

developed stress, depression, frustration, severe anxiety and work-related post-traumatic stress disorder. By decisions dated June 9 and September 2, 2011, OWCP denied appellant's claim for lack of any medical evidence relating a diagnosed condition to her employment factors. The Board reviewed these decisions and found sufficient medical evidence to establish diagnosed medical conditions including generalized anxiety disorder, post-traumatic stress disorder -- chronic, panic disorder without agoraphobia, major depressive disorder.² The Board remanded the claim for OWCP to consider the factors to which appellant attributed her condition.

In a statement dated February 21, 2011 appellant stated that she was a veteran with post-traumatic stress disorder from spousal abuse and military sexual trauma, an attempted rape and sexual harassment by her supervisor during her military career. She stated that her health was precarious due to metabolic syndrome, extremely high cholesterol as well as diabetes. Appellant provided a list of employment activities which she felt caused or contributed to her condition including overwork, requirements that exceeded her medical restrictions, denial of leave requests, bonuses and on-call pay as well as sexual harassment, patient conflict and harassment from her coworkers and superiors. By decision dated September 5, 2012, OWCP denied her claim for an emotional condition finding that she had not established any compensable factors of employment.

The Board reviewed that OWCP decision and found that appellant had established that she had been required to work beyond her medical restrictions on three occasions after December 2010 and thus had established a compensable factor of employment.³ The Board further found that the evidence was sufficient to substantiate that she was faced with patients who did not understand procedure as part of her employment duties. The Board found that appellant had established this second compensable employment factor. The Board further found that she had not submitted the necessary evidence to substantiate the other employment factors alleged. The Board remanded the case for OWCP to develop and analyze the medical evidence as it related to the two accepted employment factors and to issue an appropriate decision.

On remand, OWCP referred appellant, a statement of accepted facts and a list of specific questions to Dr. Paul James O'Leary, a Board-certified psychiatrist. The statement of accepted facts provided to Dr. O'Leary listed the accepted factors of employment as being exposed to an overflow of patients on November 19, 2010 such that appellant could not leave on her off time and being required to address patient confusion regarding procedures.

In a report dated May 27, 2013, Dr. O'Leary noted that only the statement of accepted facts was used as a framework for his opinion. He listed the employment factors described on the statement of accepted facts and noted that appellant attributed her current symptoms to events that were not considered compensable, including sexual harassment. Dr. O'Leary diagnosed major depressive disorder, severe without psychotic features, generalized anxiety disorder and post-traumatic stress disorder, chronic, with delayed onset. He attributed appellant's anxiety depression and post-traumatic stress disorder to her alleged sexual harassment. Dr. O'Leary stated, "In my opinion, to a reasonable degree of medical certainty, there is not a relationship

² Docket No. 11-2144 (issued June 5, 2012).

³ Docket No. 12-1951 (issued March 5, 2013).

between [appellant's] emotional condition and the work factors reflected in the [statement of accepted facts].”

By decision dated July 5, 2013, OWCP denied appellant's emotional condition claim finding that the medical evidence did not establish a causal relationship between the compensable factors of employment and her diagnosed condition. In its decision, OWCP listed the factors accepted by the Board and noted that Dr. O'Leary attributed her emotional condition to her alleged sexual harassment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁶ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁷ In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus disability is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in 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 Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁰ A claimant must support his or her allegations with probative and reliable

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Robert W. Johns*, 51 ECAB 136 (1999).

⁷ *Cutler*, *supra* note 4.

⁸ *Id.*

⁹ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹²

When OWCP's medical adviser, a second opinion specialist, or a referee physician renders a medical opinion based on an incomplete or inaccurate statement of accepted facts or that does not use the statement of accepted facts as the framework in forming the opinion, the probative value of the opinion is diminished or negated altogether.¹³ OWCP procedures specify that the statement of accepted facts must include a specific description of injury or exposure factors particularly in cases involving occupational disease.¹⁴

ANALYSIS

The Board finds that this case is not in posture for a decision.

After remand from the Board, OWCP referred appellant, a statement of accepted facts and a list of specific questions to Dr. O'Leary for a second opinion evaluation. Instead of the statement of accepted facts including the factors the Board found to be compensable, OWCP provided Dr. O'Leary with a statement of accepted facts with incorrect accepted factors of employment; that appellant was exposed to an overflow of patients only on November 19, 2010 and could not leave on her off time and that appellant was required to address patient confusion regarding procedures. Dr. O'Leary submitted a report on May 27, 2013 and found that the factors accepted as compensable by OWCP were not the cause of appellant's diagnosed emotional condition.

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹³ *A.R.*, Docket No. 11-692 (issued November 18, 2011).

¹⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3(a)(8) (October 1990). *See also L.T.*, Docket No. 10-2228 (issued August 1, 2011); *B.P.*, Docket No. 11-800 (issued March 1, 2010).

By decision dated July 5, 2013, OWCP denied appellant's emotional condition claim finding that the medical evidence did not establish a causal relationship between the compensable factors of employment and her diagnosed condition.

The Board finds that Dr. O'Leary's opinion is of diminished probative value as it was not based on an accurate factual framework.¹⁵ OWCP did not provide Dr. O'Leary with a comprehensive statement of accepted facts including all the factors found by the Board as compensable. As Dr. O'Leary did not consider whether all of the factors accepted as compensable could have contributed to appellant's emotional condition, the probative value of the opinion is diminished and his report cannot represent the weight of the medical evidence.

On remand, OWCP must develop an accurate statement of accepted facts and refer appellant for another second opinion evaluation. Following this and such other development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision and must be remanded for formulation of a proper statement of accepted facts and referral for an additional second opinion.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.¹⁶

Issued: July 29, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ *E.O.*, Docket No. 12-517 (issued July 6, 2012). *See generally Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

¹⁶ Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.