United States Department of Labor
Employees' Compensation Appeals Board

V.H., Appellant	)	
and	)	**Docket No. 16-0161**
	)	**Issued: May 24, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Redmond, WA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 2, 2015 appellant, through counsel, filed a timely appeal from a September 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has met her burden of proof to establish an emotional condition in the performance of duty due to factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances included in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal will be set forth.

[1] 5 U.S.C. § 8101 *et seq.*

On January 6, 2012 appellant, then a 51-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging major depression, panic attacks, and anxiety causally related to factors of her federal employment. She stopped work on December 12, 2011.

In a January 11, 2012 statement, appellant related that she worked as a letter carrier since 1984. She injured her elbow in 2002 and her shoulder in 2003. In 2008, appellant relocated to work as a supervisor. She experienced difficulties with a supervisor who used work time inappropriately and with the new postmaster, who changed her schedule and implemented policies that violated the union contract. In 2010, appellant alleged that the postmaster marked her absent without leave when her flight was cancelled after she had visited her terminally ill mother.

In March 2011, appellant returned to work after her mother died and found that the office had relocated and she had 40 more employees to supervise. She contended that the employing establishment wanted her to work fewer hours with an increased workload. Rich Miele, a manager in charge of the operation, instructed appellant to manually fix express mail that had been scanned or delivered improperly. Appellant's work location had poor results for delivering packages, so he ordered her to manually scan parcels so that the office could "get off the poor performers list." She received calls from customers who were not getting their packages. Mr. Miele would give carriers a 1260 form and indicate that they ended the tour without overtime even if this was inaccurate. Appellant related, "I did this a few times because I was given a direct order to do so, but felt bad because it was wrong." On November 23, 2011 she refused to change the times for the carrier who worked overtime. J.C., a fellow supervisor, took family and medical leave to which she was not entitled. Appellant was not comfortable breaking rules. She began to have attacks of stress and stated, "Part of what was causing my attacks was the notion that if I reported what I knew about my fellow supervisor, they could possibly lose their jobs."

In a statement dated February 27, 2012, Mr. Miele advised that appellant requested his assistance in 2010 because the postmaster, Harleynda Wilcox, had changed appellant's work hours such that appellant could not easily attend Employees' Assistance Program sessions. In August 2012, Ms. Wilcox indicated that carriers on the "no lunch" list could not work overtime. Appellant questioned Ms. Wilcox about this action in light of prior grievances, after which Ms. Wilcox changed appellant's work schedule. In 2011, Mr. Miele became postmaster. He related that the employing establishment had "more work to do with fewer employees." From March 2011 to January 2012, Mr. Miele was under pressure to have carriers finish by 5:00 p.m. He "gave direct orders to [appellant] to ensure that any employee who worked over 10 hours would fill out a 1260 stating their end tour time was 10 hours or less." Mr. Miele asserted:

> "In July and August 2011, our office kept showing up on the poor performance list for scans for express mail and delivery confirmation packages. I tried everything I could think of to improve our performance, but nothing seemed to work. I finally gave direct orders to [appellant] that when she checked our express mail delivery and delivery confirmation labels at the end of the day, to fix any errors. That meant she would have to manually input false information so that we could get off the poor performer list. When [appellant] told me that she had been told not to do that by [a manager], I told her to still do it anyway. When

she finally refused to do it anymore, I assigned that task to my morning supervisors."

Mr. Miele also ordered appellant in September and October 2011 to "falsely manually input any missing scans" on parcels not sorted before carriers left on their routes. In October 2011, he instructed her to enter time for J.C.'s absence as sick leave instead of annual leave because he "did not want to make any waves with [J.C.] and thought that someone else would tell her that she was not entitled to use that type of leave."

On February 29, 2012 appellant again described the actions to which she attributed her condition. She provided the dates from October through November 2011 that Mr. Miele had instructed her "to change carrier clock rings so our office did not show any penalty overtime."

By decision dated April 13, 2012, OWCP denied appellant's claim, finding that she had not established any compensable employment factors. On May 11, 2012 appellant requested an oral hearing.

A hearing was held on October 25, 2012. Appellant's counsel attributed appellant's condition to management instructing her to manipulate data to meet standards, as confirmed by Mr. Miele.

In a report dated November 12, 2012, Dr. David P. Shaw, a Board-certified psychiatrist, noted that appellant was "repeatedly asked to bend or to break the rules, or to overlook someone else ignoring the rules and guidelines." He related that Mr. Miele advised appellant to manually input inaccurate data, and that managers used work time for personal business, misrepresented vacation days, and changed her schedule when she was on vacation. Appellant had an additional 40 employees when she returned to work in March 2011 after the death of her mother. She addressed angry complaints from customers because packages were not delivered. Dr. Shaw diagnosed moderate major depression, anxiety disorder with panic attacks, and post-traumatic stress disorder and found that she could no longer perform her usual work. He attributed appellant's condition, in part, to work stressors that occurred during the course of her usual employment.

In a decision dated January 2, 2013, an OWCP hearing representative set aside the April 13, 2012 decision. She found that appellant had established as compensable work factors that in July and August 2011 Mr. Miele instructed her to fill out 1260 forms indicating that carriers worked 10 hours or less even if they worked more than 10 hours and to fix errors in Express Mail delivery. In October and November 2011, Mr. Miele told appellant to falsely change scans on express mail. The hearing representative concluded, "Therefore, I find that [appellant] has established [employing establishment] error or abuse in July, August, September, and October 2011, when Mr. Miele directed [her] to input false information regarding inputting carrier time, scanning express mail delivery, delivery confirmation, and [J.C.'s] [Family Medical Leave Act (FMLA)]." She instructed OWCP to prepare a statement of accepted facts (SOAF) describing the compensable and noncompensable work factors and refer appellant for a second opinion examination.

In a January 18, 2013 SOAF, OWCP listed as compensable factors of employment that Mr. Miele told her to change scans on express mail and carrier clock rings, instructed her to hand out 1260s, and advised her to allow J.C. to take leave under FMLA when it was not warranted.

On February 6, 2013 OWCP referred appellant to Dr. Douglas Robinson, a Board-certified psychiatrist, for a second opinion examination.

In a report dated February 28, 2013, Dr. Robinson discussed appellant's work history and the factors to which she attributed her condition. He also described the work stressors that occurred outside of work, including a custody dispute over grandchildren. Dr. Robinson diagnosed recurrent major depressive disorder, panic disorder with agoraphobia, and some obsessive-compulsive personality traits. He found that the compensable work factors "did not directly cause, aggravate, precipitate, or accelerate the identified psychiatric disorders." Dr. Robinson opined that appellant's condition occurred one year or more before the events of October 2011 and found that she had not adjusted to her transfer to a new work location. He noted that she did not sustain panic disorder and recurrent depression until "significant personal stressors." Dr. Robinson determined that appellant's personality caused her to see incidents as illegal or wrong doing. He found that the SOAF did not establish her allegations against her supervisor and thus it was "unclear whether her perceptions are valid and if such behaviors represented a violation or some form of illegal activity."

By decision dated April 25, 2013, OWCP denied appellant's emotional condition claim, finding that the weight of the medical evidence established that she did not sustain any condition as a result of the accepted employment factors.

On April 30, 2013 appellant, through her counsel, requested a review of the written record.[2]

In a report dated May 20, 2013, Dr. Shaw diagnosed a single episode of moderate major depression, anxiety disorder with panic attacks, and post-traumatic stress disorder. He noted that appellant's supervisor instructed appellant to ignore or break the rules. Dr. Shaw opined that "work factors have certainly contributed to [appellant's] emotional condition. Her family, personal and occupational history, and perhaps her genetic vulnerability, rendered her unable to cope with and conflicted over requirements to violate [employing establishment], and union rules."

By decision dated November 5, 2013, an OWCP hearing representative affirmed the April 25, 2013 decision. She found that the opinion of Dr. Robinson represented the weight of the evidence and established that appellant had not established a causal connection between the compensable work factors and her psychiatric condition.

[2] By letter dated March 26, 2013, appellant's counsel challenged Dr. Robinson's report, noting that he questioned the occurrence of the accepted compensable work factors. On May 29, 2013 he submitted a February 19, 2005 letter indicating that due to a work injury appellant was giving up her bid position and becoming an unassigned regular.

Appellant appealed to the Board. In a decision dated July 3, 2014, the Board set aside the November 5, 2013 OWCP decision denying her emotional condition claim.[3] The Board noted that OWCP accepted as compensable work factors that appellant's supervisor, Mr. Miele, committed error and abuse when he instructed appellant to improperly input scans on Express Mail, told her to place a coworker on sick leave, and required her to indicate on 1260 forms that letter carriers worked less than 10 hours. The Board found that Dr. Robinson's opinion was not based on the SOAF as he determined that she had not established her allegations of misconduct by her supervisor. The Board remanded the case for OWCP to prepare a SOAF clearly describing the compensable work factors and to further develop the medical evidence.[4]

On July 17, 2014 OWCP prepared an updated SOAF. It accepted as compensable work factors that, in October and November 2011, Mr. Miele made appellant alter scans on Express Mail and delivery packages and ordered her to change clock rings to avoid overtime penalties. OWCP also indicated that, in November 2011, he erroneously told her to hand out 1260 forms to carriers out after 6:00 p.m. Mr. Miele further told appellant to give J.C. leave under FMLA to which she was not entitled.

By letter dated July 17, 2014, OWCP requested that Dr. Robinson review the amended SOAF and explain whether appellant had a diagnosed condition causally related to the accepted work factors.

In a supplemental report dated August 26, 2014, Dr. Robinson related:

> "The potential new events occurred in October and November 2011, well after the onset of [appellant's] psychiatric symptoms. The current SOAF also indicates that events not a factor of employment include many of the other stressors that [she] cited. That some additional events have been found to be compensable factors of employment does not alter any of the opinions, including the opinions set forth in the last paragraph in response to the first question.
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> "I find the totality of evidence persuasive that [appellant's] condition is related to factors independent of her employment."

He concluded that appellant's emotional condition was not directly related to the compensable factors of her employment as identified as accepted events that are factors of employment in SOAF.

By decision dated September 30, 2014, OWCP denied appellant's claim finding that Dr. Robinson's opinion constituted the weight of the medical evidence and established that she did not have an emotional condition as a result of compensable work factors.

On October 22, 2014 appellant's counsel requested a telephone hearing.

[3] Docket No. 14-0433 (issued July 3, 2014).

[4] The Board found that appellant had not established as compensable work factors that her schedule changed unreasonably, that she was forced to give up a bid position, that she was overworked, or that she had to deal with angry customers.

At the telephone hearing, held on June 18, 2015, appellant's counsel asserted that Dr. Robinson had not provided any rationale for his opinion and did not address whether her condition was indirectly related to work factors by aggravation or acceleration.[5]

By decision dated September 4, 2015, the hearing representative affirmed the September 30, 2014 decision.

On appeal appellant's counsel notes that the hearing representative who issued the September 4, 2015 decision was the same one who issued the prior decision remanded by the Board. He asserts that SOAF minimizes the compensable work factors by describing them as showing error by the employing establishment rather than error and abuse. Counsel also maintains that Dr. Robinson's report is not reasoned or based on the SOAF. He further argues that the physician did not use the proper standard of causation in finding appellant's condition not directly related to employment. Counsel maintains that the case should be referred to a new second opinion examiner in accordance with OWCP's procedures.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[6] 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 frustration from not being permitted to work in a particular environment or to hold a particular position.[7]

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.[8] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

[5] In a statement dated June 18, 2015, appellant's counsel maintained that Dr. Robinson's supplemental report was not rationalized and did not apply the proper causation standard.

[6] *Supra* note 1; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[8] *Dennis J. Balogh*, 52 ECAB 232 (2001).

record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[9]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

OWCP's procedure manual provides as follows:

> "When the [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."[14]

ANALYSIS

On prior appeal, the Board found that Dr. Robinson, an OWCP referral physician, failed to rely on the SOAF in reaching his conclusion that the diagnosed conditions of recurrent major depressive disorder, panic disorder with agoraphobia, and obsessive-compulsive personality traits were unrelated to employment as he inaccurately found that appellant had not established her allegations of unethical or illegal acts by her supervisor. The Board remanded the case for OWCP to clarify the SOAF and further develop the medical evidence.

On remand, OWCP prepared an updated SOAF indicating that appellant had established as error that in October and November 2011 Mr. Miele made her change scans on Express Mail and delivery packages and ordered her to change clock rings to avoid overtime penalties. It further set forth that in November 2011 Mr. Miele erroneously told her to hand out 1260s to carriers out after 6:00 p.m. He additionally required that appellant approve J.C.'s leave under FMLA to which she was not entitled. In his February 27, 2012 statement, however, Mr. Miele indicated that he had told her as early as July and August 2011 to manually input inaccurate information on scans. He had also instructed supervisors to alter overtime forms during an unspecified period from March 2011 to January 2012 and told appellant in October 10, 2011 to approve J.C.'s leave under FMLA.

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[9] *Id.*

[10] *John J. Montoya*, 54 ECAB 306 (2003).

[11] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *Supra* note 10.

[13] *Judy C. Rogers*, 54 ECAB 693 (2003).

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990).

OWCP requested that Dr. Robinson review the July 17, 2014 SOAF and address whether appellant had a diagnosed condition caused or aggravated by compensable work factors. On August 26, 2014 Dr. Robinson discussed the compensable work factors set forth in the SOAF and noted that the incidents occurred in October and November 2011, significantly later than the start of appellant's psychiatric condition. He opined that appellant's condition was "not directly" related to the compensable work factors. Dr. Robinson, however, had based her report on an incomplete SOAF as it had not identified the proper time frames for the compensable factor. Consequently, the basis for his conclusion that her psychiatric condition was unrelated to work factors as it had begun well before the occurrence of the compensable work factors in November 2011 is based on an inaccurate history.[15] As discussed on prior appeal, if an OWCP referral physician fails to utilize the SOAF in forming his opinion, or relies on an incomplete or inaccurate SOAF, the probative value of the report is diminished or negated.[16] As the SOAF provided to Dr. Robinson did not accurately provide the dates of the compensable work factors, his report fails to resolve the issue of whether appellant sustained an emotional condition in the performance of duty.

Additionally, as noted by appellant's counsel, Dr. Robinson's finding that compensable work factors did not directly cause her condition is insufficient to negate causal relationship. Board precedent provides that it is not necessary to provide a significant contribution of factors of employment to establish causal relationship. If the medical evidence revealed that a work factor contributed in any way to appellant's condition, such condition is employment related.[17]

Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.[18] As it has requested clarification from Dr. Robinson, but did not receive an adequate response, it should refer appellant on remand to another referral physician.[19] OWCP should also prepare an accurate SOAF setting forth the dates of the compensable work factors. After such further development as deemed necessary, OWCP should issue an appropriate decision.

CONCLUSION

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

[15] Medical opinions based on an incomplete or inaccurate history are of little probative value. *See Douglas M. McQuaid*, 52 ECAB 382 (2001).

[16] *See supra* note 14.

[17] *See R.L.*, Docket No. 11-115 (issued June 14, 2011).

[18] *See Melvin James*, 55 ECAB 406 (2004).

[19] OWCP's procedures provide, "When OWCP undertakes to develop the evidence by referring the case to an [OWCP]-selected physician, it has an obligation to seek clarification from its physician upon receiving a report that did not adequately address the issues that OWCP sought to develop…. Only if the second opinion physician does not respond, or does not provide a sufficient response after being asked, should the [claims examiner] request scheduling with another physician." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(j) (June 2015).

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Issued: May 24, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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