

date, it requested the employing establishment to provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. On September 7, 2007 the Office received an August 27, 2007 report from Dr. Andrew Castrodale, a family practitioner.

By decision dated January 3, 2008, the Office denied the claim for compensation. Appellant requested a hearing before an Office hearing representative, which was held on May 8, 2008. At the hearing, she alleged that she was subject to verbal abuse from a coworker, Rick Krohn. Appellant stated that Mr. Krohn told her she should retire, told her she was stupid, berated her, sent an e-mail to a coworker that she could not do her job properly, intentionally changed her work product in violation of employing establishment procedures and prevented or made difficult the performance of certain aspects of her job. She indicated that her request to be moved away from Mr. Krohn was granted.

In a decision dated July 7, 2008, the hearing representative found the January 3, 2008 decision should be affirmed with modification. The hearing representative noted the components of "fact of injury" and stated, "I find the claimant has established the fact of injury in her claim in that she has now provided specific factors that she felt contributed to her condition, as well as a medical report from a physician that contains a diagnosis in connection with the claim." The hearing representative then found that appellant had not established her claim for an emotional condition as she did not substantiate any compensable work factors.

LEGAL PRECEDENT

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 factors of her federal employment.¹ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or incidents which are alleged to have occurred. The second component is whether the employment incidents caused a personal injury and generally this can be established only by medical evidence.²

In the context of an emotional condition claim, the Board has held the factual component requires the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.³ As to the medical component, a claimant must submit rationalized

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² See *John J. Carlone*, 41 ECAB 354, 357 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989). The term "fact of injury" discussed in the *Pendleton* case indicated that, while a claimant could establish an injury in the performance of duty, whether there was disability or whether causal relationship for another specific condition was established were distinct elements of a claim.

³ *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

medical opinion evidence establishing a causal relationship between the claimed condition and the established compensable work factors.⁴

ANALYSIS

The July 7, 2008 decision from the hearing representative provides an improper analysis of the issues in this case and reaches an inconsistent conclusion. On the one hand, the hearing representative states that the January 3, 2008 decision is being modified on the grounds that appellant has now established “fact of injury.” As indicated above, to establish fact of injury in an emotional condition case, appellant would have to allege and establish compensable work factors, and submit medical evidence establishing causal relationship between a diagnosed condition and the identified compensable work factors. After finding that appellant had established “fact of injury,” the hearing representative then finds that no compensable work factors were substantiated and denied the claim. If no compensable work factors are established, then appellant cannot establish a medical condition causally related to compensable factors and therefore she has not established “fact of injury.”

In view of the inconsistent findings rendered by the hearing representative, the case will be remanded for a proper decision on the issues. Any decision issued should be consistent with well-established procedures and authority regarding emotional condition claims under the Federal Employees’ Compensation Act.⁵ After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The July 7, 2008 Office decision made inconsistent findings on the issues and the case is remanded for a proper decision.

⁴ See *Bonnie Goodman*, 50 ECAB 139, 141 (1998).

⁵ The Office has an obligation to secure the relevant factual information from the employing establishment regarding the claim. See *Alice F. Harrell*, 53 ECAB 713 (2002) (the case was remanded to again request a detailed statement from the employing establishment regarding the claimant’s specific allegations).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 7, 2008 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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