

**United States Department of Labor
Employees' Compensation Appeals Board**

G.A., Appellant)

and)

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTIC AGENCY, Fort Belvoir, VA,
Employer**)

**Docket No. 12-1582
Issued: March 12, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 18, 2012 appellant filed an appeal from a June 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant establishes an emotional condition causally related to compensable employment factors.

FACTUAL HISTORY

This case has previously been before the Board. Under claim File No. xxxxxx590, appellant filed an emotional condition claim on June 19, 1993. In a May 13, 1994 decision,

¹ 5 U.S.C. § 8101 *et seq.*

OWCP denied the claim on the grounds that there was insufficient medical evidence to establish that she sustained an emotional condition due to an accepted work factor.² Claim File No. xxxxxx105 was created when appellant filed a claim on July 20, 2005 for an emotional condition. By decision dated January 8, 2009, OWCP determined that claim File No. xxxxxx105 was a duplicate of claim File No. xxxxxx590. It rescinded its decision of January 11, 2006 and all subsequent decisions issued in claim File No. xxxxxx105.³ OWCP subsequently combined claim File Nos. xxxxxx105 and xxxxxx590, with claim File No. xxxxxx590 as the master file. By order remanding case dated December 13, 2010, the Board set aside a July 31, 2009 OWCP decision which found appellant's reconsideration request was not timely filed. The Board found that appellant's May 19, 2009 reconsideration request was within one year of the January 8, 2009 merit decision and remanded the case for OWCP to issue an appropriate decision.⁴ In a March 9, 2011 merit decision, OWCP considered the relevant evidence under each claim action and denied modification of the May 13, 1994 and January 8, 2009 decisions. In a May 9, 2012 order remanding case, the Board set aside the March 9, 2011 decision and directed OWCP to reconstruct the case record, as the record was incomplete and to issue an appropriate merit decision.⁵ Thereafter, in a June 26, 2012 decision, OWCP denied modification of the May 13, 1994 and January 8, 2009 merit decisions.

The evidence germane to the case on appeal includes a May 26, 1994 letter from Bruce Jarvis, supervisor, to appellant. Mr. Jarvis noted OWCP's denial of appellant's claim and evaluated her employment options in terms of returning to work, disability retirement and voluntary resignation as they pertained to forced reductions in staffing at the employing establishment. Appellant was provided 30 days to respond in writing or she would be removed from federal service. Mr. Jarvis indicated that he could not approve appellant continuing absence from work unless she was actively pursuing a claim for disability retirement benefits and her continuing absence would be charged as absent without leave. He noted that they had worked alongside each other for several years and he would never introduce the subject of appellant's employment options unless it was absolutely necessary.

The medical documents of record not previously considered included handwritten counseling session notes from 1991 and 1993 from Dr. Joyce A. McCaughan, a psychiatrist, noting appellant's status. A June 11, 1996 report from Dr. McCaughan attested to appellant's disability due to major recurrent depression. A December 18, 2003 report from a provider with an illegible signature, noted multisystem history and examination findings.

In a December 12, 2005 report, Dr. Christopher J. Connor, a psychiatrist, stated that he had treated appellant for recurrent depression and that she remained unable to work. He opined

² This decision is not actually in the case record before the Board but it is referenced in a prior appeal to the Board. *See infra* note 4.

³ On November 16, 2006 the Board affirmed the January 11, 2006 decision that appellant's claim was not timely filed under 5 U.S.C. § 8122. Docket No. 06-1083 (issued November 16, 2006).

⁴ Docket No. 10-426 (issued December 13, 2010).

⁵ Docket No. 11-1933 (issued May 9, 2012).

that she could not return to her job as a computer specialist and that her past traumas on the job were too severe to make any employment there possible.

In a January 18, 2009 letter, appellant provided a brief history of her injury and noted that extenuating psychiatric and medical circumstances caused some confusion in regards to the claim filed in 1994 and subsequent issues with the appeals process. In other letters, she noted that her two claims had been combined and requested reconsideration based on Mr. Jarvis' letter. In a May 20, 2009 affidavit, appellant argued that Mr. Jarvis' letter established awareness by management of her depression and its relationship to her employment.

In a November 28, 2009 letter, appellant discussed the factual and medical evidence she deemed relevant and argued that the file reflected a medical relationship between her depression and her work exposure. She also addressed the issue of timely filing under claim File No. xxxxxx105. Appellant referenced her diminished mental capacity and reported memory lapses as the reasons for the duplicative filing. She noted that she had provided supporting evidence of discrimination and claimed that she had not been made whole through Equal Employment Opportunity Commission.

In an August 19, 2011 letter, appellant argued that she had not been made whole and compensated for the loss of earning potential she would have had. She argued that causal relationship has already been proven.

By decision dated June 26, 2012, OWCP denied modification of its May 13, 1994 and January 8, 2009 merit decisions.

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.⁶ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.⁷

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.⁸ 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

⁶ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁷ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.⁹

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.¹⁰ The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.¹¹

ANALYSIS

OWCP denied appellant's request for modification of the May 13, 1994 decision. In the May 13, 1994 decision, it denied her emotional condition claim on the grounds that there was insufficient medical evidence to establish that she sustained an emotional condition due to a compensable factor of employment.

Although appellant submitted medical evidence subsequent to May 13, 1994, it is insufficient to establish that her emotional condition was causally related to an employment factor.¹² Several counseling session notes and a June 11, 1996 narrative report were received from Dr. McCaughan. While she reported on appellant's disability due to depression, Dr. McCaughan failed to offer any opinion on causation between appellant's depression and a compensable work factor. In a December 12, 2005 report, Dr. Connor opined that appellant remained disabled and would never be able to return to her former employment due to severe past traumas experienced on the job. Similarly, he failed to adequately address causal relation. The chart notes from the provider with the illegible signature are of no probative value as reports lacking proper identification do not constitute probative medical evidence.¹³

There is insufficient medical evidence addressing how a compensable employment factor caused or aggravated appellant's claimed emotional condition. Her statements addressing the issue of causal relationship are not germane as causality is a medical issue. Mr. Jarvis' May 26, 1994 letter addressing appellant's employment options is not relevant to the medical issue of causality.¹⁴

⁹ *Id.*

¹⁰ *Chester R. Henderson*, 42 ECAB 352 (1991).

¹¹ *See L.R. (E.R.)*, 58 ECAB 369 (2007).

¹² *See Mary J. Ruddy*, 49 ECAB 545 (1998).

¹³ The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁴ Appellant appears to have submitted this statement in support of her assertion that her claim was timely filed. However, the current reason the claim is denied is because of a lack of medical evidence addressing causal relationship.

Accordingly, OWCP properly denied modification of its May 13, 1994 decision.

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

OWCP properly found that appellant submitted insufficient medical evidence to establish her emotional condition claim.

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2013
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