



further review of the merits.<sup>2</sup> In a decision dated April 2, 2009, the Board affirmed as modified an April 30, 2008 decision denying her emotional condition claim.<sup>3</sup> The Board found that appellant established that she experienced stress while working as a window clerk as a compensable employment factor. The Board further determined that she did not establish harassment or discrimination by her supervisor or that management erred in denying her leave requests or failing to provide her with training. The Board found that the medical evidence was insufficient to show that appellant sustained an emotional condition due to the compensable work factor. The facts and circumstances of the case as set forth in the Board's prior decisions are hereby incorporated by reference.

On June 15, 2009 appellant, through her attorney, requested reconsideration. In a report dated June 8, 2009, Dr. Flora I. Danque, Board-certified in family medicine, reviewed a statement from appellant's attorney detailing her work duties. She diagnosed partially-disabling agoraphobia with panic disorder, obsessive-compulsive disorder and major depressive disorder. Dr. Danque stated:

“The severity and duration of [appellant's] [m]ajor depression, [a]goraphobia and panic attacks are a direct result of attempts to perform and to fulfill the duties of her position as [c]lerk with the [employing establishment] within the years 1995 [to] 1998. [Appellant] was always very driven and always strived to complete what she started with pride. She attempted to do this while working for the [employing establishment] between 1995 [to] 1998. [Appellant] experienced extreme stress while performing clerk duties for the [employing establishment]. She developed [o]bsessive-compulsive disorder and [a]goraphobia due to frustrated attempts to perform her clerk duties for the [employing establishment] between 1995 and 1998. Required interaction with members of the public became especially damaging as her condition deteriorated at work.”

In an accompanying work restriction evaluation, Dr. Danque found that appellant was totally disabled from employment.

By decision dated September 8, 2009, OWCP denied modification of its April 2, 2009 decision. It found that Dr. Danque reviewed a statement listing appellant's work duties but not describing the found compensable work factors by the Board.

On September 25, 2009 appellant, through her attorney, requested reconsideration. In a September 21, 2009 report, Dr. Danque stated:

“While working for the [employing establishment], [appellant] was placed behind a counter and presented with an unfamiliar machine. The increased stress from not knowing how to work the machine properly, having to ask her coworkers for

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<sup>2</sup> Docket No. 03-1387 (issued March 8, 2008).

<sup>3</sup> Docket No. 08-1655 (issued April 2, 2009). On December 29, 1998 appellant, then a 39-year-old clerk, filed an occupational disease claim alleging that she sustained anxiety arising from her supervisor's harassment and discrimination, the denial of leave, receiving a letter of warning and her work as a window clerk.

assistance in front of the customers, being confined to a small area, unable to control her work space, feeling overwhelmed from changes in her work space and having to deal with frustrated coworkers and customers all contributed, caused and exacerbated her diagnosis of Obsessive Compulsive Disorder, Major Depression and Agoraphobia with Panic Disorder.”

Dr. Danque opined that appellant was totally disabled from working at the employing establishment.

By decision dated March 25, 2010, OWCP denied modification of its September 8, 2009 decision. It found that Dr. Danque did not specifically describe the employment factor that caused or aggravated appellant’s condition or explain why appellant required continued treatment from 1998 to the present. OWCP further determined that Dr. Danque did not adequately address how working machines at the window caused appellant’s condition. It noted that appellant had not provided sufficient medical evidence to show “a clear and convincing nexus between the claimant’s diagnosed psychiatric/emotional conditions and any work-related temporary total disability.”

On appeal, appellant’s attorney argues that OWCP failed to give any weight to competent medical evidence and misconstrued the Board’s prior findings. Appellant asserts that OWCP interpreted the Board’s finding that she sustained a compensable work factor very narrowly to mean that she had difficulty working machines at the window and had to ask a coworker for assistance. Counsel noted that OWCP applied a “clear and convincing” standard rather than a preponderance of the evidence standard.

### **LEGAL PRECEDENT**

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</sup> On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related

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<sup>4</sup> 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

condition.<sup>6</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>7</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>8</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>9</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>10</sup>

### ANALYSIS

The Board previously addressed appellant's assertions that she experienced difficulty working the machines at the window and had to ask a coworker for assistance. The Board found that performing her duties as a window clerk was a compensable employment factor, noting that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable under *Cutler*.<sup>11</sup>

On reconsideration, appellant submitted a June 8, 2009 report from Dr. Danque, who diagnosed agoraphobia with panic disorder, obsessive-compulsive disorder and major depressive disorder. Dr. Danque attributed appellant's severe symptoms to her "attempts to perform and to fulfill the duties" of her clerk position from 1995 to 1998. She noted that appellant experienced major stress performing her work duties and that "[r]equired interaction with members of the public became especially damaging as her condition deteriorated at work."

On September 21, 2009 Dr. Danque related that appellant experienced stress when appellant began working on an unfamiliar machine behind a counter and had to ask her coworkers for assistance. Appellant became overwhelmed from handling coworkers and customers, all of which caused or contributed to her obsessive-compulsive disorder, agoraphobia with panic disorder and major depression. Dr. Danque determined that appellant was disabled from working at the employing establishment.

On appeal, appellant's attorney argues that OWCP failed to give any weight to probative medical evidence. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup>

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<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Dennis J. Balough*, 52 ECAB 232 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>10</sup> 20 C.F.R. § 10.121.

<sup>11</sup> *See also Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>12</sup> *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

Dr. Danque provided a clear opinion that appellant sustained obsessive-compulsive disorder, agoraphobia with panic disorder and major depression caused or aggravated by stress working as a window clerk. She evidenced a thorough knowledge of appellant's work duties and her opinion is supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis. Dr. Danque, however, specializes in family practice. A claim for an emotional condition must be supported by an opinion from a psychiatrist or a clinical psychologist before the condition can be accepted.<sup>13</sup> Consequently, while the medical evidence from Dr. Danque is insufficient to meet appellant's burden of proof, it raises an inference of causal relationship sufficient to require further development by OWCP.<sup>14</sup> Accordingly, the Board will remand the case to refer appellant, together with a statement of accepted facts, to an appropriate specialist for a rationalized medical opinion regarding whether she sustained an emotional condition due to a compensable work factor and, if so, whether there is any employment-related disability. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

On appeal, appellant's attorney argues that OWCP applied an inaccurate standard of review. In its March 24, 2010 decision, OWCP found that the evidence necessary to meet appellant's burden of proof must be "clear and convincing." The burden, however, is on appellant to establish her case by the preponderance of the evidence.<sup>15</sup> On remand, OWCP should apply the proper standard of law.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>13</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995).

<sup>14</sup> *Id.*

<sup>15</sup> See *V.F.*, 58 ECAB 321 (2007) (an employee who claims benefits under FECA has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 21, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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