

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA HAGEN and DEPARTMENT OF THE INTERIOR,
FISH & WILDLIFE SERVICE, Albuquerque, NM

*Docket No. 99-341; Submitted on the Record;
Issued July 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that her emotional condition was caused by the accepted factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On August 29, 1995 appellant, then a 48-year-old refugee program specialist, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her mental depression was caused by factors of her employment on August 3, 1995. Appellant's claim was accompanied by factual and medical evidence.

By letter dated October 5, 1995, the Office advised the employing establishment to submit factual evidence regarding appellant's claim. By letter of the same date, the Office also advised appellant that the claim and evidence submitted were insufficient to establish her claim. The Office then advised appellant to submit factual and medical evidence supportive of her claim.

By decision dated November 6, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a January 29, 1994 letter, appellant, through her counsel, requested reconsideration of the Office's decision accompanied by medical evidence.

In a June 10, 1996 decision, the Office denied appellant's request for modification based on a merit review of the claim. By letter dated June 19, 1996, appellant, through her counsel, requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By letter dated July 9, 1996, the Office advised the employing establishment to submit factual evidence in response to appellant's allegations. In response, the employing establishment submitted factual evidence by letter dated August 23, 1996.

In a decision dated September 11, 1996, the Office denied appellant's request for modification based on a merit review of the claim. In a June 26, 1997 letter, appellant, through her counsel, requested reconsideration of the Office's decision.

In a letter dated December 2, 1997, which included a statement of accepted facts, the Office advised Edward Siegel, Ph.D., a clinical psychologist and appellant's treating physician, to submit a medical report concerning appellant's emotional condition and the cause of her condition accompanied by a statement of accepted facts.¹ In a December 10, 1997 letter, appellant's counsel advised the Office that Dr. Siegel had discontinued treatment of appellant in September 1995.

The Office then referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Gerald S. Fredman, a Board-certified psychiatrist, for a second opinion examination by letter dated December 22, 1997. In a letter of the same date, the Office advised Dr. Fredman of the referral.

By decision dated January 26, 1998, the Office modified its prior decision to reflect that the evidence of record was sufficient to establish two compensable factors of employment, but insufficient to establish that appellant's emotional condition was causally related to these factors. In an accompanying memorandum, the Office found that appellant's emotional reaction to her day-to-day work and special assignments particularly, her difficulty in completing different tasks at the same time and performing complex duties and her increased work load under the supervision of Gary Burke in May 1994 occurred in the performance of duty. The Office, however, found that Dr. Fredman's January 16, 1998 medical report constituted the weight of the medical evidence inasmuch as his opinion that appellant's perceptions of harassment and negativity in the workplace were unsupported allegations and thus, not considered to be compensable factors of employment and he provided no indication that either of the two compensable factors of employment as described in the statement of accepted facts contributed in any way to appellant's psychiatric condition. Appellant, through her counsel, requested reconsideration of the Office's decision, in a May 29, 1998 letter.

By decision dated July 23, 1998, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds that the evidence submitted was found to be of a repetitious nature and thus, insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for a decision.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's

¹ On December 2, 1997 the Office prepared a statement of accepted facts, finding that appellant's emotional reaction to her day-to-day work and special assignments particularly, her difficulty in completing different tasks at the same time and performing complex duties and her increased work load under the supervision of Gary Burke in May 1994 occurred in the performance of duty.

emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.²

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.³ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁴

In this case, the Office properly found that appellant's allegation that she had difficulty in completing different tasks at the same time and performing complex duties and that her increased work load under the supervision of Mr. Burke in May 1994 constituted compensable employment factors. These allegations relate directly to appellant's regular or specially assigned duties and are established as having occurred by the evidence present in the case record and by their nature, they arise out of and in the course of appellant's assigned duties. Therefore, the Board accepts these allegations as factual.

In the present case, appellant has established compensable factors of employment. However, appellant's burden of proof, is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁵

In finding the medical evidence of record insufficient to establish that appellant's emotional condition was caused by the accepted factors of her employment, the Office relied on the January 16, 1998 medical report of Dr. Fredman, a Board-certified psychiatrist and second opinion physician.⁶ In this report, Dr. Fredman indicated a history of stressful situations in both

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *William P. George*, 43 ECAB 1159, 1168 (1992).

⁶ In a January 29, 1998 letter to the Office, appellant's counsel requested a copy of Dr. Fredman's January 16, 1998 medical report. In a February 4, 1998 letter, the Office advised appellant's counsel that its regulations prohibited sending a copy of any psychiatric report to anyone other than a licensed physician. The Office further advised appellant's counsel that a copy of the report could be sent to any physician of his choice if he provided the

appellant's home life and her employment, appellant's family background and a review of medical records. Dr. Fredman further indicated his findings on clinical examination. He diagnosed "Axis I: Bipolar Disorder; Axis II: Rule out personality disorder; Axis III: Elevated cholesterol by history; Axis IV: Unemployment perception of unfair treatment in work setting; Axis V: GAF Scale = 70 (current) Mild symptoms." Dr. Fredman stated that appellant's treatment providers' diagnosis of recurrent major depression was incorrect. He opined that the correct diagnosis was Axis I bipolar disorder in view of the distinct history of both manic and depressive episodes. He further opined:

"[t]he cause of [appellant's] condition is multifaceted. There is a biological etiology. That is, the bipolar disorder is genetic and not due to environmental or developmental factors. In my view, her perceptions of ill treatment, harassment and negativity in the work environment may have hastened and even precipitated the symptoms of her illness. I understand that her allegations against the employer are not accepted as having occurred as alleged [sic]. However, an individual with her preexisting psychiatric condition would be more vulnerable to perceptions of mistreatment. This would especially be true during depressive, or hypomanic episodes."

Dr. Fredman stated that appellant's condition would likely worsen if she returned to her regular job duties and concluded that appellant was disabled for that job. He further concluded that appellant could work in an alternative setting as her present level of impairment was mild.

The Board finds that although the Office provided Dr. Fredman with a statement of accepted facts indicating that appellant's emotional reaction to her day-to-day work and special assignments particularly, her difficulty in completing different tasks at the same time and performing complex duties and her increased work load under the supervision of Mr. Burke in May 1994 occurred in the performance of duty, his medical report fails to address whether appellant's emotional condition was caused or contributed to by these accepted factors.

Dr. Fredman's report requires clarification regarding the causal relationship between appellant's emotional condition and the accepted employment factors. On remand, the Office should further develop the medical evidence by preparing a statement of accepted facts and obtaining clarification from Dr. Fredman as to whether the accepted factors caused or contributed to appellant's emotional condition. After this and such other further development as the Office deems necessary, the Office should issue an appropriate decision.⁷

physician's name and address. On May 4, 1998 appellant's counsel provided the address for Dr. Janice Kando, a Board-certified family practitioner. By letter dated May 8, 1998, the Office sent Dr. Kando a copy of Dr. Fredman's report. The Board notes that the record does not contain a report from Dr. Kando.

⁷ In view of the Board's decision on the causal relationship between appellant's emotional condition and the accepted factors of her employment, the issue regarding the Office's refusal to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) is moot.

The July 23 and January 28, 1998 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, D.C.
July 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member