportive evidence is insufficient to change the statement of accepted facts. She also alleged that OWCP engaged in doctor shopping to deny her claim. However, a review of the procedural history in this case does not support this allegation. In an August 19, 2011 decision, an OWCP hearing representative found the opinion of the second opinion physician, Dr. Reddy, was of little probative value as he had based his opinion on an incomplete statement of accepted facts, which did not include the compensable factors of employment. Accordingly, the case was remanded to OWCP to develop a complete statement of accepted facts and referral of appellant to a new second opinion psychiatric examination for an opinion regarding whether the accepted work factors contributed by direct cause, aggravation, precipitation or acceleration of appellant's condition. OWCP properly found a conflict in medical opinion subsequently arose between Dr. Ingram, the attending physician, and Dr. Bennett, the second opinion physician, as to whether the compensable factors of employment caused appellant's work-related condition and referred appellant to Dr. Brylowski, for an impartial medical evaluation. As noted, the weight of the medical evidence has properly been accorded to Dr. Brylowski's impartial medical opinion. Thus, there is no evidence of doctor shopping in this case.

Appellant may submit new evidence or argument with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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