

FACTUAL HISTORY

On October 1, 2010 appellant, a 39-year-old sales and service/distribution associate, filed a traumatic injury claim alleging an emotional condition in the performance of duty on September 1, 2010. On November 19, 2010 she filed an occupational disease claim alleging a hostile environment.

In a May 27, 2011 decision, OWCP denied appellant's emotional condition claim. Appellant claimed that management mistreated her and the employing establishment denied the allegations. OWCP advised that appellant must establish that management's actions were erroneous. Further, if she wished to perfect her claim, appellant should submit a medical narrative with a rationalized opinion of how activity at work caused her medical condition.

In a December 21, 2011 decision, an OWCP hearing representative modified the prior findings and affirmed the May 27, 2011 decision. He found that appellant had establish two compensable factors of employment, one pertaining to a "mysterious" package on August 31, 2010, which required screening or vetting by the Inspection Service, the other pertaining to not having access to the office safe for a few days, which affected regularly assigned duty. The hearing representative found that the medical reports of record did not establish a causal relationship between the two factors of employment and her diagnosed emotional condition. He found that reports from a licensed clinical social worker were not probative, and reports from physicians who were not psychiatrists or licensed clinical psychologists were insufficient to establish causal relationship.

OWCP received appellant's request for reconsideration dated December 20, 2012 on December 31, 2012. Appellant's representative argued that reconsideration should be granted, as appellant provided new and relevant evidence and argument to establish causal relationship between the activities on August 31 and September 1, 2010 and the injuries of post-traumatic stress syndrome, emotional distress and reactive depression.

In an April 24, 2012 report, Dr. Anca Bereanu, a clinical neurologist,² advised that she performed a neuropsychiatric evaluation of appellant due to an incident that took place at work on August 31, 2010. She related the events of August 31, 2010, when appellant was unable to open the mail safe, which contained most of her tools for the day and the keys to access the mailbox. Dr. Bereanu also related how management treated appellant the following day. She described her findings and diagnosed post-traumatic stress syndrome with depressive reaction as a result of work circumstances and emotional distress at work; cumulative trauma disorder culminating with the August 31, 2010 emotional distress secondary to unrecognized individual contribution at work; and reactive depression compounded by chronic sleep disorder and anxiety.

Dr. Bereanu then addressed the issue of causal relationship. She found that, within a reasonable degree of medical certainty, the diagnosed conditions stemmed from a cumulative trauma emotional disorder that appellant sustained at wok culminating with the date of injury of August 31 and September 1, 2010. I find a direct relationship and causal relationship between her work circumstances including the date of incident, August 31, 2010 and the claimant's

² The Board is unable to determine whether Dr. Bereanu is Board-certified.

disability from work.” Dr. Bereanu explained that the diagnoses were a result of appellant’s physical and neurological examination, a review of pertinent medical records provided, a very long intake and detailed history from appellant and from the assessment of her self-rating depression score.

In a decision dated January 24, 2013, OWCP denied appellant’s reconsideration request. It found her request to be untimely and did not present clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”³

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be received by OWCP within one year of the date of the OWCP decision for which review is sought. OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁴

The term “clear evidence of error” is intended to represent a difficult standard.⁵ If clear evidence of error has not been presented, OWCP should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.⁶

ANALYSIS

The most recent merit decision in appellant’s case is OWCP’s hearing representative’s December 21, 2011 decision denying appellant’s emotional condition claim. Appellant had one year or until December 21, 2012 to deliver a reconsideration request to OWCP. She and her representative dated the request on December 20, 2012, but OWCP did not receive it until December 31, 2012. The request was therefore untimely.

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5.a (October 2011).

⁶ *Id.* at Chapter 2.1602.5.b.

Nonetheless, appellant may obtain a merit review of her case by presenting clear evidence of error on the part of OWCP in its December 21, 2011 decision. This is intended as a difficult standard. The application must establish, on its face, that OWCP's December 21, 2011 decision was erroneous.

The Board finds that appellant's reconsideration request does not show, on its face, that the OWCP hearing representative's December 21, 2011 decision was erroneous. Appellant submitted additional evidence to support her claim. The Board addressed a compensable factor of employment and that touched on the issue of causal relationship. The author of the April 24, 2012 report, Dr. Bereanu, is a neurologist. The hearing representative explained, however, that causal relationship must be addressed by a psychiatrist or licensed clinical psychologist. Dr. Bereanu indicated that she performed a neuropsychiatric evaluation; nonetheless, her qualifications remain unclear for addressing appellant's emotional condition.

Dr. Bereanu offered no medical rationale to support her opinion. She made clear that she believed appellant's diagnoses stemmed from the stressful condition that she encountered at during her work at the employing establishment, culminating with the incident on August 31, 2010 pertaining to the unopened safe. Dr. Bereanu did not explain how, from a psychiatric perspective, not having access to the office safe for a few days caused or contributed to the diagnosed conditions. It is important in this regard not to mingle compensable and noncompensable factors. Causal relationship must be addressed in regard to a factor of employment established as compensable. Dr. Bereanu considered the August 31, 2010 incident just the culmination of cumulative circumstances at work.

The Board finds that Dr. Bereanu's opinion does not show clear evidence error on the part of OWCP in its December 21, 2011 decision. The standard for obtaining a merit review here is a difficult one, particularly when the issue depends on a physician's exercise of medical judgment and adherence to evidentiary standards. As Dr. Bereanu's opinion does not, on its face, cure the deficiency found in appellant's claim, the Board finds that OWCP properly denied appellant's reconsideration request. The Board will, therefore, affirm OWCP's January 24, 2013 nonmerit decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's reconsideration request as untimely filed and failing to establish clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2013
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board