

FACTUAL HISTORY

This case was previously before the Board. On October 11, 2007 appellant, then a 53-year-old claims examiner, filed a claim for employment-related depression arising on or about January 25, 2007. She was previously diagnosed with pain disorder and major depressive episode.² Appellant's current depression allegedly stemmed from an inability to keep pace with an ever increasing workload. Her psychologist, Virgil Wittmer, Ph.D., diagnosed major depression, severe, which he attributed to an "increased stress level at work with gradual progression of job load since January [2007]." On November 5, 2007 Dr. Mark C. Hofmann, a Board-certified physiatrist, reported "pressure-like pain over [appellant's] neck and back of her head," which she attributed to an increase in stress at work.

In a decision dated November 29, 2007, the Office denied appellant's claim finding that she had not established any compensable employment factors. It also found the medical evidence insufficient to support her claim.

By decision dated October 10, 2008, the Board found that appellant established a compensable employment factor.³ The Board determined that appellant's "emotional reaction was to the increase in workload she was expected to manage beginning January 25, 2007."⁴ Although appellant established a compensable employment factor, the Board found that she failed to demonstrate that the claimed emotional condition was causally related to the accepted employment factor. Accordingly, the Board modified the Office's November 29, 2007 decision to reflect that appellant had established a compensable employment factor, but affirmed the denial of benefits based on insufficient medical evidence of a causal relationship.⁵

On November 28, 2008 appellant requested reconsideration. She submitted an undated report from Dr. Jeffrey Wertheimer, a neuropsychologist, who evaluated her over a two-day period in September and October 2008. Dr. Wertheimer diagnosed major depressive disorder, moderate to severe and anxiety disorder, not otherwise specified. He also diagnosed pain disorder associated with a general medical condition and psychological factors. Dr. Wertheimer noted a cognitive inefficiency secondary to factors extraneous to organic brain dysfunction. He had previously evaluated appellant on June 22, 2006. Dr. Wertheimer's report summarized earlier findings, noting a prior history of both psychiatric and orthopedic ailments. Since his

² Under claim number xxxxxx890, the Office accepted temporary aggravation of depression, which arose on November 8, 2002. Appellant's depression had reportedly been in remission since June 2006. She also sustained employment-related injuries to her cervical and lumbar region. (xxxxxx673 and xxxxxx166). The first low back injury occurred January 19, 1999, followed by a second injury to her lower back and neck on April 17, 2002.

³ Docket No. 08-1102 (issued October 10, 2008).

⁴ This included numerous extra digit assignments between January and October 2007, as well as the additional responsibility of handling quality case management (QCM) and periodic rolls management (PRM) cases beginning August 2007. Appellant also attributed her emotional condition to events surrounding a September 25, 2007 telephone message from a claimant who reportedly stated that appellant had been giving her "the runaround." The employing establishment investigated the complaint and ultimately disciplined appellant on October 18, 2007. The Board found that neither the investigation nor the discipline meted out was a compensable employment factor.

⁵ The Board's October 10, 2008 decision is incorporated herein by reference.

evaluation in June 2006, appellant reported having returned to work in August 2006. It was a smooth return and she reportedly did well until October 2006. Appellant informed Dr. Wertheimer that her employer had integrated three major units into her responsibilities. She reportedly became “overwhelmed at work” when her responsibilities were expanded to include QCM, PRM and rehabilitation unit cases. Appellant advised Dr. Wertheimer that this event was the beginning of her “breaking down.” Other reported stressors included January 2007 interactions with a customer service representative regarding a claimant. Appellant reportedly “snapped” at that point, and since then she felt overwhelmed, stressed and debilitated. She claimed to have been less efficient, slower in her cognitive processing, and error prone because of her emotional state. Appellant also advised Dr. Wertheimer that her brain “continues to shut down” and she had been scrutinized for inefficient work, lack of work and tardiness in completing tasks.

With respect to appellant’s current psychiatric status, Dr. Wertheimer indicated that she was clearly experiencing greater distress when compared to her previous evaluation. Appellant currently exhibited major somatic preoccupation. Dr. Wertheimer also noted that appellant was tense, anxious, depressed, extremely ruminative and filled with self-doubt. He ruled out organic brain pathology as the cause of appellant’s current condition. Dr. Wertheimer stated that appellant appeared to be experiencing moderate to severe levels of depression and anxiety and general psychological distress. He also noted that she continued to experience significant pain and headaches and she reported having sleep disturbance. According to Dr. Wertheimer, the confluence of these factors could account for appellant’s subjective experience of cognitive inefficiency.

The Office also received treatment notes and an undated report from Dr. Richard E. Nay, a psychologist, who initially examined appellant on October 20, 2008 and diagnosed severe recurrent major depression and pain disorder associated with both psychological factors and a general medical condition. Dr. Nay identified January 19, 1999 as the date of injury. He noted that appellant’s feelings of depression as well as her ongoing chronic pain disorder were a direct result of her work-related orthopedic injuries sustained in 1999 and 2002. Dr. Nay’s treatment notes covered the period October 20, 2008 through January 29, 2009.

The Office reviewed the merits of the claim and in a decision dated January 30, 2009, found that appellant had not established a causal relationship between her diagnosed psychiatric condition and her accepted employment exposure.

LEGAL PRECEDENT

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁶

⁶ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

ANALYSIS

Appellant has been diagnosed with major depression and she has established at least one compensable employment factor. While two of the three criteria have been met, appellant must also submit rationalized medical opinion evidence establishing that her claimed emotional condition is causally related to the identified compensable employment factor.⁷

According to Dr. Nay, appellant's current depression and her ongoing chronic pain disorder were a direct result of her work-related injuries from 1999 and 2002. These particular injuries pertained to appellant's neck and lower back. Dr. Nay's narrative report did not mention appellant's complaints about the increasing amount of work she received beginning January 2007. As he did not attribute appellant's current psychiatric condition to the accepted employment factor, his opinion is not sufficient to meet appellant's burden of proof.

Dr. Wertheimer's opinion is similarly insufficient to meet appellant's burden of proof. Although his report referenced difficulties appellant reportedly experienced following her return to work in August 2006, Dr. Wertheimer's account of events is not entirely consistent with the evidence of record. First, he makes no reference to the extra digit assignments appellant began receiving in January 2007. Instead, Dr. Wertheimer notes that after October 2006 appellant reportedly became "overwhelmed at work" when her responsibilities were expanded to include QCM, PRM and rehabilitation unit cases. While the additional assignment of QCM and PRM cases technically occurred after October 2006, it was not until August 2007 that appellant assumed responsibility for such cases. Second, Dr. Wertheimer reported other stressors that included January 2007 "interactions with a customer service representative regarding a claimant." However, the incident involving the customer service representative and the disgruntled claimant did not occur until September 2007. And the subsequent investigation and resulting disciplinary action have not been found to be compensable employment factors.⁸ Thus, Dr. Wertheimer's chronology of events is not entirely accurate and some relevant information has been omitted from his latest evaluation. These mistaken factual underpinnings impact the probative value of his medical opinion.⁹ Other than noting what appellant reported to him, Dr. Wertheimer has not specifically attributed her current psychiatric condition to any of the post-October 2006 incidents appellant described. He noted that appellant "is currently in greater emotional distress" than when he previously evaluated her in June 2006. However, the exact cause of her deteriorating psychiatric condition is not readily apparent from his October 2008 evaluation.

⁷ *Charles D. Gregory*, 57 ECAB 322, 328 (2006).

⁸ *See supra* note 4.

⁹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

CONCLUSION

The Board finds that the medical evidence is insufficient to establish that appellant's emotional condition is causally related to the accepted employment factor.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 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