



personality disorder, major depression and consequential eating disorder. It placed her on the periodic rolls for temporary total disability.

On May 1, 1996 appellant began work as a child support attorney for the Child Support Enforcement Unit, Devils Lake, ND with a monthly salary of \$2,376.00

By decision dated July 3, 1996, the Office reduced appellant's wages based upon her employment as an attorney effective May 1, 1996, the date of her reemployment. The Office determined appellant's weekly pay rate to be \$555.60, her adjusted earning capacity in the position was \$400.03 per week, which resulted in loss in earning capacity of \$155.57 per week. Appellant's compensation rate every four weeks was found to be \$547.00.

In a letter dated August 4, 1997, appellant informed the employing establishment that she had secured new employment with the U.S. Probation and Pretrial Services Office effective that date. Her starting salary was \$29,886.00 per year, which would increase to \$31,800.00 after six months, \$33,747.00 after one year and \$37,507.00 after two years. In a December 16, 2000 letter, appellant informed the Office that she resigned from this position effective December 2, 2000. Appellant alleged that she was constructively discharged due to hostility directed at her.

In progress notes dated November 30, 2000, Dr. Naveed Haider, a treating Board-certified psychiatrist, diagnosed recurrent major depressive disorder and eating disorder. He noted that appellant stated that her "binge eating is approximately the same frequency but purging much less than before." Appellant informed him that she was quitting her job. An examination revealed good mood with an appropriate and bright affect. Dr. Haider found "[n]o formal thought disorder, no psychotic symptomatology."

In a report dated November 30, 2000, Tracy M. Foldesi, a social worker, diagnosed recurrent major depressive disorder and eating disorder. Appellant related that, subsequent to her mother's abrupt death in May 2000, she took a leave of absence for two months. When she returned to work appellant alleged it was "to a hostile work environment and felt that her chief supervisor was not supportive of her and was going to put her through a fitness-for-duty examination," which never occurred, there was gossip about her throughout the agency and her credibility with coworkers was destroyed. Ms. Foldesi indicated that appellant "felt overwhelmed in her job setting and eventually quit yesterday and is trying to deal with the aftermath of that." She concluded that appellant's symptoms had intensified due to her work situation, the death of her mother and dealing with her father's declining health.

In letters dated December 12, 2001 and November 18, 2002, appellant informed the Office she was hired part time by Barnes and Noble bookstore. In the December 12, 2001 letter, appellant noted that she was paid at an hourly rate of \$6.75 while in November 18, 2002 she noted a monthly salary of "about \$600[.00] per month." She requested that her wage-loss compensation be increased due to the change in her employment circumstances.

In a letter dated December 30, 2002, the Office informed appellant of the criteria required for modification of a loss of wage-earning capacity decision. It advised her as to the type of

information required to support her request for modification of the July 3, 1996 loss of wage-earning capacity decision.

On March 28 and June 19, 2003 appellant filed a claim for a recurrence of disability beginning December 6, 2000 due to her October 1987 employment injury. She alleged that her injury caused her to be susceptible to subsequent stressors due to her vulnerable and weakened state. On the June 19, 2003 claim form appellant alleged that the recurrence was a gradual process from when she started the position of Child Support Enforcement, which “came to a head in the fall of 2000.”

In a report dated April 15, 2003, Dr. Haider diagnosed recurrent major depressive disorder, “mild to moderate in severity,” multiple chronic stressors, eating disorder and “[p]anic disorder in remission.” He reported that appellant feels “fairly anxious when she goes back to work and has kept her work hours around the 20-hour mark” and that she has her depression “under a fair amount of control.”

By decision dated August 22, 2003, the Office denied appellant’s claim for a recurrence of disability. The Office noted that the record contained no reasons as to why appellant left her employment with the Child Support Enforcement Unit or the U.S. Probation Agency or why she secured employment at Barnes and Noble in September 2001. In addition, the Office found that appellant failed to provide any medical evidence establishing that she was disabled from the position that her loss of wage-earning capacity decision was based on.

In a letter dated September 9, 2003, appellant requested reconsideration.

In a report dated September 18, 2003, Dr. Haider noted appellant’s employment history that she took time off work to care for her father and that, upon her return to work, she experienced a hostile environment. He opined that the “lack of support resulted in a relapse in the patient’s depression” and that “[s]he had to quit her job in December 2000” due to her extreme struggling with her depressive symptoms. Dr. Haider indicated that appellant returned to work at Barnes and Noble with less hours and pay. He opined that appellant met the criteria for depression and an eating disorder and that “[d]uring this time she has been unable to regain her full functional capacity.” An examination revealed “[a]ffect appeared appropriate but mildly depressed.”

In a letter dated August 4, 2004, appellant submitted additional medical and factual evidence in support of her claim as well as her statement alleging that she had a “severe recurrence” of disability. She stated that she left the Child Support Enforcement Unit because she knew her “capacity to concentrate and maintain an even keel was waning” so she returned to federal employment. Appellant indicated that she quit her federal position in December 2000, because the environment at the U.S. Probation and Pretrial Services Office was “an excluding and hostile environment.” After moving back to Moorehead, MN she found part-time employment with Barnes and Noble in Fargo.

In a report dated April 16, 2004, Dr. Ronald M. Burd, an examining Board-certified psychiatrist, diagnosed anxiety disorder, moderate recurrent major depression and eating

disorder.<sup>2</sup> He, based upon a review of medical and employment history and an examination, concluded that appellant's "current symptoms and difficulty with function are a consequence of the experiences she has had at work." In support of this conclusion, Dr. Burd noted that appellant's "current symptoms are consistent with those experienced previously and that her recent situation is also similar to her previous symptoms." He found that appellant's delay in seeking "review of her situation and difficulty in following up on the details necessary for reconsideration is actually increased evidence of her disability."

In a June 23, 2004 report, Dr. Peggy A. Sheldon, a treating Board-certified internist, noted that she had treated appellant for many years and that she agreed with Dr. Burd's report regarding appellant's recurrence of disability.

By decision dated November 8, 2004, the Office denied appellant's claim that she sustained a recurrence of disability.

On November 17, 2004 appellant requested an appeal to the Board, which was docketed as No. 05-351.

During the pendency of appellant's appeal to the Board, the Office received progress notes February 16 and March 16, 2005 by Dr. Kimberly A. Fitch, a treating Board-certified psychiatrist and a March 23, 2005 assessment report and progress notes dated April 20 and 27 and June 7, 2005 by Karla Stormo, Ph.D., licensed psychologist.

In a March 23, 2005 assessment report, Dr. Stormo noted appellant's medical and employment history and diagnosed generalized anxiety disorder, recurrent major depressive disorder, in partial remission, history of eating disorder and panic disorder without agoraphobia. In concluding, Dr. Stormo stated: "[r]esults of the present evaluation revealed a long-standing history of recurrent depression and anxiety occurring concomitant with multiple and significant psychosocial stresses."

Dr. Stormo, in April 20 and 27 and June 7, 2005 progress notes, diagnosed generalized anxiety disorder, recurrent major depressive disorder, in partial remission, history of eating disorder and panic disorder without agoraphobia. Appellant related, in the April 20, 2005 progress note, that "[s]he still feels that she can no longer function at the level of a basic job as she is now" based upon her past trying and failing "twice to resume a higher level of function." In the April 27, 2005 progress notes, appellant reported symptoms of sleep disturbance, anhedonia, feelings of guilt, difficulty thinking and fatigue. Dr. Stormo reported exploring "some of the stresses and challenges she experienced on her previous jobs." In the June 7, 2005 progress notes, Dr. Stormo stated that appellant "has limitations both for physical and mental health reasons."

In a February 16, 2005 progress note, Dr. Fitch diagnosed moderate to severe recurrent major depression and generalized anxiety. She reported that appellant had difficulty concentrating, extremely low motivation and was eating "in a compulsive manner." Appellant indicated that she currently works part time at a bookstore and was "adding a second part-time

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<sup>2</sup> The record indicates that Dr. Burd signed the report on May 14, 2004.

job, but feels quite overwhelmed by this idea since she has difficulty tolerating her current demands.” Dr. Fitch noted that appellant was “struggling with a lot of depression and anxiety, they seem to be worsening.”

In a March 16, 2005 progress note, Dr. Fitch diagnosed recurrent major depressive disorder and moderate generalized anxiety disorder. A mental status examination revealed appellant’s “affect varied with normal range” and her “thought processes appeared logical and goal directed.”

On August 18, 2005 the Board issued an order remanding the case to the Office to adjudicate whether modification of a loss of wage-earning capacity decision was warranted.<sup>3</sup>

On September 9, 2005 the Office received a July 13, 2005 report by Dr. Stormo, which noted that appellant continued to have problems with managing her eating disorder and diagnosed recurrent major depressive disorder in partial remission, panic disorder without agoraphobia, history of eating disorder and generalized anxiety disorder. Appellant reported feeling “overwhelmed if there are any significant changes” and that “[s]he is very afraid of taking on responsibilities in jobs based on her past work experiences.”

On October 28, 2005 the Office received a December 2, 2004 report and progress notes dated April 20 and October 11, 2005 by Dr. Fitch.

In a December 2, 2004 report, Dr. Fitch diagnosed recurrent moderate major depression, employment and financial difficulties and generalized anxiety disorder. The psychiatrist stated that appellant “has really struggled with depression and anxiety symptoms for many years, with significant impact on her ability to function.” Dr. Fitch noted her concern about appellant’s level of symptoms. Appellant noted that she was a licensed attorney but was “unable to practice law because of her cognitive difficulties.” She noted: “[s]he most recently worked for Federal Probation and Pretrial Services for about three years, apparently this was a very negative experience for her.”

Dr. Fitch, in an April 20, 2005 progress note, reported appellant’s improvement in her anxiety condition due to the medication, but saw “no real change with the depression.” A mental status examination revealed intact insight and judgment and “affect varied within normal range.” Dr. Fitch diagnosed moderate recurrent major depressive disorder and generalized anxiety disorder.

In an October 11, 2005 progress note, Dr. Fitch stated that appellant “is only able to work a very minimal amount.” She also reported that appellant was “very stressed due to very difficult financial situation.” Appellant reported that she continued struggling with her depression and stated that she “does really feel that this is the best that she is ever going to get, which is discouraging to her.”

On November 22, 2005 the Office received factual and medical evidence from appellant including received letters dated August 4, 2004 and November 15, 2005, from appellant

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<sup>3</sup> Docket No. 05-351 (issued August 18, 2005).

regarding documentation for her claim and a response to the Office's October 17, 2005 request for additional information and an April 16, 2004 report by Dr. Burd.

By decision dated December 21, 2005, the Office found that appellant failed to establish that modification of the loss of wage-earning capacity decision was warranted. In reviewing the medical evidence, the Office found that "Dr. Burd failed to specify what work incidents caused a recurrence." The Office also found that appellant failed to establish that she sustained a recurrence of disability beginning December 6, 2000.

### **LEGAL PRECEDENT**

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by its statute and regulations to make findings of fact. Section 8124(a) of the Federal Employees' Compensation Act provides: "The [Office] shall determine and make a finding of fact and make an award for or against payment of compensation"<sup>4</sup> Section 10.126 of Title 20 of the Code of Federal Regulations provides: "The decision shall contain findings of fact and a statement of reasons."<sup>5</sup>

The Office regulations found at 20 C.F.R. § 10.126 provide that a decision shall contain findings of fact and a statement of reasons.<sup>6</sup> The Office procedures provide that a decision should contain a discussion of the issues, requirements for entitlement, a background framework so that the reader can understand the issues at hand, a discussion of the relevant evidence, a basis for the decision and a conclusion.<sup>7</sup> Thus, a final decision must include findings of fact and a description of the basis for the findings so that the parties of interest will have a clear understanding of the reasoning behind the decision.<sup>8</sup>

### **ANALYSIS**

The Board finds that the case is not in posture for decision. The December 21, 2005 decision of the Office does not fully comply with the Board's remand order to consider appellant's claim as a request for modification of a loss of wage-earning capacity decision. The Office's decision fails to fully apprise appellant of the factual findings as to whether it was denying modification of her wage-earning capacity decision or denying her recurrence claim. The Board's August 18, 2005 order clearly set aside the November 18, 2004 decision denying appellant's recurrence claim and remanded the case for adjudication on whether modification of a loss of wage-earning capacity decision was warranted. On remand, the Office found that appellant failed to establish that modification of the loss of wage-earning capacity decision was

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<sup>4</sup> 5 U.S.C. § 8124(a).

<sup>5</sup> 20 C.F.R. § 10.126.

<sup>6</sup> 20 C.F.R. § 10.126; *see Teresa A. Ripley*, 56 ECAB \_\_\_ (Docket No. 05-189, issued May 9, 2005); *Robert L. Johnson*, 51 ECAB 480 (2000).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (March 1997); *see Avalon C. Bailey*, 56 ECAB \_\_\_ (Docket No. 04-2178, issued December 23, 2004).

<sup>8</sup> *See Paul M. Colosi*, 56 ECAB \_\_\_ (Docket No. 04-1042, issued February 3, 2005).

warranted without providing any rationale or discussion of the factual and medical evidence of record. The Office also found that appellant failed to establish that she sustained a recurrence of disability beginning December 6, 2000 without any rationale or discussion of all the medical and factual evidence. The Office's decision did not contain any discussion of the factual or medical evidence submitted by appellant in conjunction with her claim or specify the precise defect of the claim so that she would know the kind of evidence needed to overcome it.<sup>9</sup>

Furthermore, it is well established that the Office must consider all the evidence of record. Since the Board's jurisdiction of a case is limited to reviewing the evidence which was before the Office at the time of its final decision and the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>10</sup> Appellant submitted various reports and progress notes from Dr. Fitch, a treating Board-certified psychiatrist and Dr. Stormo, a licensed psychologist. The Office did not review the evidence, as it stated in its decision that the only evidence reviewed was a report by Dr. Burd. Accordingly, the case will be remanded to the Office for a review of the evidence submitted and an appropriate decision.

### **CONCLUSION**

The Board finds that the December 21, 2005 decision of the Office did not contain adequate findings regarding the wage-earning capacity issue and will remand the case for further proceedings consistent with this decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 21, 2005 is set aside and remanded for further proceedings consistent with the above opinion.

Issued: September 14, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *Avalon C. Bailey, supra* note 7.

<sup>10</sup> 20 C.F.R. § 501.6(c); *Yvette N. Davis*, 55 ECAB \_\_\_\_ (Docket No. 04-122, issued April 22, 2004); *William A. Couch*, 41 ECAB 548 (1990).