

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

D.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Short Hills, NJ, Employer**

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**Docket No. 14-546
Issued: October 6, 2014**

Appearances:

*James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 13, 2014 appellant, through counsel, filed a timely appeal from the July 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying an emotional condition claim. He also timely appealed a November 14, 2013, OWCP decision denying reconsideration. 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.

ISSUES

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty due to the accepted employment factors; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant's counsel argues that the medical evidence established that her stress was caused by the accepted work factors, including an unreasonable workload.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 10, 2010 appellant, then a 57-year-old supervisor of customer service, filed an occupational disease claim alleging that her severe depression was caused by her employment. She attributed it to additional assignments and duties, increased workload, the inability to complete her duties in the time allotted, cuts in supervisory staff and answering the telephone. Appellant first became aware of her condition on April 1, 2005, but did not realize it was caused by her employment until January 1, 2010. She stopped work on August 14, 2010.

On September 17, 2010 OWCP received an August 3, 2010 predisciplinary report regarding appellant's failure to perform certain duties in a timely fashion.

By letter dated September 20, 2010, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised to submit additional medical and factual evidence and given 30 days to provide this information.

In an August 20, 2010 hospital report from Holy Name Medical Center, Dr. Syed A. Zaidi, a treating psychiatrist, performed an initial psychiatric evaluation. He reported that appellant was admitted to Overlook Hospital following an overdose of pills she took at work. Appellant stated that it had been her intention to die at work. Under history of illness, Dr. Zaidi related a long history of depression and noted that she was taking medication for this condition for approximately seven years. Appellant related having multiple stressors, including raising a teenage grandson with severe medical problems and who was in a special school program. The examination revealed her to be apathetic and depressed with poor eye contact. Dr. Zaidi diagnosed severe recurrent depression. On August 21, 2010 appellant stated that she had a history of bipolar disease and that she cried everyday going to work. On August 25, 2010 Dr. Zaidi reported that she was improving. He stated that appellant's bipolar depression worsened due to work stress.

On October 7, 2010 OWCP received a September 10, 2010 investigative report by the employing establishment regarding appellant's conduct on August 14, 2010 involving her overdose of drugs at work.

In an October 12, 2010 evaluation, Dr. Zaidi provided a psychiatric history and mental status examination findings. Appellant related stressors including an increased workload and raising her teenage grandson, who had severe medical problems. She stated that her supervisory workload had increased tremendously and that she was unable to handle it. At the time of appellant's admission, Dr. Zaidi reported that she was sad and extremely depressed. Appellant was unable to talk about "her work without crying profusely and had to stop talking." Following her discharge from the hospital, Dr. Zaidi stated that she was able to discuss her work stressors due to the reduction of her depression. Appellant related feeling overwhelmed at work, helpless, crying on the way to work and unable to function at home after work. She had no assistant, there was too much work for her do and that her breakdown was due to pressure to perform.

By decision dated November 29, 2010, OWCP denied appellant's claim. It found that she failed to establish any compensable factors of employment.

In a December 22, 2010 letter, appellant's counsel requested a telephonic hearing before an OWCP representative

By decision dated February 24, 2011, an OWCP hearing representative made a preliminary determination that the case was not in posture for a hearing. The hearing representative vacated the November 29, 2010 decision and remanded the case for further development on the issue of whether appellant established any compensable factors.

On March 16, 2011 Postmaster Gerard J. Del Colle responded to appellant's allegations. He confirmed that reductions were made in the supervisor, clerk and carrier staff due to revenue and mail volume decreases. Mr. Del Colle stated that appellant was assigned to cover Saturdays alone with duties including answering the telephone and corrective action service talks. He noted that approximately 25 e-mails were sent to supervisors daily. The e-mails concerned notices, changes, deadlines, reminders, alters and instructions. Mr. Del Colle denied that any of the e-mails were threatening. As to appellant staying late, he noted that she may have done so for personal reasons such as avoiding traffic. Mr. Del Colle confirmed that she was responsible daily for fleet concerns, including repairs, inoperative vehicles and replacements. He stated that passports did not require appointments and the only role appellant played was scheduling a clerk when needed.

In a March 17, 2011 letter, Sheila J. Owens, supervisor of customer service, responded to appellant's allegations. She concurred with appellant's statement regarding a heavier workload and additional stress. Ms. Owens stated that appellant did not complete her day load and received additional help from the acting supervisor. She agreed that the staff reductions and shortages impacted everyone and that adjustments had to be made to ensure delivery of the mail and customer service with fewer people. Ms. Owens agreed that vehicle fleet paperwork was part of her duties and that she did not timely complete such paperwork. She confirmed that appellant worked alone on Saturdays from June to August 2010. During this time, customers filed complaints stating that appellant was rude to them and hung up the telephone on them. While agreeing that, all management received a large volume of e-mail, Ms. Owens denied being aware of appellant receiving any threatening e-mails. With respect to passport work, she stated that appellant was only responsible for daily scheduling. Ms. Owens set up an appointment with the Employee Assistance Program (EAP) after appellant told her that she felt like she was going to have a breakdown.

By decision dated July 28, 2011, OWCP found that appellant established 10 compensable factors of employment: (1) her workload increased when the supervisory staff was reduced to two people from four; (2) due to a reduction in staff, she was short on clerks and carriers which resulted in having to daily pivot two to three routes; (3) the inability to complete her work tasks in the allotted timeframe; (4) in order to complete her tasks, she worked late; (5) from June to August 2010 she had to work alone on Saturdays from open to close; (6) she assisted in answering busy telephone calls; (7) she had to deal with customer service alone (the employing establishment verified that on Saturdays she dealt with customer service issues alone, but stated that it received multiple customers complaints saying she hung up on them or was rude); (8) appellant was responsible for an old vehicle fleet which broke down constantly causing her to make repairs and find replacements; (9) she was responsible for the service talks and edit books; and (10) on August 3, 2010 a predisciplinary interview was performed. OWCP found that the

medical evidence was insufficient to establish that her depression was causally related to the accepted work factors.

In an August 2, 2011 letter, appellant's counsel requested a telephone hearing before an OWCP hearing representative, which was held on November 17, 2011

By decision dated January 26, 2012, an OWCP hearing representative affirmed the denial of appellant's claim. She found that medical evidence failed to establish that appellant's emotional condition was causally related to the accepted employment factors.

In a June 8, 2012 letter, appellant's counsel requested reconsideration. In a May 2, 2012 report, Dr. Zaidi stated that appellant was seen for depression and unstable mood. He attributed her depression to work stress. Dr. Zaidi related that appellant's stress had increased during the summer 2010 due to the reduction of supervisors and she was left in charge on Saturdays. He noted that the employing establishment provided passports for the whole area and was very busy. Appellant also had to deal with reduced staffing due to people being on vacation or sick and being in charge. She was also stressed by a meeting with the officer-in-charge who referred her to the EAP. At the meeting on August 3, 2010 appellant cried throughout and reiterated that she was under stress from her work duties. On August 14, 2010 the pressure became overwhelming and she took an overdose of pills at work. Dr. Zaidi stated that these work incidents led to appellant's breakdown, severe depression and suicide attempt.

By decision dated September 18, 2012, OWCP denied the prior decisions denying the claims.

In a letter dated June 12, 2013, appellant's counsel requested reconsideration. In a March 10, 2013 report, Dr. Zaidi noted appellant's history and that she was first seen following her suicide attempt at work. He related that her depression first occurred approximately six to seven years before she was totally overwhelmed. Appellant attributed her stress to her work duties. While she stated that there was some stress involved in raising her teenage grandson, she denied feeling overwhelmed by it or complaining about it. Dr. Zaidi stated that there were distinct stressors, which led to appellant's suicide attempt and breakdown. He identified the stressors as an increased workload due to the reduction in the supervisor staff to two from four, being short staffed on clerks and carriers, working alone on Saturday from opening to closing and having to work late to catch up on her work. Dr. Zaidi opined that appellant's work stressors caused her depression, which led to her breakdown and suicide attempt.

By decision dated July 17, 2013, OWCP denied modification of its prior decisions.

In November 6, 2013 letter, appellant's counsel requested reconsideration. He submitted an October 2, 2013 statement from appellant addressing her workload.

By decision dated November 14, 2013, OWCP denied reconsideration without further merit review.

LEGAL PRECEDENT -- ISSUE 1

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.³ There are situations where an injury or an illness has some connection with the employing establishment but nevertheless does not come within the concept or coverage of workers' compensation.⁴ Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment, the disability comes within the coverage of FECA.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, it should then determine whether the evidence of record substantiates that factor.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

² V.W., 58 ECAB 428 (2007); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ L.D., 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁴ A.K., 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁵ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ J.F., 59 ECAB 331 (2008); *Gregorio E. Coned*, 52 ECAB 410 (2001).

⁷ D.L., 58 ECAB 217 (2006).

⁸ K.W., 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁹ *Robert Breeden*, *supra* note 3.

assigned work duties of the employee and are not covered under FECA.¹⁰ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹¹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹²

ANALYSIS -- ISSUE 1

When appellant filed her occupational disease claim, she worked as a supervisor of customer service at the employing establishment. She had multiple responsibilities supervising this branch of the employing establishment. Appellant alleged that various factors of her employment caused stress, aggravated her depression and led to an attempted suicide while at work. In a July 28, 2011 decision, OWCP accepted that she had established compensable factors of employment which included: (1) an increased workload as the result of the supervisory staff being reduced from four to two; (2) being short of clerical and carrier staff due a reduction in staff which resulting in having to daily pivot two to three routes; (3) an inability to complete her work tasks in the allotted timeframe; (4) working late to complete her work tasks; (5) from June to August 2010 she had to work Saturdays from open to close alone; (6) assisted in answering busy telephone calls; (7) having to deal with customer service alone on Saturdays she dealt; (8) she was responsible for an old vehicle fleet which were breaking down constantly and she had to make repairs and find replacements; (9) responsibility for the service talks and edit books; and (10) on August 30, 2010 a predisciplinary interview was performed. The Board finds the above incidents were compensable factors of employment under *Cutler* as they pertain to her regular and specially assigned duties as a supervisor.¹³

As appellant has established compensable factors of employment, the remaining question is whether the medical evidence is sufficient to establish that she sustained an emotional condition causally related to the accepted facts.

The Board finds that the case is not in posture for decision. The medical evidence of record generally supports accepted compensable employment factors caused or aggravated appellant's emotional condition.

Appellant submitted reports from Dr. Zaidi dated August 20, 2010 to March 10, 2013. Dr. Zaidi diagnosed depression which he attributed to her work stress. He identified the work stress as appellant having increased work duties as the result of a reduction in supervisors in the summer 2010, being overwhelmed with her work duties and being left in charge on Saturdays. Appellant also had stress from dealing with the reduction of staff due to people being on vacation

¹⁰ See *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹¹ See *William H. Fortner*, 49 ECAB 324 (1998).

¹² *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ See *Lillian Cutler*, *supra* note 5.

or sick. Dr. Zaidi concluded that, as a result of these stressors, she felt overwhelmed, which caused her breakdown, depression and a suicide attempt at work. While appellant acknowledged stress with raising her teenage grandson, she denied feeling overwhelmed.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁴ While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵ While Dr. Zaidi's medical reports do not contain sufficient medical reasoning to overcome her burden of proof, explaining how the accepted compensable factors caused or aggravated her depression, his reports are generally supportive of her claim and raise an uncontroverted inference of causal relationship sufficient to required further development by OWCP.¹⁶

On remand, OWCP should refer appellant, the case record and a statement of accepted facts, to an appropriate Board-certified psychiatric specialist for an evaluation and rationalized medical opinion concerning the cause of her claimed emotional condition. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.¹⁷

¹⁴ *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Vanessa Young*, 55 ECAB 575 (2004).

¹⁵ *D.N.*, 59 ECAB 576 (2008); *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁶ *See also E.J.*, Docket No. 09-1481 (issued February 19, 2010); *see John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁷ In view of the Board's disposition on the first issue, the issue of whether OWCP properly denied merit review is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 14 and July 17, 2013 are set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: October 6, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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