

Appellant stated that the branch where she was customer service manager experienced staffing deficiencies beginning in 1993, which caused stress. She noted that, due to the growth of the community, management contemplated moving to a larger facility and she was responsible for planning and effectuating the move. Appellant allegedly did not receive any guidance from her supervisors. She also indicated that she received mixed messages from management with regard to her job responsibilities. Appellant further noted that her interpersonal skills were criticized and that she unfairly received unacceptable performance reviews from her supervisors.

Dr. Michael M. Burgess, a clinical psychologist, treated appellant for depression from December 1991 to December 1992 and diagnosed agitated depression and obsessive compulsive disorder. Also submitted were reports from Dr. William V. McKnelly, Jr., a Board-certified psychiatrist, who treated appellant for depression and work-related stress in 1995. Dr. McKnelly noted in his October 18, 1996 and October 23, 2000 reports that appellant's stress was caused by receiving an unsatisfactory performance evaluation in 1996, by having a highly critical supervisor, by receiving a formal letter of warning in 1998, and being placed on administrative leave for poor performance.

In a report dated August 18, 2000, Dr. David O. Hill, a psychologist, noted treating appellant since December 21, 1997 for depression. He identified several incidents that caused appellant's stress, which included being criticized by her supervisor, Vic Kane, on January 9, 1998, receiving numerous critical emails from Mr. Kane from December 1997 to 1999, being questioned about three customer complaints on April 4, 1998, and receiving two letters of warning in September 1998. Dr. Hill also noted that appellant had a tendency to overreact to situations and he opined that the stress of her relationship with Mr. Kane was a factor in exacerbating her depression and anxiety.

In a decision dated February 14, 2001, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the work incidents and the claimed emotional condition. The Office accepted as compensable the employment factors that there were staffing deficiencies beginning in 1993 and that there was constant growth at the Stanley facility causing management to move to another location. However, the Office concluded that appellant did not submit sufficient rationalized medical evidence establishing that the identified compensable employment factors caused an emotional condition.

On February 21, 2001 appellant requested an oral hearing, which was held on September 17, 2002. Appellant submitted a report from Dr. Hill dated October 1, 2002, which noted that he treated appellant for depression from December 21, 1997 to December 13, 1999. He diagnosed major depressive disorder, recurrent, severe with only partial recovery between severe episodes. Dr. Hill opined that appellant's depression was directly caused by the general stress of her work environment due to understaffing, the excessive demands of trying to provide services to a rapidly growing area and the stress created by her supervisor. Also submitted was a report from Dr. McKnelly, dated October 16, 2002, who noted treating appellant since 1987 and advised that in the mid-1990's she experienced an increase in work pressures and conflicts with supervisory personnel causing her emotional stress.

In a decision dated December 5, 2002, the hearing representative affirmed the decision of the Office dated February 14, 2001. The hearing representative noted that neither Drs. Hill nor

McKnelly addressed the specifics of appellant's preexisting depression and anxiety disorder, or determined whether her current condition was a new psychiatric condition or an aggravation of a preexisting condition or discussed outside stressors, and therefore, their reports were insufficient to meet appellant's burden of proof.

In a letter dated December 2, 2003, appellant requested reconsideration and submitted additional medical evidence. In a report dated September 30, 2003, Dr. Hill diagnosed major depressive disorder, recurrent, severe without psychotic features. He opined that the worsening of appellant's major depression in 1997 was directly caused by a variety of stressors in her work environment, including Mr. Kane's critical and demeaning manner, understaffing, the pressure of relocating the branch office, employee discontent, and the employer's rigid rule-bound policies. Dr. McKnelly, in a report dated November 19, 2003, noted that he read Dr. Hill's most recent report and he concurred that work-related pressures aggravated appellant's preexisting depressive illness.

In a decision dated December 29, 2003, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was immaterial in nature and insufficient to warrant review of the prior decision.

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act, the Office has the discretion to reopen a case for review on the merits.¹ Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

In the present case, the Office denied appellant's claim without conducting a merit review on the grounds that the evidence submitted was cumulative in nature and insufficient to support that appellant sustained an emotional condition in the performance of duty. However, appellant submitted relevant and pertinent evidence not previously considered by the Office. After the December 5, 2002 decision appellant submitted new medical reports from Drs. Hill and McKnelly dated September 30 and November 19, 2003. Dr. Hill, in his report of September 30, 2003, diagnosed major depressive disorder, recurrent and severe and opined that the worsening

¹ 5 U.S.C. § 8128(a).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

of her major depression in 1997 was directly caused by a variety of stressors in her work environment. He indicated that appellant's depression was not severe prior to 1995 and worsened between 1995 and 1997 as a result of understaffing, the pressure of relocating the branch office, employee discontent, rigid rule-bound policies of her employer and the demeaning manner of her supervisor. Also submitted was a report from Dr. McKnelly dated November 19, 2003 in which he opined that work-related pressures aggravated appellant's preexisting depressive illness. This medical evidence is relevant as it addressed causal relationship of appellant's current emotional condition to the accepted employment factors by noting that her condition was directly related to a variety of stressors in appellant's work environment including the critical and demeaning manner in which she was treated by Mr. Kane, understaffing and the need to relocate the branch office and this evidence was not previously considered by the Office in rendering a decision. The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁴ The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), these new reports from Drs. Hill and McKnelly are sufficient to require reopening appellant's case for further review on its merits.

Therefore, the Office improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. Consequently, the case must be remanded for the Office to reopen appellant's claim for a merit review. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.⁵

⁴ See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

⁵ 20 C.F.R. § 10.606(b)(2)(i) and (ii) (1999), see also *Claudio Vazquez*, 52 ECAB 496 (2001).

CONCLUSION

The Board finds that the Office improperly denied appellant's request for reconsideration of her case on its merits.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2003 decision of the Office is hereby set aside and the case is remanded to the Office for further development in accordance with this decision.

Issued: August 25, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member