

FACTUAL HISTORY

This is the third appeal before the Board. Appellant, then a 53-year-old accountant, she alleged that she sustained stress in the performance of her duties pertaining to the transition to a new computer system. She submitted reports from Drs. Sarah Jonaus and Michael Chan which indicated that she experienced anxiety, professional self-doubt, feelings of hopelessness and crying spells related to stress at work since being transferred to a new position in January 2004. The physicians noted that appellant felt overwhelmed, extremely stressed and was also very concerned about her ailing mother, who had recently undergone open heart surgery. Dr. Jonaus diagnosed depression and anxiety and released her from work. By decisions dated February 4, 2005, September 15 and December 14, 2006 and February 28, 2007, OWCP denied appellant's claim for a stress-related condition. It found that she did not establish any compensable employment factors.

In a decision dated March 21, 2008,² the Board set aside OWCP's decisions denying appellant's claim. The Board found that she attributed her emotional condition to the requirements of her work as an accountant and the evidence established a compensable factor of employment. The Board remanded the case for further development of the medical evidence.

On remand, OWCP referred appellant, together with a statement of accepted facts and list of questions, to Dr. Lee Howard, clinical psychologist, for a second opinion examination. In a May 15, 2008 report, Dr. Howard diagnosed major depression and panic disorder with agoraphobia in remission. He stated that appellant's condition was produced by life stressors, including her mother's 2004 heart surgery and her separation in 2007 from her second husband rather than as a reaction to a single environmental stressor from work. Dr. Howard also opined that her major depression was a preexisting condition which predated the work stressors. He concluded that there was no evidence to support that the 2004 work injury caused a specific psychological or psychiatric disorder. By decision dated June 25, 2008, OWCP denied the claim. In a February 19, 2010 decision,³ the Board found a conflict in medical opinion between appellant's attending physicians and Dr. Howard. The case was remanded for further development of the medical evidence. The facts of this case as set forth in the Board's March 21, 2008 and February 19, 2010 decisions are incorporated by reference.

OWCP referred appellant to Dr. Alan B. Levy, a Board-certified psychiatrist, for a referee medical examination. In a March 8, 2010 referral letter, it provided a statement of accepted facts and a list of questions, including "Did any episode which began in 2004 bear any relationship to the single compensable employment factor described in the statement of accepted facts?" OWCP advised Dr. Levy to address contemporaneous nonwork-related stressors which may have precipitated any episode she experienced beginning in 2004, including health concerns of her husband, her mother, or the longstanding history of episodic major depression.

In an April 29, 2010 report, Dr. Levy reviewed the medical history, the statement of accepted facts and stated findings on examination. He concluded that, although appellant

² Docket No. 07-1074 (issued March 21, 2008).

³ Docket No. 09-1150 (issued February 19, 2010).

continued to be significantly impaired by her major depression condition, she also displayed a possible symptom magnification. Dr. Levy noted that she had not shown any improvement in her depression despite being away from work. He stated:

“While I do not doubt that [appellant] felt stressed at work and felt overwhelmed by her responsibilities at work, I do not believe that the responsibilities at work were such to contribute to the exacerbation of the depression in any meaningful way above and beyond other circumstances in her life. One would have expected a significant improvement in her condition if the work-related stressors had been the major component responsible for her exacerbation of symptoms once she left work and was aware that she would not be returning to work.... I do not believe that [appellant’s] [m]ajor [d]epression was aggravated by her job responsibilities, though she is clearly disabled from the persistence of her depression. She is not able to work as a result of her impaired energy, motivation and concentration; thus, while I believe she qualifies for being disabled from work, I do not believe this disability is directly due to or aggravated by the job she was working in 2004 or in 2005.”

By decision dated May 25, 2010, OWCP found that Dr. Levy’s impartial medical opinion that appellant’s depression condition was not causally related to her accepted employment factor represented the weight of the medical evidence. It therefore denied modification of its previous decisions which denied appellant compensation for an emotional condition.

By letter dated June 27, 2010, appellant requested reconsideration. She argued that Dr. Levy’s opinion was flawed because he failed to address how her stress, anxiety and depression were caused by the accepted employment factor; he did not base his decision on a full review of the medical evidence; he was improperly influenced in his evaluation; and his report was based on an inaccurate statement of accepted facts. Appellant did not submit any additional medical evidence with her request.

By decision dated August 9, 2010, OWCP denied appellant’s application for review, finding that it did not raise any substantive legal questions or included new and relevant evidence sufficient to require further merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.⁴ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁵

⁴ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁵ See *Ruth C. Borden*, 43 ECAB 146 (1991).

Appellant's burden of proof is not discharged by the fact that she has merely identified an employment factor which may give rise to a compensable disability under FECA. She also has the burden of submitting sufficient medical evidence to support her claim that the employing establishment's harassment resulted in an employment-related emotional condition.⁶ The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.⁷

When the medical evidence of record gives rise to a conflict in opinion between the physician for the employee and the physician making the examination for the United States, a third physician shall be appointed to make an examination as an impartial medical specialist.⁸ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist will be given special weight when based on a proper factual and medical history and if sufficiently well rationalized.⁹

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision as Dr. Levy's opinion on causal relation requires clarification.

Dr. Levy stated that, while appellant continued to be disabled due to the persistence of her symptoms, her major depression condition had not been aggravated by her job responsibilities. He did not doubt that she felt stressed at work and overwhelmed by her responsibilities at work, but opined that her work responsibilities did not contribute to the exacerbation of the depression in any meaningful way above and beyond the other circumstances in her life. Dr. Levy explained that other circumstances in appellant's life, such as her continued marital difficulties and her mother's health issues were the cause of her continued depression and that she would have experienced the same depression, without the employment factor. He indicated that her depression should have abated once she left work if the work-related stressors had been responsible for the exacerbation of symptoms; he stated, however, that there had been no improvement in her depression condition since she left the employing establishment several years prior.

The Board finds that Dr. Levy's report requires clarification regarding the issue of causal relationship between the accepted employment factor and appellant's major depression condition. It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence reveals that the employment factor contributed in any way to the disabling condition, such condition would be considered employment related for purposes of compensation under FECA.¹⁰ While Dr. Levy

⁶ *Chester R. Henderson*, 42 ECAB 352 (1991).

⁷ *See L.R., claiming as widow of E.R.*, 58 ECAB 369 (2007).

⁸ *See Guiseppe Aversa*, 55 ECAB 164 (2003).

⁹ *See Richard R. LeMay*, 56 ECAB 341 (2005)

¹⁰ *See Beth P. Chaput*, 37 ECAB 158 (1985).

opined that appellant's employment did not contribute to the disabling depressive condition in any meaningful way, he stated that she felt stressed by the accepted work factor, the requirements of her work as an accountant. His opinion did not clearly rule out the accepted work factor as having contributed to her emotional condition. On remand, OWCP should ask Dr. Levy to clarify whether the accepted factor contributed to appellant's depressive condition in any manner and, if so, whether the condition was aggravated by the accepted factor. After such further development as necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 9 and May 25, 2010 decisions of the Office of Workers' Compensation Programs be set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: September 12, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ Given the resolution of the first issue, the Board finds it unnecessary to address the second issue on appeal.