

result of her federal employment duties. She stated that she had worked as a library technician for seven years. Approximately, three years ago, appellant was given a substantial amount of increased responsibility, for which she was not properly trained. In order to finish her assigned duties, she was required to work long hours. Appellant first became aware of her condition on November 1, 2011 and of its relationship to her employment on August 16, 2012.

By letter dated October 15, 2012, OWCP advised appellant that the factual and medical evidence was insufficient to support her claim. It informed her that she had 30 days to provide the requested information.

In an August 20, 2012 narrative statement, appellant reported that her responsibilities grew increasingly when the supervisory librarian retired three years ago and the only other librarian in the department worked part time. As a result, the library technicians were required to perform the duties of a librarian while also managing the library. Appellant provided a description of the additional employment duties that she was required to perform.

By decision dated November 27, 2012, OWCP denied appellant's claim finding that she failed to establish fact of injury because the evidence did not support that the occupational exposure occurred as alleged. It noted that the circumstances she claimed were responsible for her condition were unclear, which precluded OWCP from performing its adjudicatory function and making findings of fact.

By letter dated December 4, 2012, appellant, through counsel, requested a hearing before the Branch of Hearings and Review.

In support of her claim, appellant resubmitted her August 20, 2012 statement describing her additional work responsibilities. An official position description for a library technician was also enclosed. Appellant highlighted portions of the position description, which noted that responsibilities included "basic reference services," "daily maintenance of the library," and "performing a range of library support tasks." She further highlighted portions noting that she was required to "assist the medical librarian" in providing interlibrary loan services and was "under the daily supervision of the medical librarian (when necessary the lead librarian)."

In a November 13, 2012 narrative report, Dr. Samuel A. Bobrow, Ph.D., a clinical psychologist, reported that he evaluated appellant on August 29, 2012. Appellant informed him that she stopped working for the employing establishment on March 28, 2012 due to severe work-related stress at the suggestion of her treating psychiatrist. Dr. Bobrow reported that she had previously been diagnosed with general anxiety disorder and moderate major depression in 2007 and 2008. On June 9, 2011 appellant sought further psychiatric treatment due to stress from job-related changes and because her husband had recently lost his job. She was diagnosed with general anxiety disorder and severe major depression.

Dr. Bobrow noted that he read appellant's August 20, 2012 statement concerning conditions of employment during the period of June 30, 2009 to March 28, 2012 and provided a detailed history of her occupational disease. He noted that, in June 2009, appellant's supervisory librarian retired. At that point, there was only one librarian who worked at the East Orange Library and there were no librarians at Lyons Library where appellant worked. As a result,

appellant had to take on the duties of the supervisory librarian, including day-to-day management operations and maintenance of all aspects of the library, for which she had no experience and was not provided proper training. Dr. Bobrow noted that some of her increased responsibilities included providing comprehensive library services, which required a master's degree in library science, a degree that she did not have. Appellant began to feel overwhelmed, anxious, and stressed from her increased workload. She sought psychiatric treatment and notified her supervisor that she was overworked. Dr. Bobrow noted that appellant began to feel incompetent because she was asked to do tasks for which she had not been trained. Appellant's anxiety and depression were exacerbated from being overworked and ill prepared.

From May 2010 to October 2011, two educators left appellant's department and the positions remained vacant. As a result, appellant's supervisor forced appellant to become the administrator of training for an educational web-based system that all employees at the Veterans Administration had to complete. Appellant was not provided training and this additional responsibility was not part of her job description. She would receive calls all day from employees with issues navigating the system, which interrupted her other job duties. As a result, appellant began to have frequent painful headaches and increased sleeplessness. The stress led to significant teeth grinding which caused her to break her front tooth.

Dr. Bobrow stated that the experience of having to provide these classes caused a deep sense of depression because she was totally unqualified, unprepared, and the lectures were not in her job description. Appellant was anxious to the point of not being able to sleep before each presentation and was given feedback that the veterans thought she did a terrible job. She felt like a failure and became very ashamed, causing her to become extremely depressed.

Dr. Bobrow reported that, from October 20 to December 31, 2010, the only librarian became part time, requiring appellant to perform the job duties of a librarian at Lyons Library and manage the library by herself. From January to May 2011, the librarian on duty was on leave, which meant that there was no librarian in the department.

From August 22 to 26 and September 19 to 23, 2011, appellant's supervisor instructed appellant to buy food and beverages for education classes. Dr. Bobrow stated that this required her to come to work at 7:30 a.m. instead of her normal 9:00 a.m. start time in order to set up the meeting room. Appellant would then have to stay the complete day to finish her work. This caused physical fatigue and increased her anxiety and depression. Appellant subtly developed stress-induced asthma symptoms that she had not had since she was 16 years old, requiring the use of an asthma inhaler. Dr. Bobrow opined that these incidents contributed to her feelings of depression, where on the one hand she was being required to do duties of a master's level librarian, and then on the other hand she was required to do the duties of a secretary.

Dr. Bobrow diagnosed generalized anxiety disorder and recurrent severe major depression, which he opined were permanently aggravated by the conditions of employment as described by appellant. He noted that she had a history of anxiety and depressed mood. Appellant enjoyed her job as a library technician. Beginning in June 2009, her supervisor began giving her increased duties and responsibilities. Appellant felt that she was not competent at these new duties, which were outside of her job classification, because of her lack of education and training. She responded to these additional work assignments with increased worry, anxiety,

and stress. Dr. Bobrow stated that, as the new duties continued to mount, appellant's symptoms of stress and anxiety increased to the point of somatic complaints. When appellant was told by the participants in a training that she had done a poor job, her feelings of shame resulted in severe depression. Dr. Bobrow noted that her feelings on the job were unbearable, yet she was the only source of income for her family. Appellant wanted to do a good job but was constantly feeling overwhelmed, unprepared, and incompetent. She preserved this position until March 26, 2012 when her psychiatrist insisted that she stop work. Dr. Bobrow concluded that appellant was totally disabled from work and could never return to her job as the constant fear and struggle to perform left a permanent impression on the brain.

In a November 14, 2012 note, Dr. Bobrow reported that appellant was unable to work from November 13, 2012 to January 13, 2013.

In a March 21, 2013 note, Dr. Bobrow reported that appellant could not attend the March 25, 2013 hearing because it would cause a severe panic attack as she suffered from extreme anxiety when leaving her home. He noted that appellant was extremely depressed, anxious, and very fragile because of her work-related injuries. Progress notes dated August 16, 2007 to August 27, 2012 were also submitted.

By letter dated March 21, 2013, counsel informed OWCP that appellant was unable to attend the scheduled March 25, 2013 hearing and requested review of the written record.

By letter dated April 19, 2013, OWCP requested the employing establishment provide comment and review pertaining to appellant's emotional condition claim. No response was received.

By decision dated May 14, 2013, the Branch of Hearings and Review affirmed the November 27, 2012 decision finding that appellant failed to establish fact of injury because it could not determine what, if any, employment duties she experienced in the performance of her federal employment duties. The hearing representative noted that, while Dr. Bobrow's November 13, 2012 report reflects evidence in which a physician has displayed his impression of her employment environment, definitive diagnoses, and unequivocal opinion addressing causal relationship between the described employment environment and diagnoses provided, he was unable to determine whether an accurate history of injury had been presented since there was no statement of record prepared by appellant. He further noted that the general position description of a library technician and the increased supervisory duties described by Dr. Bobrow could not establish fact of injury without a statement from appellant detailing those aspects of her federal employment which she believes caused or contributed to her emotional condition claim.

By letter dated July 25, 2013, appellant, through counsel, requested reconsideration of OWCP's decision. Counsel noted that it was resubmitting her August 20, 2012 statement and Dr. Bobrow's November 13, 2012 report which established the factual basis of her claim.

By decision dated June 11, 2014, OWCP affirmed the May 14, 2013 decision finding that appellant failed to establish fact of injury because the evidence did not support that the occupational exposure occurred as alleged. The senior claims examiner noted that, due to OWCP's delay in processing the request for reconsideration, it would conduct a merit review of

the claim in order to preserve her appeal rights. The decision modification of the May 14, 2013 decision because the evidence was repetitious and consisted of copies of documentation that had been previously considered in the contested 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.² There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable, and probative evidence.³

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.⁴ 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.⁵

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.⁶ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁷ 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.⁸

² See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

³ See *Ruth C. Borden*, 43 ECAB 146 (1991).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Id.*

⁶ *D.L.*, 58 ECAB 217 (2006).

⁷ *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁸ *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

ANALYSIS

In its June 11, 2014 decision, OWCP affirmed the May 14, 2013 decision, which denied appellant's claim for failing to establish fact of injury. While the decision stated that it was conducting a merit review to preserve appellant's right to a timely request for reconsideration, OWCP denied the claim on the basis that she neither raised substantive legal questions nor included new and relevant evidence.

While OWCP's June 11, 2014 decision purported to conduct a merit review of the claim, the Board finds that OWCP conducted a nonmerit review. FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.⁹ The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁰

In its June 11, 2014 decision, OWCP did not discharge its responsibility to provide appellant a statement explaining the disposition so that she could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of her claim. The Board notes that it did not provide any discussion of the arguments or evidence submitted in support of her reconsideration request. The context of the June 11, 2014 decision clearly establishes that appellant was not afforded a merit review.¹¹

In the May 14, 2013 merit decision, OWCP found that appellant failed to submit a statement detailing those aspects of her federal employment she believed to have caused or contributed to her emotional condition. Yet, in the June 11, 2014 decision, it claimed that the supplemental August 20, 2012 narrative statement describing her employment duties, as well as Dr. Bobrow's November 13, 2012 report had already been considered. In his report, Dr. Bobrow provided detailed specificity regarding the factors of employment appellant has more generally alleged caused her emotional condition.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹² On April 19, 2013 OWCP requested the employing establishment to provide comment and review of appellant's claim. The employing establishment did not respond. OWCP failed to properly

⁹ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.125.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

¹¹ *See generally Terry Newsom*, Docket No. 06-226 (issued May 15, 2006).

¹² *See Phillip L. Barnes*, 55 ECAB 426 (2004).

develop the evidence by directly requesting a statement from appellant's supervisor addressing allegations of an increased workload outside the scope of her employment.¹³

Accordingly, OWCP did not properly discharge its responsibilities in developing the record and the case will be remanded to OWCP for further development of the evidence.¹⁴ On remand, it should consider all the evidence in the record and issue a de novo decision consistent with its own procedures. OWCP should request a statement from appellant's supervisor addressing appellant's job requirements, level of training, whether she was required to perform duties outside the scope of a library technician, periods the library was staffed with librarians and educators, and any other details relating to her allegations of an increased workload.¹⁵ Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision which includes findings of fact and a clear and precise statement regarding appellant's emotional condition claim.¹⁶

CONCLUSION

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

¹³ *Lillian E. Lesniak*, Docket No. 00-1021 (issued February 22, 2001).

¹⁴ *S.E.*, Docket 08-2243 (issued July 20, 2009).

¹⁵ The employing establishment is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time. 20 C.F.R. § 10.118(a).

¹⁶ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2014 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: February 26, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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