



## **FACTUAL HISTORY**

On August 31, 2012 appellant, then a 52-year-old commissary management specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition as a result of her employment. She first became aware of her condition March 3, 2012 and that it was caused or aggravated by her employment on April 4, 2012. Appellant stopped work on March 3, 2012.

The record reflects that appellant had been working in a training program for commissary management for 19 of the past 30 years of her employment. Appellant was most recently stationed in Germany and requested a transfer to Virginia to be with her husband. When she arrived in Virginia, the commissary was under a reorganization and many people, including appellant, were detailed to different areas to address the new organization that was being implemented. The new initiative was called CLASS and the reorganization was a priority for the employing establishment.

In a statement received on September 19, 2012, appellant indicated that in March 2012 she was reassigned to the grocery team in the store operations unit. After her reassignment she experienced tension in the workplace and her workload increased. She provided a list of the tasks and projects she performed in March and April 2012, which she alleged constituted a heavy and time consuming workload. Appellant indicated that she regularly received information regarding her work assignments from various sources (coworkers, other leads, other directorates), but did not receive information through official channels. While still under the direction of a “temporary detail,” she was following orders from her current supervisor and was also tasked and given orders by other team leads. Appellant was extremely concerned about the tasks she was being assigned by others who did not notice her already heavy and time consuming workload. She indicated that her assignments changed constantly and information flowed through other people or by rumor.

In April 2012, appellant requested an Alternate Work Schedule (AWS) with Mondays as her regular day off. However, after beginning her AWS, she started falling behind in her work. Appellant began to feel ill and experienced migraine headaches. At home, she was overcome with anxiety because she believed she could not afford to be sick due to her workload. Appellant had a conversation with her work lead, Bonita Moffett, about how the workload was affecting her health, but the dialog became agitated without any resolution of the issues. She told Ms. Moffett that she intended to speak to the next level supervisor, which only made matters worse. On April 4, 2012 appellant met with Jay Hudson, Deputy Director, to bring to his attention how the situation at Store Operations was affecting her health and might negatively impact her career. She stated that Mr. Hudson told her that she did not have a choice and must work on all projects assigned to her. Appellant requested reassignment, but he told her the only reassignment was to a store out of state. She indicated that this statement caused emotional distress as she did not understand what his intentions were. Appellant felt Mr. Hudson’s statement was heartless and intentionally stated to break her spirit and what small measure of wellbeing she still had left.

Appellant noted that she had been on medical leave since May 2, 2012 and that all her accrued sick and annual leave had been exhausted, leaving her with no source of income. A copy of an October 2, 2012 request for reasonable accommodation was attached.

In an August 9, 2012 report, Aaron Mexhoubat, PHD, a licensed therapist, diagnosed recurrent major depression; anxiety disorder (panic disorder); historic personality disorder; and other disorders. Several major life activities, such as seeing, eating, sleeping, speaking, concentration, thinking, and working, were noted to be substantially limited. Dr. Mexhoubat indicated that appellant was not able to perform her job.

In a September 11, 2012 statement, Hector Granado, appellant's former supervisor, stated that appellant was assigned to work with the grocery team within the store operations group with Ms. Moffett as appellant's work leader. He noted that Ms. Moffett assigned appellant duties which were different from her previous duties. Appellant felt that she could not deal with either the workload or the type of work. Mr. Granado indicated that appellant would be provided training for the programs she was unfamiliar with (*i.e.*, the tobacco program) and that other members of the grocery team would also learn the programs to help when needed. He saw the training begin, but lost visibility regarding the day to day goings on within store operations when he was reassigned to the vision team.

In September 27, 2012 note, Dr. Banerje Koduru, a Board-certified psychiatrist, noted that appellant had been under his care since October 17, 2006. He opined that she would be unable to work from October 1 through November 1, 2012.

In an October 2, 2012 letter, the employing establishment indicated that it would continue to grant appellant leave without pay until October 12, 2012, but that it needed administratively acceptable medical documentation for her to continue to be accommodated with leave or leave without pay for an extended period of time.

In an October 8, 2012 report, Dr. Mexhoubat indicated that appellant was receiving outpatient psychotherapy. Based on the clinical and psychological assessment, appellant had anxiety disorder, major depressive disorder, obsessive-compulsive personality disorder, histrionic personality disorder. Dr. Mexhoubat indicated that her condition occurred shortly after she became aware of the excessive responsibilities that she had to complete. He noted that appellant believed that she could not complete all the aspects of her responsibilities.

Dr. Koduru related that on October 26, 2012 appellant had been a patient since October 2006 and was doing well until May 2, 2012, when she decompensated significantly to the point of not being able to function at work. He indicated that she suffered with panic/anxiety attacks, bipolar disorder with severe depression, and was on medication.

In a January 15, 2013 letter, the employing establishment indicated that statements from Gail Tolbert, one of the leads appellant worked with, and Mr. Granado, appellant's immediate supervisor during that time period indicated that work assignments were normal for that area of operations and the workload was evenly distributed amongst all employees. It noted that appellant performed well until early 2012 when she started having trouble staying focused and focused instead on assignments that were not assigned to her. Her supervisor was informed by

the lead that she had to direct appellant to stay focused. At that time, appellant's work and attendance started to suffer. The individual statements from both Ms. Tolbert and Mr. Granado essentially agreed with appellant's description of the tasks and projects which she had performed during March and April 2012. Mr. Granado indicated that the environment was the normal hectic pace of the organization. He indicated that with any new organization there were unanticipated assignments. Mr. Granado also explained that there were new initiatives that were under-resourced, misaligned or mistimed. He stated that the new organization offered many challenges to all personnel. Staff was asked to rise to the challenge and accept new assignments that previously were accomplished in many other areas of the agency. He indicated that the work pace was hectic.

In a July 2, 2013 letter, OWCP advised appellant of the deficiencies in her claim and requested additional medical and factual evidence, including responses to its questionnaire. Appellant was provided 30 days to submit the requested information. No new evidence was received other than a congressional inquiry.

By decision dated August 20, 2013, OWCP denied appellant's claim on the basis she had not identified any compensable factors of employment.

On August 18, 2014 appellant, through her representative, requested reconsideration. In an August 18, 2014 statement, she reiterated that, after a period of time at her new duty station, she began to experience anxiety because she felt that she was going to be unsuccessful in accomplishing her regular and additional special tasks assigned by her employing establishment. Appellant voluntarily requested transfer to other positions in hopes that her employing establishment would take that into consideration that her constant fear and anxiety of not being successful in her current position was real. She noted being anxious and having thoughts that she would lose her job due to being unsuccessful. Appellant stopped work on March 3, 2012 as her fear and anxiety became overwhelming. She indicated that it became clear to her and Dr. Mexhoubat that although certain aspects of the work environment were contributing, the actual underlying cause of her psychological condition was due to her constant fear of not being able to successfully carry out the assigned duties required by her job and specially assigned tasks from her supervisor.

In an August 18, 2014 letter, appellant's representative presented arguments and indicated that the new medical evidence indicated that appellant's medical condition was caused and/or contributed to by her work. Additional reports from Dr. Mekhoubat dated March 4 and May 22, 2014 were also submitted.

By decision dated November 14, 2014, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> As the Board explained in *Lillian Cutler*,<sup>4</sup>

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<sup>3</sup> *Id.* at § 8102(a).

<sup>4</sup> 28 ECAB 125 (1976).

when an employee experiences emotional stress in carrying out his or her employment duties or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her 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 where the employee's disability resulted from his or her emotional reaction to his or her day-to-day duties. The same result is reached where the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his or her work. 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.<sup>5</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside the scope of FECA.<sup>6</sup> Although related to the employment, administrative and personnel matters are functions of the employing establishment rather than the regular or specially assigned duties of the employee.<sup>7</sup> However, to the extent 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.<sup>8</sup>

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that an emotional condition was caused or adversely affected by her employment.<sup>9</sup> Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>10</sup>

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.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that

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<sup>5</sup> The Board in *Cutler* found that when an employee becomes upset over not receiving a promotion, the resulting disability does not have such a relationship to the employee's assigned duties as to be regarded as arising from the employment. "The emotional reaction in such circumstances can be truly described as self-generated and as not arising out of or in the course of the employment."

<sup>6</sup> *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

<sup>7</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

<sup>8</sup> *Id.*

<sup>9</sup> See *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>10</sup> See *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>11</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

factor. 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.<sup>12</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed explanation regarding the causal relationship between the claimant's diagnosed condition and the compensable employment factors.<sup>13</sup>

### ANALYSIS

Appellant contended that she sustained an emotional condition on or about March 3, 2012 which resulted from her reassignment to the grocery team, during the reorganization of the commissary. In general, an emotional reaction arising from an employing establishment reorganization is not a compensable factor as it is akin to an employee's desire to work within a particular environment.<sup>14</sup>

However, since *Cutler*,<sup>15</sup> the Board has consistently held that emotional reactions to situations in which an employee is attempting to meet his or her position requirements, when supported by sufficient evidence, are compensable.<sup>16</sup> The Board has found that when a reorganization affected a claimant in the performance of his or her regular duties, a compensable factor may arise with substantiating evidence. In *Donald E. Ewals*, the Board remanded the case for further factual development as to the affect the reorganization had on the claimant's work duties.<sup>17</sup>

The Board finds that in the present case appellant has established that the reorganization affected her ability to perform her assigned duties.

Appellant contended that she sustained an emotional condition on or about March 3, 2012 in meeting the newly assigned requirements of her position with the grocery team. She alleged that she was overwhelmed by the workload and the nature of her assignments. Dr. Mexhoubat indicated that appellant's condition occurred shortly after she became aware of the excessive responsibilities that she had to complete. He explained that appellant believed she could not complete all the aspect of her responsibilities.

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<sup>12</sup> *Id.*

<sup>13</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>14</sup> *Donald E. Ewals*, 45 ECAB 111 (1993) (where appellant contested both the manner of the reorganization and his assignment, the preference for a certain assignment was noncompensable, but the case was remanded to determine the effect of the reorganization upon his specific job duties).

<sup>15</sup> *Supra* note 4.

<sup>16</sup> *See Tina D. Francis*, 56 ECAB 180 (2004). *See also Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>17</sup> *Donald E. Ewals*, *supra* note 14.

Mr. Granado, appellant's immediate supervisor at the time, supported that appellant experienced: multiple supervisors to whom she was answering, new tasks for which she felt unprepared, unanticipated assignments, under-resourced staffing, and a hectic pace.

It is appellant's emotional reaction to the requirements imposed by the employing establishment that triggers coverage under FECA. Appellant attempted to meet the production requirements and the evidence reflects she did so, but the stress of doing so caused or aggravated her emotional condition. That she was fully able to complete her tasks in a timely manner does not mean that her regular and specially assigned duties caused her no stress. Given that these duties were part of appellant's job requirements, the Board finds that she has established compensable employment factors related to tasks assigned to her while assigned to the grocery team.<sup>18</sup>

In the present case, appellant has established a compensable employment factor with respect to her established work duties performed in March and April 2012. As she has established a compensable employment factor, OWCP must base its decision on an analysis of the medical evidence. It found that there were no compensable employment factors and did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose.<sup>19</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision on this claim.<sup>20</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for decision. As appellant has established a compensable factor of employment, OWCP must review the medical evidence. After such further development as deemed necessary, OWCP shall issue a *de novo* decision on this matter.

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<sup>18</sup> *Supra* note 4.

<sup>19</sup> *See D.C.*, Docket No. 09-1274 (issued March 18, 2010); *see also Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

<sup>20</sup> Due to the disposition of this case, appellant's representative's arguments on appeal will not be addressed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further proceedings consistent with this decision of the Board.

Issued: August 1, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board