



computer system. Reports from Dr. Sarah Jonaus, Board-certified in internal medicine, Dr. Michael Chan, Board-certified in family practice, and Janet Clark, Ph.D, in psychology, noted that appellant was experiencing increasing anxiety, professional self-doubt, feelings of hopelessness and crying spells related to stress at work since being transferred to new position in January 2004. Dr. Jonaus diagnosed depression and anxiety and placed appellant on disability from work. Dr. Clark opined that appellant's disability was directly related to her employment as accountant; she stated that her inability to adequately perform her job placed a great deal of stress on her, which led to her emotional breakdown and her inability to function at work. By decisions dated February 4, 2005, September 15 and December 14, 2006 and February 28, 2007, OWCP denied appellant's claim.

In a March 21, 2008 decision,<sup>2</sup> the Board found that appellant attributed her emotional condition to the requirements of her work as an accountant and that the evidence established a compensable factor of employment. The Board also found that the medical evidence was sufficient to require further development of the claim. The case was remanded to OWCP for further development. On remand, OWCP referred appellant, together with a statement of accepted facts and list of questions, to Lee Howard Ph.D., a clinical psychologist, for a second opinion examination. In a May 15, 2008 report, Dr. Howard found that her major depression and panic disorder conditions were produced by life stressors and not appellant's work. He stated that there was no evidence to support that the 2004 work factor caused a specific psychological or psychiatric disorder. By decision dated June 25, 2008, OWCP denied the claim. The medical condition was not caused by the identified employment factor. By decisions dated January 9 and February 27, 2009, OWCP denied modification after merit review.

In a February 19, 2010 decision,<sup>3</sup> the Board found a conflict in the medical opinion between appellant's attending physicians and Dr. Howard regarding whether she sustained an emotional condition caused by the accepted employment factor. On remand, OWCP referred appellant to Dr. Alan B. Levy, a Board-certified psychiatrist, for an impartial medical examination. In a March 8, 2010 referral letter, it presented the 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 appellant experienced beginning in 2004.

In an April 29, 2010 report, Dr. Levy noted that while he believed appellant felt stressed at work and overwhelmed by her work responsibilities, they were not sufficient to contribute to the exacerbation of her depression in any meaningful way above and beyond other circumstances in her life. He advised that a significant improvement in her condition could have been expected if the work-related stressors had been the major component responsible for her symptoms once she left the work environment and was aware that she would not be returning to work. Dr. Levy did not find that her major depression was aggravated by her job responsibilities and or that her disability was directly due to or aggravated by her job in 2004 or in 2005. He noted that she was clearly disabled due to the persistence of her depression.

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<sup>2</sup> Docket No. 07-1074 (issued March 21, 2008).

<sup>3</sup> Docket No. 09-1150 (issued February 19, 2010).

By decision dated May 25, 2010, OWCP denied appellant's claim, finding that Dr. Levy's opinion represented the special weight of medical opinion. By nonmerit decision dated August 9, 2010, it denied her request for reconsideration. In a September 12, 2011 decision,<sup>4</sup> the Board found that Dr. Levy's opinion was not sufficiently rationalized to resolve the conflict in medical evidence. The case was remanded for OWCP to ask Dr. Levy to supplement his opinion on causal relation. The facts of the case as set forth in the Board's prior decisions are incorporated by reference.

In a September 27, 2011 supplemental report, Dr. Levy stated:

"[Appellant] was seen by me for an independent psychiatric evaluation on April 29, 2010. I found her to be experiencing symptoms of major depression but did not feel that the major depression was directly due to nor aggravated by her job....

"Because I indicated in my report that [appellant's] work responsibilities did not contribute to the exacerbation of the depression in any meaningful way above and beyond the other circumstances in her life, there was some concern that I believed that work responsibilities did contribute in a lesser way but that I simply did not believe that the work responsibilities were the significant contribution to her depression. I was asked to clarify whether, in fact, I [ha]ve concluded that her work responsibilities did contribute in some way, even if it was not a significant way, in the persistence of her [m]ajor [d]epression."

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"I am pleased to have the opportunity to clarify my original conclusions. [Appellant] suffered from significant symptoms of depression related to nonwork responsibility circumstances. When she attempted to work with this depression, it became evident that she felt stressed in the workplace. I am aware from the statement of accepted facts that the responsibilities [appellant] was given were not excessive or unreasonable. It is my opinion that these stresses at work did not contribute in any way to her depression but rather her depression caused her to feel stressed at work. It has been clearly demonstrated in individuals with major depression that they cope less well with difficult circumstances. It is not that those circumstances cause them to be depressed but rather their depression causes them to feel more stressed than the circumstance warrants. This was [appellant's] situation, I believe. While she left stressed at work, it was not the workplace environment nor the responsibilities she was expected to complete that contributed to depression, but rather the fact that her depression caused her to feel stressed and overwhelmed under any circumstance. The fact that [appellant] continues to feel stressed and overwhelmed and remains depressed to a similar degree since leaving work substantiates the notion that it is the depression that caused her to feel stressed rather than workplace circumstances that contributed to or aggravated the depression.

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<sup>4</sup> Docket No. 11-70 (issued September 12, 2011).

“As I concluded in April 2010, I continue to believe that the workplace circumstances played no role in [appellant’s] depression. It neither caused nor aggravated her major depression.”

By decision dated October 25, 2011, OWCP found that Dr. Levy’s impartial opinion represented the special weight of the medical evidence. It denied modification of its previous decisions, which denied her emotional condition claim.

By letter dated December 7, 2011, appellant requested reconsideration. She submitted a December 5, 2011 report from Dr. Clark, who stated:

“I do not agree that [appellant’s] responsibilities at work, at the time of her decompensation, were ‘not excessive or unreasonable.’ As [she] noted, she was processing nonretail interfund transactions; in processing these transactions, an unusual event was occurring, in that her workload was being transferred from Germany to the United States. [Appellant] had been trained in another department and only recently transferred; she had not been trained for this new situation. Moreover, no one in her new department, including her supervisor, was able to help her resolve problems that she faced, in spite of repeated requests from her. In my opinion, this situation is not a usual and customary workplace situation and is beyond what would be typically expected.

“I do not agree that [appellant’s] work responsibilities did not contribute to her preexisting depression ‘in any meaningful way.’ [Her] work responsibilities were the precipitating event which led to her failure to perform her work duties and her emotional breakdown at work, which led to her need to take time off work.

“I do not agree that the stresses at her workplace were simply a matter of her perceptions: *i.e.*, that the fact that [appellant] was depressed led to an erroneous overestimation of workplace stresses. As documented in my report of January 17, 2006, [she] had been working for DFAS for 13 years and had never experienced problems which took her to a physician. Also as documented in that report, [appellant] had never received training that covered her new task demands and repeated questions to her supervisor were not answered. Furthermore, she had never received any acknowledgement of her good work by her employers at the new division. Although it is true that depression worsens an individual’s negative perceptions of their surroundings, there was sufficient negativity in [appellant’s] surroundings without the added feature of a negative outlook.

“Finally, I do not agree with the conclusion that the fact that [appellant] continues to feel stressed and overwhelmed and remains depressed to a similar degree since leaving work substantiates the notion that it is the depression that caused her to feel stressed. It is certainly true that when she was seen in 2006, [she] was significantly depressed. As I reported, [appellant’s] mental content “includes preoccupations about the situation described here, within.” As she struggled with attempts to gain compensation from workers’ compensation, she continued to struggle with the events which had led to her decompensation. As [appellant] was

revisiting these events, she was significantly depressed and suicidal. At the present time, [appellant's] psychological condition has improved.... [Her] depression, anxiety and mental confusion are all remarkably better at this time than on first presentation.... Most importantly, [appellant] reports that she is no longer suicidal, as she was in 2006.

“In conclusion, I believe that [appellant's] prior major depression was exacerbated as a direct result of her workplace experiences and that this exacerbation was a direct cause of her inability to continue her workplace responsibilities.”

By decision dated March 19, 2012, OWCP denied modification of the October 25, 2011 decision.

### **LEGAL PRECEDENT**

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.<sup>5</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>6</sup>

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>7</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.<sup>8</sup>

A claimant's burden of proof is not discharged by the fact that she has 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.<sup>9</sup> The Board

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<sup>5</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>6</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

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

<sup>9</sup> *Chester R. Henderson*, 42 ECAB 352 (1991).

notes that any contribution of employment factors is sufficient to establish the element of causal relation.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

In the October 25, 2011 decision, OWCP relied on the September 27, 2011 report of Dr. Levy, the impartial medical examiner, to find that appellant's diagnosed major depression condition was not causally related to the accepted employment factor. Dr. Levy addressed the concern raised in his April 29, 2010 report that work responsibilities partially contributed to her major depression. He clarified, that the depression symptoms appellant exhibited at the workplace were not related to her employment activities. Dr. Levy stated that individuals with major depression, experienced symptoms which caused them to feel more stressed than the circumstance warranted. He opined that the work responsibilities set forth in the statement of accepted facts were not unreasonable or excessive. The stresses at work did not contribute in any way to appellant's depression; rather, her depression caused her to feel stressed and overwhelmed under any circumstance. Dr. Levy stated that the workplace circumstances played no role in her depression and neither caused nor aggravated her emotional condition.

The Board finds that Dr. Levy's impartial opinion negated a causal relationship between the accepted employment factor and appellant's major depression condition. Dr. Levy's medical report was thorough, well rationalized and based on an accurate factual and medical background. His report is entitled to the special weight accorded an impartial medical specialist.<sup>13</sup> OWCP therefore properly found that it represented the weight of the medical evidence in its October 25, 2011 decision.

Following the October 25, 2011 decision appellant requested reconsideration and submitted Dr. Clark's December 5, 2011 report. This report, however, does not outweigh Dr. Levy's impartial opinion as the medical referee or negate OWCP's finding that Dr. Levy's report represented the weight of the medical evidence. Dr. Clark's report restated one side of the conflict which was resolved by Dr. Levy's referee medical opinion. Accordingly, the Board finds that Dr. Levy's opinion constituted the weight of medical opinion.

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<sup>10</sup> See *L.R., (E.R.)*, 58 ECAB 369 (2007).

<sup>11</sup> See *Guiseppe Aversa*, 55 ECAB 164 (2003).

<sup>12</sup> See *Richard R. LeMay*, 56 ECAB 341 (2005).

<sup>13</sup> See *B.T.*, Docket No. 08-1885 (issued June 3, 2009).

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

**CONCLUSION**

The Board finds that appellant has not sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2012 and October 25, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 10, 2012  
Washington, DC

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

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

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