

FACTUAL HISTORY

On October 10, 2007 appellant, then a 38-year-old revenue officer, filed a traumatic injury (Form CA-1) alleging that she had sustained an emotional condition related to her federal employment. She listed the date of injury as February 28, 2006. Regarding the cause of the injury, appellant stated, "Taxpayer in my inventory contacted me repeated about his delinquent taxes and left message threatening suicide. Then he committed suicide."²

In a supplemental statement, received on April 23, 2008, appellant stated that she was deeply disturbed by the taxpayer's suicide on February 28, 2006 and noted that she "tried to keep working [through] this." The last voicemail message that the taxpayer left for her was incomplete as he committed suicide in the course of leaving the message. Appellant criticized the employing establishment's response to the incident stating that "at no time did management provide or attempt to provide assistance" and that, a second level supervisor, Duane Briggs, advised that "I go tie one on." She requested assistance but management, particularly her immediate supervisor, Cheryl Callaway, became negative, hostile and verbally abusive. Appellant alleged that a statement was placed in a management report stating that she was an alcoholic. She experienced a meltdown in the office in September 2006 and stopped work.³

In statements received on May 20 and July 14, 2008, Robert Misinkavitch, a territory manager for the employing establishment, stated that appellant was given an opportunity to receive assistance from the Employee Assistance Program, but she declined such assistance. He noted that, prior to the February 28, 2006 incident, she exceeded the fully successful performance standard and that she was a candidate for promotion. However, after February 28, 2006, appellant's work performance declined "dramatically." Mr. Misinkavitch noted that Mr. Briggs admitted suggesting to her that she "tie one on" but he only stated this to lighten her mood. Other employing establishment officials corroborated that on February 28, 2006 a taxpayer who left messages on appellant's voicemail did, in fact, commit suicide on that date.⁴

In a September 17, 2008 decision, OWCP denied appellant's claim for a work-related emotional condition. It accepted that she was engaged in her regular duties when she listened to voicemails left on February 28, 2006 by a taxpayer who threatened suicide and then committed suicide that day. OWCP found that appellant did not establish any work factors with respect to management's actions after the taxpayer's suicide on February 28, 2006. It denied her claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to the accepted work factor.

² In another Form CA-1, also completed on October 10, 2007, appellant stated regarding the cause of her claimed emotional condition, "Taxpayer suicide. The taxpayer called revenue officer's voicemail and left three separate messages at approximately 12:45 a.m., 12:55 a.m. and 1:10 a.m. stating his intentions."

³ Appellant submitted documents showing that she sought psychotherapy from a therapist in October 2006. She also submitted brief medical reports indicating that she had major depression.

⁴ It appears from the record that, shortly after appellant listened to the last voicemail left by the taxpayer, relatives of the taxpayer confirmed to her that the taxpayer had in fact committed suicide on February 28, 2006.

Appellant disagreed with the September 17, 2008 decision and, through her union representative, requested reconsideration of her claim. In a statement received on March 3, 2009, her representative discussed management's actions after the taxpayer's suicide on February 28, 2006.

In a June 1, 2009 decision, OWCP denied appellant's emotional condition claim noting that she did not submit sufficient medical evidence to establish that she sustained an emotional condition due to the accepted work factor.

Appellant disagreed with the June 1, 2009 decision and requested reconsideration.⁵ By decision dated August 27, 2009, OWCP refused to perform a merit review of the claim as no new and relevant evidence had been submitted.

Appellant requested reconsideration of her claim and submitted an August 11, 2009 report of Dr. Andrew Lopez, an attending Board-certified psychiatrist,⁶ who stated that he was her attending psychiatrist and noted that she was attending weekly psychotherapy sessions for a bipolar disorder and likely post-traumatic stress disorder (PTSD). Dr. Lopez stated:

“[Appellant] reported that she worked as a revenue officer for 11 years and began having severe anxiety, insomnia, mood swings and an inability to function at work in February 2006, after the suicide of a tax client. She then started seeing Dr. [Stanford E.] Bazilian, a psychiatrist, in October 2006 and changed to NHS due to insurance reasons in December 2007. This trauma triggered the appearance of subsequent Bipolar I Disorder and PTSD and the symptoms of these conditions (extreme mood swings, poor concentration, racing thoughts, impulsivity, distractibility, nightmares and extreme anxiety, to name a few) have directly caused an inability to work and function normally. [Appellant's] prognosis for return to work is extremely guarded.”

In a June 28, 2010 decision, OWCP again denied appellant's emotional condition claim. It found that Dr. Lopez did not provide sufficient medical rationale in support of his conclusions that she sustained an emotional condition due to the accepted work factor.

Appellant disagreed with the June 28, 2010 decision and, through counsel, requested reconsideration of her claim. Counsel submitted a letter dated March 10, 2011 and a February 16, 2011 medical report from Dr. Lopez.

Dr. Lopez stated that he first interviewed appellant on January 16, 2008 when she presented requesting treatment for mood swings and periods of elevated moods and insomnia lasting for days and weeks at a time, as well as chronic anxiety and racing thoughts, poor concentration and alternating periods of severe depressed and low mood that kept her in bed for days to weeks. He noted that her symptoms began after she attempted to collect a tax debt from a taxpayer who left her several voice messages indicating that he would kill himself. Dr. Lopez

⁵ Appellant indicated that she would submit additional medical evidence, but she did not submit such evidence in connection with her reconsideration request.

⁶ Dr. Lopez was a physician for the Human Services (NHS) practice group.

stated that the last message to appellant was incomplete and she found out shortly thereafter from family members that the taxpayer did indeed kill himself on February 28, 2006. Appellant also reported that following the February 28, 2006 incident she would cry “all the way to work for three months” and was only able to sleep three hours per night. Dr. Lopez stated:

“The symptoms [appellant] described on initial presentation to NHS combined with her presenting mental status exam[ination] are consistent with Bipolar I Disorder and this has remained a diagnosis since admission to the clinic. Given her excellent work history as a tax revenue officer for 22 years without difficulty and the onset of Bipolar Disorder immediately after witness to this emotional trauma mentioned herein, I can only conclude that the onset of her Bipolar Disorder was directly caused by the experiencing of this unfortunate work[-]related trauma. The fact that [appellant] had an excellent work record and no psychiatric treatment nor psychiatric history before the trauma supports that the Bipolar I Disorder was not present before the trauma. In my clinical experience and in the psychiatric literature, there are many reports of cases of Bipolar Disorder that have been triggered by a single traumatic event in a person’s life, an event such as witness to a death, rape, severe abuse or threat of bodily harm to a person.”

In a May 4, 2011 decision, OWCP affirmed its June 28, 2010 decision noting that the February 16, 2011 report of Dr. Lopez was not sufficiently well rationalized to establish appellant’s claim.

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 her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

Administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁹ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing

⁷ *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 556 (1991).

establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹¹

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 employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹⁵ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between appellant's diagnosed condition and the compensable employment factors.¹⁶

It is well established that, proceedings under FECA are not adversarial in nature and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁷

¹⁰ *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁷ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

ANALYSIS

Appellant claimed that she sustained an emotional condition due to learning that a taxpayer who left messages on her voicemail threatening suicide on February 28, 2006 committed suicide on that date. The Board finds that she established a compensable factor of employment with respect to the suicide of the taxpayer on February 28, 2006. Because appellant was performing her regular duties when she learned of the taxpayer's suicide, the Board notes that this established work factor is related to her regular or specially assigned duties under *Cutler*.¹⁸ She also alleged that her emotional condition was due to management's failure to provide adequate support after the February 28, 2006 suicide. The Board finds that appellant has not established a work factor in this regard because she did not establish that her employer committed error or abuse with respect to its administrative functions after the February 28, 2006 suicide.¹⁹ Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. To establish her claim for an emotional condition, she must also submit medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.²⁰

Appellant submitted August 16, 2009 and February 16, 2011 reports of Dr. Lopez, an attending psychiatrist. Dr. Lopez indicated that she presented to his practice group in late 2007 with symptoms, including extreme mood swings, poor concentration, racing thoughts, impulsivity, distractibility, nightmares and extreme anxiety, which were consistent with Bipolar I Disorder and PTSD. He asserted that the fact that appellant learned of the taxpayer's suicide on February 29, 2006 triggered the appearance of Bipolar I Disorder and PTSD. Dr. Lopez stated that, given her excellent work history as a tax revenue officer for 22 years, without difficulty and the onset of Bipolar I Disorder immediately after she became aware of the taxpayer's suicide, he could conclude that the onset of her Bipolar I Disorder was directly caused by the experiencing of the work-related trauma. The fact that appellant had no psychiatric treatment or psychiatric history before the trauma supported that the Bipolar I Disorder was not present before the trauma. Dr. Lopez stated that, in his clinical experience and in the psychiatric literature, there were many reports of cases of Bipolar I Disorder that had been triggered by a single traumatic event in a person's life, an event such as witness to a death, rape, severe abuse or threat of bodily harm to a person.

The Board notes that, while none of the reports of Dr. Lopez are completely rationalized, they are consistent in indicating that appellant sustained an emotional condition due to an accepted work factor, the suicide of the taxpayer on February 28, 2006 and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not

¹⁸ See *Cutler* note 7.

¹⁹ The record reveals that appellant was given an opportunity to receive assistance from the Employee Assistance Program, but she declined such assistance. Appellant has not submitted any finding of a grievance or other action showing the existence of the claimed error and abuse. There is evidence that Mr. Briggs, a supervisor, admitted suggesting to appellant that she "tie one on" but he asserted that he only said this to lighten appellant's mood and this isolated comment would not constitute error or abuse.

²⁰ See *William P. George*, 43 ECAB 1159, 1168 (1992).

sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her claimed condition and the accepted work factor and are sufficient to require OWCP to further develop the medical evidence and the case record.²¹

The case will be remanded to OWCP for further evidentiary development regarding the issue of whether appellant sustained an emotional condition in the performance of duty. OWCP should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as OWCP deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: May 23, 2012
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

²¹ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).