

FACTUAL HISTORY

This case has previously been before the Board. In an October 20, 2010 decision, the Board found that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability causally related to the accepted employment conditions and that OWCP properly refused to reopen her case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).² The facts of the previous decision are incorporated herein by reference.

On September 27, 2011 appellant, through her attorney, requested reconsideration and submitted an April 11, 2011 report from Dr. Catherine Whitehouse, a Board-certified psychiatrist, who had treated appellant since 2002.³ Dr. Whitehouse diagnosed post-traumatic stress disorder (PTSD) and opined that the claim had been incorrectly denied. She reported appellant's description of intimidating and threatening behavior by her supervisor, Robert K. Smith, stating that appellant's symptoms of PTSD were exacerbated by her rotational shift work including night work, when Mr. Smith was also scheduled. Dr. Whitehouse explained that a contributing causal factor was relentless frightening harassment, and psychological and verbal abuse by Mr. Smith, that was repeatedly directed at appellant during night work hours. She indicated that Mr. Smith's behavior caused appellant's chronic PTSD. Dr. Whitehouse referred to a letter from appellant's attorney who stated that appellant was coerced into resigning her position in order to receive an Equal Employment Opportunity (EEO) Commission settlement award. Dr. Whitehouse concluded that appellant was unable to work.

By decision dated April 20, 2012, OWCP denied modification of the October 20, 2010 decision.

LEGAL PRECEDENT

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁴ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and

² Docket No. 10-442 (issued October 20, 2010). OWCP accepted as a compensable factor of employment that appellant, then a 53-year-old border patrol administrative assistant, worked a rotational shift, including night work, and that this caused an adjustment disorder, anxiety disorder, gastritis and esophageal reflux for a closed period of time from February 1 through July 31, 1996 only. No other employment factors were accepted as compensable, and monetary and medical benefits were denied after July 31, 1996. Appellant last worked on October 13, 1996 and she was removed from the employing establishment effective January 9, 1998.

³ The most recent medical report of record prior to Dr. Whitehouse's April 11, 2011 report was the physician's report dated November 30, 2007, reviewed by OWCP and the Board in its October 20, 2010 decision.

⁴ 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

supports that conclusion with sound medical reasoning.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

ANALYSIS

The Board finds that appellant has not established that she sustained a recurrence of disability on or after July 31, 1996 caused by the accepted employment conditions. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷ Medical opinion evidence must be of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

OWCP accepted as a compensable factor that appellant worked a rotational shift, including night work that caused an adjustment disorder, anxiety disorder, gastritis and esophageal reflux from February 1 through July 31, 1996. No other employment factors were accepted as compensable, and monetary and medical benefits were denied after July 31, 1996. The Board affirmed this finding in the October 20, 2010 decision.

In the October 20, 2010 decision, the Board reviewed medical reports from Dr. Whitehouse dated August 12, 2002 to November 30, 2007. Dr. Whitehouse diagnosed chronic and severe PTSD after being exposed to intense trauma at the employing establishment. Her April 11, 2011 report is essentially a repetition of her previous findings and conclusions. While Dr. Whitehouse indicated in the latter report that rotational shift work, especially night work, caused appellant's PTSD, she further noted this was attributable to appellant's supervisor, Mr. Smith, working the same shift. It was appellant's reaction to Mr. Smith's presence, not the shift work *per se*, that caused her condition. As noted, PTSD has not been accepted by OWCP in this case. Dr. Whitehouse also maintained that appellant received an EEO settlement and referenced a letter from her attorney as support of her conclusion on causal relation. The record contains a January 5, 2004 letter in which the attorney stated that a settlement agreement dated September 25, 2003 would rescind appellant's involuntary termination, which was effective January 9, 1998, and allow her to resign, effective that day. There is no settlement agreement or other EEO decision of record.

⁵ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁷ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁸ *Roy L. Humphrey*, 57 ECAB 238 (2005).

Dr. Whitehouse did not provide a rationalized medical opinion that appellant's claimed recurrence of disability was caused by the accepted conditions.⁹ As she did not submit sufficient medical evidence to meet her burden of proof, OWCP properly denied her recurrence claim.¹⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability causally related to the accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁰ *Tammy L. Medley*, 55 ECAB 183 (2003).