

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 3, 2009 appellant, then a 59-year-old housekeeping aid, filed an occupational disease (Form CA-2) alleging that on August 1, 2009 she sustained an aggravation of a preexisting emotional condition due to factors of her federal employment. She indicated that she was coping with stressful situations in her department, such as understaffing, interruptions by a demanding nursing staff and harassment by a patient.

By letter dated September 15, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days.

Appellant submitted a position description and a narrative statement. She was on vacation from July 27 to 31, 2009 and became the subject of constant harassment when she returned to work on August 1, 2009. On August 1, 2009 appellant alleged that a nurse informed her supervisor that she was not doing a good job cleaning a shower. On August 10, 2009 the head nurse of the ward approached her to let her know that the bathroom in Room 11 needed cleaning. On August 11, 2009 appellant was informed by a nurse that Room 5 needed cleaning as soon as possible. On August 19, 2009 she had already cleaned the floor in Room 12 but a nurse called the ward manager to complain that the floor was dirty and needed cleaning. The ward leader inspected the floor and told the nurses that it was cleaned and the marks that they were complaining about could not come out unless the floor was stripped and buffed, which housekeeping could not do. On August 25, 2009 appellant's supervisor noted that the bathroom in Room 34 had not been cleaned and was reported to Infection Control by a nurse. Appellant stated that this was an employee area, but she went on and cleaned it anyway. She alleged that she was harassed by Mr. Turner, a patient, for the period August 24 to 28, 2009. Mr. Turner watched while she was working and ate lunch. When appellant ate in the dining facility, he could come in and turn off the lights and tell her that she did not need any light to eat. She indicated that Mr. Turner only bothered her. If there was a group eating, Mr. Turner would not say a word, but when they left and appellant was left eating he would harass her. He would also block the hallway so that she could not do her work. On September 1, 2009 appellant's supervisor told appellant that she and the other employees could no longer eat in the dining hall until a certain patient left. Appellant stated that, due to these incidents, she experienced constant stress, despair, anxiety, anger, frustration and harassment.

In a September 23, 2009 report, Dr. Bonnie Saks, a Board-certified psychiatrist, diagnosed severe depression, anxiety, panic attacks and agoraphobia. Appellant was unable to leave her home without severe anxiety. Dr. Saks stated that appellant felt harassed at work and was thrown into a state of panic and depression. She opined that appellant was unlikely to totally recover. On October 22, 2009 Dr. Saks opined that appellant was disabled from work due to depression, anxiety and agoraphobia which was exacerbated by work.

In a statement dated November 19, 2009, Richard Devlin appellant's supervisor, noted that he did not work on August 1, 2009 as it was a Saturday. He first heard about the complaint concerning appellant while he was making rounds on August 3, 2009. Mr. Devlin indicated that nursing staff often told housekeeping staff of cleaning that was necessary for patient safety and well-being at any time of the day, not necessarily on a scheduled basis. Appellant was concerned

that her routine was being interrupted and he told her that she was reacting to a request that could be made to any housekeeper at any time and that this was part of their job. On August 25, 2009 Mr. Devlin asked her to clean Room 34, even though it was not in her assigned area as it was occupied by a female veteran who was uncomfortable with male housekeepers cleaning her room. He asked housekeepers if their area was caught up and if the response was positive, to work in the area most needed. Regarding Mr. Turner, the supervisor stated that he spoke with the patient who had asked appellant to turn off the dining room lights because they were glaring on the television screen he was watching. Appellant was eating at a table next to large glass windows that permitted a great deal of natural light from outside. Mr. Devlin stated that the dining room was a patient area and that patients had a right to make requests such as the one Mr. Turner made. He was not aware of the patient staring at appellant or blocking her with his wheelchair in the hallway.

On December 15, 2009 appellant, through her attorney, filed a claim for compensation for the period September 8 through December 15, 2009.

By decision dated January 8, 2010, OWCP denied the claim finding that the evidence failed to establish that an injury occurred in the performance of duty.

On January 13, 2010 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative. She submitted a narrative statement reiterating the factors of her employment. In a January 29, 2010 report, Dr. Saks indicated that she had treated appellant since September 17, 2009 for depression and panic disorder. Despite a long history of anxiety and depression, she noted that appellant attempted to work at the employing establishment but felt harassed and demeaned at her job. Appellant discussed the problem with her supervisor but the problems were not resolved. She developed panic attacks and depression. Appellant continued to feel depressed and anxious and denied suicidal ideation but had difficulty doing her chores at home and had frequent anxiety episodes. Dr. Saks opined that appellant was unable to work.

A hearing was held before an OWCP hearing representative on April 13, 2010. Appellant provided testimony and the hearing representative held the record open for 30 days for the submission of additional evidence. Subsequently, she submitted the employing establishment's procedure manual.

By decision dated June 29, 2010, the hearing representative denied appellant's claim finding that the evidence did not establish that her emotional condition arose from a compensable factor of employment. Appellant modified the January 8, 2010 decision from a denial on the basis of performance of duty to a denial on the basis of causal relationship. The hearing representative found that appellant established the following compensable factors of employment: (1) the interruptions of her cleaning schedule to do other cleaning tasks that came upon an immediate basis; (2) performing additional work in August 2009 because of an increase in patients in her area of her responsibility; and (3) her fear of not being able to get her work done because of the additional tasks she performed. The hearing representative concluded that the evidence was insufficient to establish that any of the compensable factors caused or aggravated her emotional conditions.

On July 27, 2010 appellant, through her attorney, filed a request for reconsideration. In a February 20, 1992 psychological evaluation Dr. Bruce Whiting, Ph.D., a clinical psychologist, diagnosed agoraphobia with panic attacks.

In reports dated November 7, 1997 through January 20, 1999, Dr. James J. Rodgers, a Board-certified internist, diagnosed panic disorder with acrophobia and dysthymia, and took appellant off work from January 20 to February 7, 1999 due to severe anxiety reaction and muscle tension headache.

On February 16, 1999 Dr. Yun Tae Chang, a Board-certified internist, stated that appellant was under stress from her occupation and suffered from severe anxiety and situational depression, bordering on major depression. He opined that she was unable to perform her occupational duties. In a September 16, 1999 progress note, Dr. Chang indicated that appellant had panic disorder and chest pain with left arm numbness. He stated that the symptoms began when she had an altercation with a fellow employee and that talking about it caused her to have increased symptoms and anxiety.

In reports dated February 22, 1999 through June 15, 2000, Dr. Rafael Barreda, a psychiatrist, diagnosed panic disorder and agoraphobia.

In a July 27, 1999 report, Dr. Leland "Lee" C. Kirkman, a Board-certified internist, diagnosed goiter, hypertension, history of gastroesophageal reflux disease, mild hyperglycemia and panic disorder, who noted that appellant denied any chest pain or shortness of breath. On December 16, 1999 he diagnosed agoraphobia and dysthymia.

On July 26, 2010 Dr. Saks reiterated her diagnosis and opined that appellant was permanently and totally disabled as a result of her work conditions, which had elevated her stress and aggravated her preexisting condition.

By decision dated October 1, 2010, OWCP affirmed the June 29, 2010 decision. It found that the evidence submitted was not sufficient to establish causal relationship.

On April 28, 2011 appellant, through her attorney, requested reconsideration. She submitted an April 11, 2011 report from Dr. David Kalin, a family practitioner, who diagnosed post-traumatic aggravation of chronic panic disorder with anxiety, depression, history of agoraphobia and dysthymia due to a work-related incident on August 9, 2009. Dr. Kalin opined that the change in work environment coupled with changes causing a decrease in assistant personnel and an increase in her work duties contributed to the aggravation of her preexisting condition.

OWCP referred appellant to Dr. James R. Edgar, psychiatrist, for a second opinion examination. In a June 7, 2011 report, Dr. Edgar reviewed her medical history and conducted a mental status examination. He diagnosed panic disorder with agoraphobia and opined that appellant's preexisting psychiatric disorder was not caused or aggravated by the factors of her employment in August 2009. Dr. Edgar explained that the employment factors did not rise to the level of stress necessary to exacerbate appellant's panic disorder. He advised that she was not capable of returning to work. On July 15, 2011 Dr. Edgar further explained that appellant had

exacerbations of her condition prior to the employment incidents in question without any identifiable stressor.

By decision dated July 28, 2011, OWCP affirmed the October 1, 2010 decision. It finds that the medical evidence of record was insufficient to establish that appellant's emotional condition was causally related to the accepted employment factors.

On February 15, 2012 appellant, through her attorney, requested reconsideration. In a February 14, 2012 report, Dr. Saks opined that the interruption of appellant's normal schedule, duties and additional work caused her to feel overwhelmed and to have panic attacks. She opined that the change and addition of duties also caused appellant's fear of not being able to perform the tasks which also contributed to the panic disorder. Dr. Saks further opined that the lack of identifiable external stress in appellant's life would not diminish the identified stressors as causative factors for the aggravation, referencing Dr. Chang's reports as examples of previous episodes of her occupation aggravating her emotional condition.

OWCP found a conflict in medical opinion between Dr. Saks and Dr. Edgar. It referred appellant to Dr. Walter E. Afield, a Board-certified psychiatrist, for an impartial medical examination. In a May 10, 2012 report, Dr. Afield reviewed the medical history of treatment and conducted a mental status examination. He diagnosed major depressive disorder, dependent personality disorder, hyperlipidemia, diabetes controlled, hypothyroidism controlled and hypertension controlled. Dr. Afield stated that it was very difficult to put appellant into a good diagnostic category. He noted that her depression was under control and not interfering with anything. Appellant's activities of daily life were decent and not restricted in any major way. Dr. Afield found no evidence of an employment-related condition. He noted that appellant got into some altercations and was a bit pushed at work, but this did not cause or aggravate her preexisting emotional condition.

By decision dated June 20, 2012, OWCP affirmed the July 28, 2011 decision on the basis that appellant had not submitted sufficient evidence to establish causal relationship, relying on Dr. Afield's May 10, 2012 report as the weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.⁶

ANALYSIS

OWCP has accepted three compensable factors of appellant's federal employment: (1) the interruptions of her cleaning schedule to do other cleaning tasks that came upon an immediate basis; (2) her emotional reaction to having to do additional work in August 2009 because of the increase in patients in her area of her responsibility; and (3) her fear of not being able to get her work done because of the additional tasks she performed. The issue is whether an aggravation of appellant's preexisting emotional condition resulted from the accepted employment factors. The Board finds that she did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the accepted employment factors.

OWCP found a conflict in medical opinion between Dr. Saks, appellant's treating physician, who opined that appellant's emotional condition was aggravated by the accepted employment factors and the second opinion physician, Dr. Edgar, who opined that her preexisting psychiatric disorder was not caused or aggravated by the accepted employment factors. It properly referred her to Dr. Afield, a Board-certified psychiatrist, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

In his May 10, 2012 report, Dr. Afield reviewed the medical history of record and conducted a physical examination. He diagnosed major depressive disorder and found that appellant's depression was under control and not interfering with anything. Appellant's activities of daily life were decent and not restricted in any major way. Dr. Afield found no evidence of an employment-related condition. He indicated that appellant was involved in some altercations and was a bit pushed at work, but opined that this did not cause or aggravate her preexisting emotional condition. The Board finds that Dr. Afield's report represents the weight of the medical evidence at the time OWCP denied the claim and that OWCP properly relied on his report in denying her claim. The Board finds that he had full knowledge of the relevant facts

⁵ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

and evaluated the course of her condition. Dr. Afield is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Afield addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's condition.⁷ At the time appellant's claim was denied, he found no basis on which to attribute any causal relationship between her condition and the accepted employment factors. Dr. Afield's opinion as set forth in his May 10, 2012 report is found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's denial of appellant's claim for compensation.

On April 11, 2011 Dr. Kalin diagnosed post-traumatic aggravation of chronic panic disorder with anxiety, depression, history of agoraphobia and dysthymia due to a work-related incident on August 9, 2009. He opined that the change in work environment coupled with changes causing a decrease in assistant personnel and an increase in appellant's work duties contributed to the aggravation of her preexisting condition. As Dr. Kalin was on one side of the conflict his report, without more by way of medical rationale, is insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Afield.⁸

The reports from Drs. Whiting, Rodgers, Chang, Barreda and Kirkman are irrelevant as they predate the employment incidents on or about August 1, 2009 and therefore fail to constitute probative medical evidence on the issue of causal relationship in this case.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to accepted factors of her federal employment, she has failed to meet her burden of proof.

On appeal, counsel contends that OWCP improperly relied on the May 10, 2012 report by the impartial medical examiner, Dr. Afield, as it was not rationalized and lacked probative value. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

Appellant may submit additional evidence, together 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. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that, on or about August 1, 2009, she sustained an aggravation of a preexisting emotional condition causally related to factors of her federal employment.

⁷ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

⁸ See *J.M.*, Docket No. 11-1257 (issued January 18, 2012); see also *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2012 Office of Workers' Compensation Programs' decision is affirmed.

Issued: July 2, 2013
Washington, DC

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

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

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