

**United States Department of Labor
Employees' Compensation Appeals Board**

K.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Waterbury, CT, Employer**

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**Docket No. 06-1949
Issued: February 14, 2007**

Appearances:

*Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 21, 2006 appellant filed a timely appeal from a September 19, 2005 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision on January 15, 2004¹ setting aside the Office's October 21, 2002 decision and remanding the case to the Office for

¹ Docket No. 03-1432 (issued January 15, 2004).

further proceedings.² The Board found that appellant had established an employment factor with respect to a December 8, 2000 incident whereby she discovered fresh blood on a piece of mail that she was sorting.³ As the Office had previously determined there were no compensable employment factors and did not analyze or develop the medical evidence, the case was remanded for the Office to consider the medical evidence. The facts and the circumstances of the case as set forth in the Board's prior decision and are incorporated herein by reference.

Following the Board's decision, the Office referred appellant, together with the case record, a list of questions and a statement of accepted facts, to Dr. Jay A. Lasser, a Board-certified psychiatrist for a second opinion examination. In a March 2, 2004 report, Dr. Lasser opined that appellant had no diagnosable psychiatric condition. With respect to whether the December 8, 2000 incident caused, aggravated, precipitated or accelerated any psychological disorder, Dr. Lasser stated that he was unable to determine that appellant had a psychiatric diagnosis at the time of the incident as neither report from appellant's treating physicians provided any medical data which could be a basis for formulating an opinion on a diagnosis. He opined that the single incident of finding blood neither caused nor precipitated appellant's conditions. Dr. Lasser stated that if appellant was suffering some psychiatric difficulty at the time, then the confrontations that followed when she returned to find her work piled up, could have aggravated or accelerated whatever difficulties she may have been experiencing.).

In a letter dated March 18, 2004, the Office requested that appellant submit her medical treatment notes from May 8, 2000. She submitted handwritten treatment notes from May 12, 2000 to May 16, 2001. In a March 29, 2004 letter, appellant's attorney characterized the treatment notes as coming from appellant's attending psychiatrist. She noted that the treatment notes were not very helpful as the doctors had explained to her they did not take extensive notes as a privacy precaution. Counsel argued that the reports from appellant's treating physicians written a year and a half after the December 8, 2000 work incident should carry more weight than Dr. Lasser's evaluation which took place over three years after the December 8, 2000 incident.

Of record are the July 11, 2002 report from Dr. Bradley L. Rosenberg, a Board-certified family practitioner, and a July 31, 2002 report from Dr. Kanchan Mahon, a Board-certified psychiatrist. Dr. Rosenberg diagnosed major depression and anxiety disorder. He stated that the history of injury was that of undue stress to appellant as a result of stressful incidents at work over a prolonged period of time. Dr. Rosenberg indicated that the cumulative effect of the stresses in her work accelerated and magnified her condition with each episode, which caused her condition. He stated that the events of January 18, 1999, April 14 and 19, 2000 certainly aggravated her condition, a confrontation on September 26, 2000 further worsened her condition,

² On May 14, 2001 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents of harassment or discrimination by supervisors and coworkers at work. She stopped work on December 8, 2000 and did not return.

³ The Board found that appellant had not established her claims that she was subjected to harassment and discrimination by either her coworkers or supervisors. The Board also found that the evidence failed to establish that the disciplinary actions taken against her were erroneous or abusive.

and the blood incident on December 8, 2000 caused appellant to become totally disabled due to major depression and anxiety disorder.

Dr. Mahon stated that appellant had been in treatment since July 3, 2002. He reviewed appellant's history, records and spoke with her previous psychiatrist, Dr. Caruso. Dr. Mahon opined that appellant had severe depression and anxiety as a result of her work environment at the employing establishment. He reviewed Dr. Rosenberg's letter and agreed with his assessment as to the causes of appellant's condition.

In an April 7, 2004 letter, the Office requested that Dr. Lasser review appellant's treatment notes from May 12, 2000 through May 16, 2001 and provide an addendum report addressing whether her emotional condition was related to the December 8, 2000 accepted incident of finding blood on mail. In an April 10, 2004 report, Dr. Lasser noted that the treatment records cover the period of time around the compensable incident. However, they did not contain any clinical data which would support a psychiatric diagnosis. Dr. Lasser concluded that, since no psychiatric diagnosis was established, the question of any possible contributing role of the December 8, 2000 incident was moot.

By decision dated April 30, 2004, 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 factor. The Office accorded determinative weight to Dr. Lasser's opinion. It found that appellant's treating physicians did not provide clinical data to support the diagnosis of major depression or anxiety disorder in connection with the accepted event of December 8, 2000.

In a May 12, 2004 letter, appellant requested an oral hearing, which was held July 11, 2005. Following the hearing, in an August 10, 2005 letter, appellant's counsel argued that the statement of accepted facts was confusing and failed to address the opinions of appellant's treating physicians.

By decision dated September 19, 2005, an Office hearing representative affirmed the April 30, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Tracy P. Spillane*, 54 ECAB 608.(2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ 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.⁸

In establishing the causal relationship between the employment and the injury, the Office usually relies on a physician's opinion as to whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁹ This rationalized medical evidence must be based on a complete factual and medical background of the claimant,¹⁰ and must be one of reasonable medical certainty,¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹² Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

In its prior decision, the Board found an established employment factor with respect to the December 8, 2000 incident in which appellant discovered fresh blood on a piece of mail that she was sorting.¹⁴ Following further development, the Office denied appellant's claim on the

⁶ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Id.*

⁹ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ With respect to the Board's findings regarding appellant's other 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).

grounds that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to this employment factor. The Board must review the medical evidence to determine whether appellant sustained an emotional condition due to the accepted employment factor.¹⁵

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

Appellant submitted various treatment records dated May 12, 2000 to May 16, 2001. A number of these notes contained a diagnosis of depression or anxiety. To the extent that these notes were authored by a physician,¹⁶ they are of limited probative value on the issue of causal relationship. The treatment notes do not contain any opinion on the cause of appellant's diagnosed emotional condition.¹⁷ Therefore, these notes are of diminished probative value.

In a July 11, 2002 report, Dr. Rosenberg diagnosed major depression and anxiety disorder which he attributed to the cumulative effect of the stresses in appellant's work environment. He noted that various episodes at work accelerated and magnified her condition. Dr. Rosenberg addressed the blood incident on December 8, 2000, stating that it caused appellant to become totally disabled due to major depression and anxiety disorder. Although, Dr. Rosenberg indicated that appellant's emotional condition was related to the compensable incident of December 8, 2000, his report relies on a history of employment incidents at work which were not accepted as established compensable factors in this case.¹⁸ This diminishes the value of his opinion as it is based on an inaccurate history.¹⁹ Dr. Rosenberg's opinion also is not well reasoned. Dr. Rosenberg provided no explanation as to how the December 8, 2000 incident exacerbated appellant's emotional condition and caused her to become totally disabled. A temporal relationship, alone, is not sufficient to establish causal relation. The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.²⁰ Causal relationship must be established by sound medical reasoning explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.²¹ Dr. Rosenberg did not explain how

¹⁵ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992) and accompanying text.

¹⁶ See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹⁷ 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).

¹⁸ See *George Tseko*, 40 ECAB 948 (1989) (finding that the factual information related by a physician, who reported only that the claimant was subjected to supervisory harassment without identifying specific events of harassment and the times and places at which they occurred in sufficient detail, was too vague to support the claim).

¹⁹ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

²⁰ See, e.g., *Steven R. Piper*, 39 ECAB 312 (1987). Not all heart attacks that occur at work, for example, are caused by work.

²¹ See *Helen K. Holt*, 50 ECAB 279 (1999).

appellant's emotional reaction to the accepted factor of employment exacerbated her emotional condition. This diminishes the value of Dr. Rosenberg's opinion.

In a July 31, 2002 report, Dr. Mahon opined that appellant experienced severe depression and anxiety as a result of her work environment at the employing establishment. He indicated his agreement with Dr. Rosenberg's assessment and statements as to the causes of appellant's condition. However, his report is deficient in that the report of Dr. Rosenberg did not explain the reasons why the accepted incident caused or contributed to appellant's diagnosed emotional condition. Moreover, Dr. Mahon based his report in large part on Dr. Rosenberg, whose history was not accurate as to the work factors accepted in this case.

The Board finds that the reports of Drs. Rosenberg and Mahon are insufficient to meet appellant's burden to establish that she sustained an emotional condition causally related to the accepted employment factor of December 8, 2000.

Dr. Lasser provided a second opinion evaluation for the Office which reviewed the statement of accepted facts, the medical record and appellant's complaints of job-related harassment and abuse and the accepted incident of December 8, 2000. He opined that the single incident of finding blood on mail while at work on December 8, 2000 would not cause or precipitate a psychiatric diagnosis. While the incident of December 8, 2000 could contribute to a psychiatric condition, a review of the medical records surrounding that period of time failed to provide any clinical information on which a psychiatric diagnosis could be based. Dr. Lasser found no basis on which to attribute any condition or disability to the December 8, 2000 blood incident. Dr. Lasser had the opportunity to review the relevant evidence of record and provided reasoning for his stated conclusions.

Consequently, the medical evidence does not establish that appellant sustained an emotional condition causally related to the accepted December 8, 2000 incident. In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical 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.²² In this case, the medical evidence is insufficient because it does not explain the reasons why the December 8, 2000 incident caused or aggravated a specific diagnosed condition.

Appellant contends on appeal that the statement of accepted facts was confusing and failed to address the opinions of her treating physicians. In securing the opinion of a medical specialist, the Office's procedures note that a statement of accepted facts and questions are to be prepared by the claims examiner for use by the physician.²³ Specifically, the claims examiner is required to correctly set forth the relevant facts of the case, including the employee's date of injury, age, job held when injured, the mechanism of injury and any conditions claimed or accepted by the

²² *Anna M. Delaney*, 53 ECAB 384 (2002).

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809 (June 1995).

Office.²⁴ The procedure manual notes that not all information contained in a case record may bear on the issues to be resolved and cautions the claims examiner from including material which is inappropriate or prejudicial to the claim.²⁵

The statement of accepted facts provided to Dr. Lasser, the second opinion physician, is consistent with Office procedures and included necessary information, including a chronological account of the incidents alleged by appellant and specifically identifying the December 8, 2000 incident found to have arisen out of the performance of duty. Additionally, the Office forwarded the medical evidence to Dr. Lasser for his review. In a March 2, 2004 supplemental report, he noted reviewing reports of Drs. Mahon and Rosenberg. The evidence of record does not support appellant's contentions.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an employment-related emotional condition causally related to the December 20, 2000 accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

²⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.12 (June 1995). Other information pertaining to medical treatment received, the employee's personal habits and off-duty or family activities may be included as the case warrants.

²⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.14 (June 1995).