

for further proceedings.² The Board found that appellant had established employment factors with respect to the several work duties, including her responsibilities concerning the production of reports, the handling of employee complaints, and the understaffing of employees.³ The Board found that, as the Office had previously found there were no compensable employment factors and did not analyze or develop the medical evidence, the case should be remanded to the Office to consider the medical evidence.⁴ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Appellant submitted a March 7, 2006 form report in which Dr. Brown stated that appellant reported that she worked in a "toxic and hostile environment due to retaliation and discrimination" and that she was ostracized at work. Dr. Brown diagnosed anxiety and indicated that her condition probably was "not compensable especially under [Department of Labor] guidelines."

By decision dated April 17, 2006, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to her accepted employment factors. The Office indicated that appellant submitted treatment notes and disability certificates from Kaiser Permanente dated between August 2002 and March 2006, but that these documents only generally mentioned appellant's claims regarding her workplace.⁵ It stated that the record contained reports of Dr. Samuel J. Brown, an attending physician Board-certified in preventive medicine,⁶ and Dr. Chie Okuda, an attending clinical psychologist,⁷ which suggested an employment-related cause for appellant's condition, but that

² On September 9, 2002 appellant, then a 40-year-old accounting technician supervisor, filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work.

³ The Board found that the evidence of record supported that appellant's supervisory duties included the responsibility of ensuring that various documents, including accounting updates and year-end reports, were produced in an accurate and timely manner, that her work unit was understaffed such that employee transfers were necessary to complete work tasks, and that she was required to deal with a number of verbal and formal complaints lodged by subordinates, including her involvement as a witness in several complaint investigations. The Board also found that appellant had not established her claims that she was subjected to harassment and discrimination by subordinates and coworkers and that her supervisors did not provide adequate support for her dealings with subordinates.

⁴ The Board also affirmed the Office's December 3, 2003 decision with respect to the Office's denial of appellant's request to subpoena witnesses.

⁵ The record contains numerous treatment notes and disability certificates, dated between August 2002 and March 2006, in which attending physicians at Kaiser Permanente detailed their treatment of appellant's emotional condition. A number of these notes contained a diagnosis of "stress" or "adjustment disorder" and indicated that appellant reported her workplace was stressful, hostile or threatening and that she had "difficulty with coworkers."

⁶ In a form report dated August 28, 2006, Dr. Brown stated that appellant reported that she worked in a "toxic and hostile work environment" with "chaos and adversity," that multiple complaints were going on, and that her department was being investigated. Dr. Brown diagnosed "stress" and answered "yes" in response to whether his findings and diagnosis were "consistent with the patient's account of injury or onset of illness."

⁷ In a form report dated September 9, 2006, Dr. Okuda stated that appellant reported that she worked in a "toxic and hostile work environment" with "chaos and adversity," that multiple complaints were going on, that her department was being investigated, and that she had "difficulty with coworkers." Dr. Okuda diagnosed "adjustment disorder" and answered "yes" in response to whether his findings and diagnosis were "consistent with the patient's account of injury or onset of illness."

these reports did not contain a clear opinion that the condition was related to the specific employment factors accepted by the Office. The Office noted that the reports of Dr. Walter A. Watman, an attending clinical psychologist, also did not relate appellant's condition to the specific employment factors accepted by the Office⁸ and that the record did not contain any medical opinion containing a rationalized opinion on causal relationship.⁹

LEGAL PRECEDENT

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹⁰ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹¹

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 employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, 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

⁸ In a report dated December 4, 2002, Dr. Watman stated that appellant reported that she was in a "hostile work environment" which was created by her supervisors. Dr. Watman indicated that appellant had a industrially-related mild adjustment disorder with mixed features of anxiety and dysphoria and stated that "work events" caused her to have this disorder but that the condition was not related to whether her work environment was "hostile." He posited that appellant's emotional condition was not disabling. In a report dated January 8, 2003, Dr. Watman indicated that appellant told him that she did not want any further care.

⁹ In a report dated September 26, 2002, Dr. Claudia R. Viazzoli, an attending clinical psychologist, stated that appellant alleged that the subordinates at her workplace were physically aggressive with her, used foul language, and constantly filed complaints and that her superiors did not address her concerns. Dr. Viazzoli diagnosed chronic adjustment disorder with mixed anxiety and depressed mood as well as histrionic personality features.

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁴ If a claimant does implicate a factor of employment, the Office 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, the Office must base its decision on an analysis of the medical evidence.¹⁵

ANALYSIS

In its December 16, 2004 decision, the Board determined that appellant established employment factors with respect to several work duties, including her responsibilities concerning the production of reports, the handling of employee complaints, and the understaffing of employees.¹⁶ The Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to her accepted employment factors. The Board must review the medical evidence to determine whether appellant sustained an emotional condition due to any of the accepted employment factors.¹⁷

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an emotional condition due to her accepted employment factors.

Appellant submitted numerous treatment notes and disability certificates, dated between August 2002 and March 2006, in which attending physicians at Kaiser Permanente detailed their treatment of her emotional condition. A number of these notes contained a diagnosis of "stress" or "adjustment disorder" and indicated that appellant reported her workplace was stressful, hostile or threatening and that she had "difficulty with coworkers," but these reports are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on the cause of appellant's claimed emotional condition.¹⁸

In a form report dated August 28, 2006, Dr. Brown, an attending physician Board-certified in preventive medicine, stated that appellant reported that she worked in a "toxic and

¹⁴ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ The Board noted that appellant produced accounting updates and year-end reports, that her work unit was understaffed such that employee transfers were necessary to complete work tasks, and that she was required to deal with a number of verbal and formal complaints lodged by subordinates, including her involvement as a witness in several complaint investigations. With respect to the Board's findings regarding appellant's claimed employment factors, it is noted that in the absence of further review by the Office on an issue addressed by a Board decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁷ See *supra* note 15 and accompanying text.

¹⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding 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).

hostile work environment” with “chaos and adversity,” that multiple complaints were going on, and that her department was being investigated. Dr. Brown diagnosed “stress” and answered “yes” in response to whether his findings and diagnosis were “consistent with the patient’s account of injury or onset of illness.” Although he suggested an employment-related cause of appellant’s claimed condition, he did not provide a clear opinion that appellant’s stress condition was related to the specific accepted employment factors, *i.e.*, those relating to the production of reports, the handling of employee complaints, and the understaffing of employees.¹⁹

In a form report dated September 9, 2006, Dr. Okuda, an attending clinical psychologist, stated that appellant reported she worked in a “toxic and hostile work environment” with “chaos and adversity,” that multiple complaints were going on, that her department was being investigated, and that she had “difficulty with coworkers.” Dr. Okuda diagnosed “adjustment disorder” and also answered “yes” in response to whether his findings and diagnosis were “consistent with the patient’s account of injury or onset of illness.” However, his report is similar to the August 28, 2006 report of Dr. Brown in that he did not relate appellant’s adjustment disorder to the accepted employment factors.

In a report dated December 4, 2002, Dr. Watman, an attending clinical psychologist, stated that appellant reported that she was in a “hostile work environment,” diagnosed an industrially-related mild adjustment disorder with mixed features of anxiety and dysphoria and stated that “work events” caused her to have this disorder but that the condition was not related to whether her work environment was “hostile.” Although he generally indicated that appellant’s emotional condition was employment related, he did not provide a clear opinion that specific accepted employment factors contributed to her condition. In a report dated September 26, 2002, Dr. Viazzoli, an attending clinical psychologist, stated that appellant alleged that the subordinates at her workplace were physically aggressive with her, used foul language, and constantly filed complaints and that her superiors did not address her concerns. She diagnosed chronic adjustment disorder with mixed anxiety and depressed mood as well as histrionic personality features, but she provided no opinion on causal relationship.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

¹⁹ In a March 7, 2006 form report in which Dr. Brown stated that appellant’s condition probably was “not compensable especially under [Department of Labor] guidelines.”

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 17, 2006 decision is affirmed.

Issued: October 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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