

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

M.I., Appellant

and

**U.S. POSTAL SERVICE, MAIN OFFICE,
Boulder, CO, Employer**

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**Docket No. 09-433
Issued: August 25, 2009**

Appearances:
Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 1, 2008 appellant, through her representative, filed a timely appeal from the October 17, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her emotional injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's major depressive disorder is causally related to the accepted factors of employment. Appellant's representative argues that there is a conflict of medical opinion.

FACTUAL HISTORY

On February 12, 2004 appellant, then a 38-year-old customer services supervisor, filed a claim alleging that she developed depression and occupational stress while in the performance of duty: "I have been an employee of the USPS since February 1991. I came to the realization that my place of employment caused a depressing and stressful environment for me." The Office accepted that appellant supervised 27 clerks and mail handlers, that for one week she reported to

work at 4 a.m., and that an employee whom she had previously disciplined called her “bitch” on the workroom floor. However, on August 17, 2004 it denied her claim for compensation on the grounds that the medical evidence did not establish a causal relationship between these compensable factors of employment and a diagnosed medical condition. This decision was affirmed by an Office hearing representative, as modified, on July 18, 2005.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kenneth D. Krause, a Board-certified psychiatrist. On October 2, 2006 Dr. Krause noted the incidents the Office accepted as occurring in the performance of duty and those it did not accept. He reviewed the relevant medical reports. Dr. Krause related appellant’s history, findings on mental status examination, and diagnosed major depressive disorder, recurrent, moderate. He reported that the accepted factors of employment did not cause appellant’s diagnosis. Dr. Krause stated that he did not find a causal relationship.

On October 13, 2006 the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that the weight of the medical opinion evidence rested with Dr. Krause, who based his opinion on the statement of accepted facts and who provided an in-depth analysis of background, family and social history and mental status.

Appellant submitted an August 23, 2007 report from Dr. Gerald S. Fredman, a Board-certified psychiatrist, who reviewed the statement of accepted facts, the Office’s October 13, 2006 decision and Dr. Krause’s reports. Dr. Fredman related appellant’s history in some detail and his findings on clinical evaluation. He offered a principal diagnosis of major depressive disorder, recurrent, severe. Dr. Fredman stated that appellant’s problem with depression started in March 2000, before she began working in Boulder, but that the accepted factors of employment aggravated her condition. He stated: “Based on the history I obtained and records reviewed, there was development of more serious symptoms and limitations following these incidents.”

Dr. Fredman disagreed with Dr. Krause’s opinion that there was no relationship between the accepted factors of employment and appellant’s emotional disability. He believed her problem with depression worsened as a result of the accepted work-related incidents. Dr. Fredman noted that the historical information appellant provided was corroborated in the correspondence and records of Dr. Anderson. He stated: “In my opinion the incidents that occurred in the performance of job duties at the [employing establishment], as outlined in the statement of accepted facts, did aggravate the major depressive disorder causing more serious symptoms and dysfunction. This worsening of her condition ultimately led to her inability to continue her job duties.”

In a decision dated October 17, 2008, the Office reviewed the merits of appellant’s claim and denied modification of its prior decisions. It found that Dr. Fredman’s opinion lacked sufficient rationale to create a conflict of medical opinion with Dr. Krause and did not warrant referral for a referee examination.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue,³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ But a conflict of medical opinion must actually exist as determined by weighing the medical evidence. The Office must decide the relative value of opposing opinions in the medical record, giving consideration to all factors of physician specialty and qualifications, completeness and comprehensiveness of evaluations and rationale and consistency of opinions. If a significantly greater weight cannot be assigned by the Office to one opinion, then it is proper to determine that a conflict in medical opinion exists and that a referee medical examination is appropriate.⁸

¹ 5 U.S.C. § 8102(a).

² *E.g., John J. Carlone*, 41 ECAB 354 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 5 U.S.C. § 8123(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11.c(1) (April 1993).

ANALYSIS

The Office accepted that appellant established three compensable factors of employment. It is therefore her burden to establish by the weight of the medical opinion evidence that one or more of these factors caused or contributed to her major depressive disorder.

Dr. Krause, a Board-certified psychiatrist and Office referral physician, found that none of the three accepted factors of employment caused appellant's major depressive disorder in any sense. He stated that he did not see a relationship between those factors and appellant's diagnosis.

Dr. Fredman, a Board-certified psychiatrist and appellant's physician, reviewed Dr. Krause's opinion and disagreed. Although appellant's problem with depression started before she began working in Boulder, the accepted factors of employment aggravated her condition, causing more serious symptoms and dysfunction, as the medical record corroborated.

The Board has carefully reviewed these reports and finds a conflict in medical opinion. Both physicians related comprehensive histories. Both reviewed relevant medical evidence. Both examined appellant and diagnosed major depressive disorder and both reviewed the statement of accepted facts. On the issue of causal relationship, the physician making the examination for the United States and the physician of the employee disagreed, and in doing so, Dr. Fredman addressed Dr. Krause's opinion and addressed why he disagreed on the issue of causal relation. Under the circumstances, the Board finds a conflict in medical opinion warranting referral to an impartial medical specialist under section 8123(a) of the Act.

The Board will set aside the Office's October 17, 2008 decision and will remand the case for a well-reasoned medical opinion from an impartial medical specialist. The specialist should address the accepted factors of employment and whether they caused or aggravated appellant's major depressive disorder. After such further development as might be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant's major depressive disorder is causally related to the accepted factors of employment. A conflict in medical opinion warrants further development of the evidence.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: August 25, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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