United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 17-0184**
	)	**Issued: January 19, 2018**
DEPARTMENT OF THE ARMY, FORT LEONARD WOOD, Nixa, MO, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2016 appellant, through counsel, filed a timely appeal from May 24 and October 21, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 failed to meet her burden of proof to establish an emotional condition and an aggravation of a preexisting chronic fatigue syndrome condition in the performance of duty.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances presented in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

Appellant, a 45-year-old clinical psychologist, filed an occupational disease claim (Form CA-2) on April 17, 2013. She asserted that she became sick after flying to a work conference, required a wheelchair to ambulate during the conference, and her health then continued to deteriorate. Appellant also alleged that she developed chronic fatigue syndrome, fibromyalgia, and dysautonomia due to employment factors, which resulted in anxiety and mood disorder, and that the employing establishment refused to grant her requests for reasonable accommodations for her chronic fatigue syndrome condition. She noted that she first became aware that these conditions were caused or aggravated by her federal employment on October 1, 2012.

Appellant submitted copies of e-mails she sent to management in October and November 2013 in which she stated that she was incapacitated due to chronic fatigue syndrome and requested accommodations for her condition.

By development letter dated May 9, 2013, OWCP advised appellant that she needed to submit factual and medical information in support of her claim. It asked her to describe in detail the employment-related conditions or incidents which she believed contributed to her alleged conditions, and to provide specific descriptions of all practices, incidents, *etc.*, which she believed affected her condition.

In response to OWCP's May 9, 2013 developmental letter, appellant provided a narrative statement, explaining that she had been diagnosed with chronic fatigue syndrome in 2006, fibromyalgia in 2007, and dysautonomia in 2012. She advised that she was incapacitated due to chronic fatigue syndrome, which resulted in her being bedridden and unable to work or perform minimal activities of daily living for approximately one year. Appellant gradually recovered and was eventually able to return to work and to normal activities. She was subsequently diagnosed with anxiety disorder and mood disorder in 2012 due to a "general medical condition." Appellant advised that she attended a pain management conference in Washington, DC, August 7 to 10, 2012. She related that during her initial connecting flight from Chicago to Washington, DC she began to experience weakness, fatigue, dizziness, shortness of breath, muscle pain, and felt "flushed." Appellant stated that her symptoms increased in intensity when she got off the plane and worsened the next morning. She experienced great difficulty walking, had weakness in her legs, and began to drastically curtail her activities. Appellant eventually was overcome by exhaustion and weakness to the extent that she required the aid of a wheelchair.

Appellant reiterated that she experienced difficulties with the employing establishment in receiving any type of accommodation for her disability due to chronic fatigue syndrome. She asserted that management did grant one request for reasonable accommodation in late 2011, when she requested to be placed on a weekly schedule of four 10-hour days so that she could attend doctor's appointments, rest, do some physical therapy, and lighten her workload to allow time at the end of the day to perform administrative tasks. Appellant, however, did not consider this an

[3] *Order Remanding Case*, Docket No. 14-1560 (issued December 21, 2015).

actual reasonable accommodation, since other staff members had flexible work schedules and some were also put on 10-hour days. She further noted that she was required to sign a form stating that if she missed work she would be taken off four 10-hour days and placed back on five 8-hour days. In addition, appellant alleged that her husband and coworker, K.V., was taken off the schedule for four 10-hour days because he missed work to care for her in late 2012. She alleged that this caused her condition to worsen because she was deprived of transportation to doctor's appointments, causing her to miss several appointments. Appellant alleged that management was punishing her and her husband for trying to deal with her disability, causing her to further fear for her job. As such she worked when she probably should not have because she did not want to lose her job.

Appellant asserted that the employing establishment denied all of her other requests for reasonable accommodations based on her disability. She advised that, in September 2011, her endocrinologist recommended a reduction from a 50- to 60-hour workweek to a normal 40-hour workweek. Management, however, ignored this request. Appellant further alleged that management denied her requests for telework as an option for part of her workday in September, October, and November 2012. Management did not grant any telework until January 11, 2013, after she had filed an Equal Employment Opportunity (EEO) grievance against the employing establishment. Appellant stated that her request was granted, but she was only allowed five hours of telework per week, which was not enough to complete her work.

Appellant further alleged that management granted her request to work four 10-hour days, but she was given an increasingly heavy workload and took over many of the duties of the chief of psychology when she deployed in late 2011, which forced her to increase her daily work hours from 10 to 12 and caused her to take work home on the weekends. She asserted that in early 2012 she began to have episodes of flushing, tachycardia, high blood pressure, and gastrointestinal problems along with the weakness and fatigue. Appellant alleged that she had to take time off because of her health condition, to which management reacted with lectures by the department chief about the importance of the missions in the department and how her absences affected the missions of the department. She stated that she became fearful of losing her job so she only took time off when she was so sick that she was absolutely unable to function or had to go to the physician. Appellant further stated that she feared losing my job and began to miss more and more days of work as her symptoms worsened.

In an August 28, 2012 report, Dr. Mark R. Ellis, a specialist in family medicine, recommended that appellant be placed on family medical leave from August 28 to September 9, 2012 and work no more than 20 hours per week from September 9 to October 1, 2012. He diagnosed chronic fatigue syndrome, thyroid dysfunction, and growth hormone deficiency.

In a December 30, 2012 report, Dr. Ellis advised that appellant was first diagnosed with post-viral chronic fatigue syndrome by the Mayo Clinic in 2006 after a series of infections that occurred after she had volunteered to go to New Orleans, LA after Hurricane Katrina. Appellant was treated with occupational therapy, physical therapy, and medication management, which stabilized in approximately 2008. Dr. Ellis opined that she had experienced periodic flare-ups since the onset of her condition, which were typical of this condition. Appellant noted that she experienced a relapse in August 2012 after attending two consecutive work-related conferences and she required modification to her work schedule as she was recovering, but these modifications

were unsuccessful. Dr. Ellis reported that every time she regained some of her physical functioning and health and would return to work, appellant would relapse due to work. In December 2012, this condition became severe enough that she required home health care and had to stop all work activities.

Dr. Ellis advised that in approximately February 2012 appellant began to experience unexplained symptoms of tachycardia, blood pressure fluctuations, problems with temperature regulation, dizziness, flushing, lightheadedness, near fainting, and gastrointestinal symptoms. Appellant was diagnosed with dysautonomia due to these symptoms. She also experienced mood and anxiety symptoms which resulted in diagnoses of mood disorder and anxiety disorder due to a general medical condition. These symptoms included muscle weakness, fatigue, blurred vision, tachycardia, flushing, blood pressure fluctuations, dizziness, difficulty eating, difficulty sleeping, gastrointestinal symptoms, decreased stamina, decreased walking and balance problems, muscle and joint pain, skin rashes, muscle twitching/fasciculation, difficulty with concentration and memory, headaches, sore throat, lightheadedness, shortness of breath, anxiety, depression, difficulty tolerating medications, and increased risk of side effects of medications.

Dr. Ellis advised that appellant was unable to exert the physical and mental energy necessary to sustain extended periods of work activities and that overexertion exacerbated her symptoms and led to relapses which made her unable to be at work on a consistent and reliable basis. Appellant experienced difficulties reading, typing, concentrating, remembering, and focusing which reduced her ability to interact with patients and perform administrative tasks. Dr. Ellis reported that appellant was unable to sit for long periods of time. He opined that her condition placed her at risk for falls. Dr. Ellis reiterated his diagnoses of chronic fatigue syndrome, fibromyalgia, anterior pituitary disorder, dysautonomia, anxiety disorder, and mood disorder. He restricted appellant to working no more than five hours per week from home.

In support of her claim, appellant submitted a June 2013 statement from her husband, K.V., who accompanied her during her August 8 to 10, 2012 trip to the Washington, DC conference. K.V. corroborated that during the flight to Washington, with a layover in Chicago, appellant began to feel weak, dizzy, and had increased muscle pain. He related that during the conference his wife's physical condition rapidly deteriorated to the extent that she needed a wheelchair to get back and forth from the conference to the hotel as she began to feel extremely fatigued due to the flight to the conference. K.V. related that upon her return to work appellant's condition further deteriorated and her physician ordered her to take time off from work and then to return to work on a part-time basis only, until her condition had improved and she was able to assume more responsibility. He advised that, initially, management agreed to this, but she was not given the proper caseload and responsibilities which forced her to work longer days in order to finish her work. K.V. stated that because the employing establishment did not accommodate her restrictions, appellant's health continued to decline. He asserted that on numerous occasions she attempted to return to work because she was being pressured by management, which further affected her ability to function. K.V. corroborated that when she became absent from the workplace on a more regular basis she was met with lectures from the division chief about the importance of her being present in the workplace and was further pressured to return to work. In addition, he asserted that the employing establishment changed her pay card from using sick leave to a no pay status for a pay period without telling her that was going to happen or why. K.V. alleged that the employing establishment's actions resulted in the deterioration of appellant's condition. He asserted that had

she been given the opportunity, and had her physician's recommendations been followed by management, she would not have been unable to work at this time.

In a June 6, 2013 report, Dr. Julie A. Warren, Board-certified in psychiatry and neurology, advised that she was treating appellant for symptoms of anxiety and depression due to anxiety disorder and mood disorder. She advised that her mental health symptoms of anxiety and depression were the direct psychological effects of a medical condition and not the result of a mental disorder. Appellant had a history of recurrent major depression which was successfully managed until approximately late 2011 to early 2012, at which time she began to exhibit symptoms of anxiety. Dr. Warren, however, opined that her symptoms were very atypical for anxiety and did not resemble her usual anxiety presentation.

Appellant reported having symptoms of anxiety which included tachycardia, shortness of breath, dizziness, flushing, muscle weakness, fatigue, difficulty sleeping, difficulty eating, difficulty performing activities of daily living, problems with memory and concentration, blurry vision, muscle twitching, pain, and neuropathy. She also reported stressors related to difficulty with her employer in regards to reasonable accommodations for her condition, time off work, fears of losing her job, and problems with her husband being allowed to take family medical leave without retaliation. Dr. Warren reiterated that appellant was experiencing symptoms similar to anxiety and depression, but that they were related to a medical condition and did not result from a mental health condition. She opined that these symptoms were worsened by the continued stress of appellant's position, long work hours, pressure to return to work before her health had improved, and lack of support and accommodations by her employer. Dr. Warren advised that appellant was disabled and unable to work.

In a report received by OWCP on June 14, 2013, Dr. Ellis reiterated his previous findings and conclusions. He advised that appellant had experienced extended periods of successful remission of symptoms in the past and believed that she would gradually be able to return to her previous level of functioning due to successful treatment of dysautonomia. Dr. Ellis opined that accommodating appellant's restrictions would assist in preventing deterioration of her condition and allow her to perform her jobs. He opined that these accommodations would increase productivity and decrease fatigue, weakness, symptom exacerbation, and potential relapses.

Dr. Ellis advised that, with appropriate treatment and accommodations in her work environment, relapses could be minimized or prevented. He noted that appellant was performing at a very high level in her job until late August 2012, at which time she sustained a significant setback in her health, from which she had struggled to recover. Dr. Ellis opined that what happened since August 2012 was most likely due to her undiagnosed and untreated dysautonomia. He advised that there was medical evidence to suggest that excessive travel and travel by airplane exacerbated dysautonomia. Additionally, the untreated dysautonomia likely contributed to appellant's inability to fully recover from the setback she experienced and exacerbated her symptoms associated with chronic fatigue syndrome. Dr. Ellis opined that, with continued treatment and a gradual return to work with reasonable accommodations in her work environment, she would be able to return to her previous level of functioning.

Appellant submitted a June 14, 2013 statement in which she reiterated that management had systematically denied her requests to accommodate her chronic fatigue syndrome. She

attached e-mails between herself and her supervisor requesting accommodations for her chronic fatigue syndrome and a request to increase her weekly telework hours due to her condition. Appellant alleged that the e-mails supported her assertion that the employing establishment refused to accommodate her chronic fatigue syndrome condition. She asserted that her supervisor did not want her to work off-site. Although management reported that there was a vacancy created by her absences, appellant asserted that she could have performed many of her duties with the reasonable accommodations requested at the beginning of her relapse. She alleged that management's warnings to her about not meeting missions and being reprimanded for her absences made her fear for her job and caused her to push herself when she should have been working on healing, resulting in her condition worsening substantially.

In a letter received by OWCP on June 18, 2013, appellant indicated that because she had received notice that management was proposing that she be terminated due to her medical inability to perform her duties, she resigned for medical reasons. She noted that she was unable to perform her duties due to her disability. Appellant wanted to continue in her employment, but management refused to keep her employed, wanted her removed, and continued to harass her until it became so unbearable that she had to resign to protect her health from further deterioration.

In a memorandum dated August 16, 2013, the employing establishment controverted appellant's claim. W.C., the employing establishment's director of psychological health, contended that appellant's poor compliance with her physician's recommendations, her voluntarily extending her psychological status with requested travel, and her noncompliance with agency accommodations potentially exacerbated her physiological condition. Specifically, he noted that appellant and her husband voluntarily chose to drive from their home in Springfield, MO on a daily basis to the hospital at Fort Leonard Wood, a distance of 93 miles each way, despite her history of chronic fatigue syndrome. This caused appellant to appear in a fatigued state by the time she arrived for her daily duty status as chief of the outpatient behavioral health department. W.C. denied appellant's allegation that she was forced to work more than 40 hours per week to fulfill her work requirements. Rather, appellant chose to work additional hours of her own volition and management had advised her to adhere to a normal work schedule on several occasions. When she was accommodated with half-day schedules, appellant chose to extend her hours. W.C. asserted that he denied her request to telework for part of her workday in September, October, and November 2012 because she was experiencing difficulty concentrating, functioning, and delivering the appropriate time to her required tasks. Furthermore, her supervisory position was classified as a non-telework position due to both supervisory and direct practice requirements. W.C. further contended that appellant was requested to physically relocate within the department to accommodate a mission requirement for a new child and adolescent clinic area. It was determined that the new office would not hinder appellant in completing tasks or exacerbate any physical difficulties. It was facilitated with a significant window and an ergonomic request to include a new desk. W.C. also contended that the employing establishment consistently met appellant's requests for reasonable accommodations. Appellant could not be realigned to a nonsupervisory position or simply trade positions with another nonsupervisory psychologist "noncompetitively" due to her disability status. She was allowed to work all requested work schedules, including half-days. Appellant was also permitted an exception to the policy for telework to complete several administrative/training weekly tasks at home for three to five hours. W.C. asserted, however, that this uniquely facilitated

accommodation only endured for several days as she could not do the administrative telework due to her fatigue issues. In addition, he noted that when appellant's Family and Medical Leave Act (FMLA) leave was exhausted, the employing establishment granted her request for advanced sick leave until she also exhausted all the advanced sick leave. At that point management suggested that appellant elect to retire on medical disability, which she did. Lastly, W.C. asserted that appellant did not inform management that she required a wheelchair until after her return from the Washington, DC conference in August 2012, and that failure could have predisposed her to chronic fatigue syndrome complications.

In an August 20, 2013 memorandum, management's human resources specialist also rebutted appellant's allegations. He asserted that appellant falsely stated that she had asked for help filing workers' compensation forms and was ignored. The specialist asserted that he had personally helped appellant file a Form CA-2, which he forwarded to her supervisor for their portion to be completed. When her supervisor completed the form on April 29, 2013, the supervisor returned his portion and the form was immediately uploaded into the disability record system.

By decision dated August 29, 2013, OWCP denied appellant's claim, finding that she failed to establish a compensable factor of employment.

By letter dated September 10, 2013, appellant, through counsel, requested an oral hearing, which was held on March 31, 2014. In a statement dated September 7, 2013, appellant asserted that her claim was for a physical illness, not a mental illness or stress condition, and that her mental health symptoms were the direct physiological consequence of her physical diseases. She asserted that OWCP considered her case as a purely psychological case and did not address the issues related to her physical conditions such as chronic fatigue syndrome and dysautonomia, which were worsened by her flight to Washington, DC in August 2012 and by walking in blistering heat while in Washington, DC for the conference.

In an October 18, 2013 report, Dr. Ellis advised that appellant experienced a worsening of her chronic fatigue syndrome symptoms in the summer of 2012, which coincided with a period of intense work activity exposing her to air travel, extreme heat, and long working hours. He reported that a substantial body of medical literature concerning chronic fatigue syndrome showed a link between environmental factors and worsening of the condition. These factors included changes in sleep schedule, mental or physical overexertion, excessive stress, and air travel. Dr. Ellis further advised that, based on his clinical assessment of appellant, on February 15, 2012, he had recommended a complete leave of absence from work from May 20 to September 9, 2012, and a maximum schedule of 20 hours per week from September 9 to October 1, 2012. He opined that appellant's intense work stressors had resulted in a significant worsening of her condition and that these measures were medically necessary. Dr. Ellis advised that, based on his treatment of appellant over several years, it was clear that the disability caused by her condition was severe and longstanding.

Appellant submitted numerous e-mails, witness statements from coworkers dated September and October 2013, and a copy of an Equal Employment Opportunity (EEO) grievance she filed against the employing establishment on the basis of her physical disability. Her coworkers attested to her strong work ethic, her dependability, her competence, and her desire to

regularly work long hours, including overtime, as needed in order to accomplish her work goals and the mission of her department.

By decision dated May 22, 2014, an OWCP hearing representative affirmed the August 29, 2013 decision. She noted that appellant's claim was predicated on her contentious relationship with the employing establishment and that the medical evidence emphasized her stress caused by its failure to accommodate her with telework as she wished. OWCP's hearing representative found that there was limited evidence that any compensable factor, such as overwork or travel, was the cause of any condition present. She concluded that there was ample evidence that appellant's fear of losing her job, and her husband's was the basis for her filing the claim.

Appellant appealed to the Board. By order dated December 21, 2015,[4] the Board vacated OWCP's May 22, 2014 decision, finding that it failed to contain adequate findings of fact and reasoning. The Board, therefore, remanded the case to OWCP for a proper decision to include findings of fact and a clear, precise statement regarding the basis for the decision.[5]

In a February 9, 2016 decision, an OWCP hearing representative affirmed the May 22, 2014 decision. She found that the following incidents did not occur as alleged: (1) that the employing establishment ignored her physician's requests for a 40-hour workweek or half days; (2) that appellant was verbally reprimanded for missing work "more than once"; (3) that the employing establishment made numerous clerical/administrative errors and did not properly assist appellant in filing the instant claim; (4) that management told appellant to move closer to her duty station, which was a financial burden to her; (5) that management violated her privacy by citing her approval for social security disability in paperwork regarding her proposed removal; (6) that management consistently retaliated against appellant and her husband for her filing a claim; (7) that appellant's resignation form was coded incorrectly, resulting in an overpayment; (8) that appellant was required to attend the Washington, DC training as it was both necessary for her position and not provided by her employer onsite; (9) that appellant was unaware that air travel could exacerbate her chronic fatigue syndrome condition; and (10) that W.C. made it clear she should be working whatever hours it took or she "would be looking for another job." OWCP's hearing representative found that the following incidents did not occur within the performance of appellant's duties: (1) that appellant's flexible schedule could be revoked as necessary by her employer; (2) that appellant was not allowed to take time off from work to accommodate her medical issues; (3) that appellant was not permitted to work a flexible schedule, frequently causing her husband to wait at work for her to finish so he could transport her; (4) that management considered her missing work a problem, which resulted in reprimands and punishment; (5) that management refused her telework requests in September and October 2012, ignored a November 2012 request for telework, and reduced telework requested on December 6, 2012 to only five hours per week on January 11, 2013; (6) that appellant's advanced sick leave approval was characterized as an "accommodation"; (7) that management encouraged appellant to resign; and (8) that appellant had issues with her pay due to issues with her leave status. OWCP's hearing representative accepted as factual that she may have worked

[4] *Id.*

[5] *Supra* note 3.

more than 40 hours per week, but found that she was not directed to do this and did this voluntarily to exceed her performance standards.

OWCP's hearing representative accepted one incident as having occurred within the performance of duty: that appellant volunteered for and attended a work conference in Washington, DC which required her to fly on August 7, 2012 and return on August 10, 2012. She found, however, that appellant did not submit medical evidence sufficient to establish that her travel in August 2012 resulted in a compensable condition and/or disability. The hearing representative found there was no concrete explanation as to how plane travel, exposure to heat, and overwork contributed to the worsening of her chronic fatigue syndrome. She found that Dr. Ellis did not provide any concrete basis for his opinions, merely citing vague studies, nor did he discuss the effect of her contentious personnel relationships to either condition after noting that noncompensable stressors contributed to them. The hearing representative further noted that Dr. Warren reported a flare-up of appellant's symptoms requiring treatment in late 2011 or early 2012, not August 2012. She, therefore, found that appellant failed to meet her burden of proof to provide well-rationalized medical evidence supporting that the accepted factor of employment caused or aggravated any of her diagnosed medical conditions.

By letter dated and received February 23, 2016, counsel requested reconsideration of the February 9, 2016 decision. He submitted a February 17, 2016 report cosigned by Drs. Ellis and Warren in which these physicians emphasized their agreement that two factors contributed to the worsening of appellant's chronic fatigue syndrome: working more than 50 hours per week in 2011, and traveling to a training session that exposed her to high temperatures. Counsel argued that there was no contrary medical evidence in the file and that, at a minimum, OWCP should refer the case for a second opinion. He noted that when an employee seeks compensation for a work-related condition, there is no requirement to prove that employment factors made a significant contribution to the development of the condition. Rather, if the medical evidence demonstrates that a work factor contributed in any way to the employee's condition, then the condition is considered employment-related for workers' compensation purposes.

Drs. Ellis and Warren noted in their February 17, 2016 report that OWCP's hearing representative found that they differed in opinion regarding whether various factors contributed to the worsening of appellant's chronic fatigue syndrome. However, they noted that there were multiple factors that each physician listed as contributing to appellant's condition, all of which resulted in appellant experiencing physical or emotional stress contributed to the aggravation of her chronic fatigue syndrome. Drs. Ellis and Warren opined that appellant's working long hours and traveling to a training session that exposed her to high temperatures contributed to the worsening of her chronic fatigue syndrome. Dr. Ellis reiterated his opinion that appellant had experienced a worsening of chronic fatigue syndrome symptoms in the summer of 2012, coinciding with a period of intense work activity which exposed her to air travel, extreme heat, and long working hours. Drs. Ellis and Warren concurred that her long work hours contributed to the worsening of her chronic fatigue syndrome and that the effects of air travel and exposure to extreme heat contributed to the worsening of appellant's condition.

Drs. Ellis and Warren opined that the scientific community is in agreement that stress worsens chronic fatigue syndrome. They opined that stressful situations, both physical and mental, cause the body to try to produce cortisol. When a person with chronic fatigue syndrome

experiences stressful situations, the body continues to try and make cortisol to keep the body working under stress, which leads to adrenal fatigue. Drs. Ellis and Warren advised that adrenal fatigue and its concomitant low production of cortisol, and a number of other regulatory hormones, exacerbates chronic fatigue syndrome, which was what occurred with appellant based on their clinical examinations. Both physicians opined that appellant felt stress in trying to meet her professional obligations and her working more than 50 hours per week, caused an aggravation of her chronic fatigue syndrome, which was worsened by her air travel and exposure to high temperatures in 2012.

By decision dated May 24, 2016, OWCP denied modification of its February 9, 2016 decision. It found that Drs. Ellis and Warren failed to explain how air travel on August 7 and 10, 2012 caused stress and that, although they did explain that appellant experienced stress while working more than 50 hours per week, this was not accepted as a compensable factor of employment. OWCP reviewed weather data for Washington, DC from August 7 to 10, 2012 and found that Drs. Ellis and Warren did not specify dates and times of exposure to extreme heat and high temperatures which they described as contributing to appellant's chronic fatigue syndrome. It therefore found that appellant did not establish that she was actually exposed to high temperatures for any specific date or period of time. OWCP modified the one accepted compensable factor of employment, deleting the portion which found that it was warm when she attended the August 2012 conference.

By letter dated and received June 17, 2016, appellant, through counsel, requested reconsideration of the May 24, 2016 decision. With her reconsideration request, appellant submitted a narrative statement, in which she described how her exposure to heat during her work conference aggravated her chronic fatigue syndrome. She advised that when she arrived in Washington, DC on August 7, 2012 at approximately 1:00 p.m., the high temperature was 105 degrees. Appellant alleged that she was exposed to the heat for approximately 20 to 30 minutes while walking from the airport terminal to get a taxi, putting luggage into the taxi, taking luggage out of the taxi at the hotel, and walking from the taxi to the hotel. On August 8, 2012 the first day of her conference, the high temperature was 110 degrees. Appellant walked approximately 3/4 mile from her hotel to the conference in the morning, a 20-minute walk, and then walked back to her hotel in the afternoon. She noted that the return trip took over an hour because she had to stop and rest so many times because of the extreme heat and because she was sick. Appellant also walked 30 minutes to one hour to a restaurant that evening to eat dinner. She later took a cab to a medical supply store to buy a wheelchair. The next day of the conference, August 9, 2012, when the high temperature was 86 degrees, appellant's husband pushed her in her wheelchair. Appellant was also pushed in her wheelchair that evening for 30 minutes to one hour to eat dinner during which she was exposed to the heat for approximately 65 to 95 minutes. The high temperature on this day was 86 degrees. Appellant stated that on the final day, August 10, 2012, when the high temperature was 89 degrees, she flew home and noted that she would have been outside on this day similar to the day of arrival. She asserted that on extremely hot and humid days it was often oppressive even indoors with the air conditioning running.

In a June 10, 2016 report, Dr. Ellis clarified his opinion with regard to appellant's chronic fatigue syndrome. He reiterated that working more than 40 to 50 hours per week contributed to the aggravation of her chronic fatigue syndrome and that appellant's chronic fatigue syndrome is a physical condition. Dr. Ellis opined that the impact that air travel, the exposure to heat, and

working long hours had on her was physical and was related to adrenal fatigue. He explained that when a person with chronic fatigue syndrome is exposed to situations that cause physical and/or mental stress, a situation in which the body would normally produce the adrenal stress hormone cortisol to keep the body working, it will cause an over-taxing of the adrenal system and result in an aggravation of the individual's chronic fatigue syndrome. Dr. Ellis advised that air travel is a stressful activity for many individuals, involving uncertainty, waiting in long lines, making sure everything is packed, arriving on time for the flight, etc. He opined that travel-related stress has a greater effect on people who have been diagnosed with a psychological condition and compromised by chronic fatigue syndrome, such as appellant.

Dr. Ellis reviewed appellant's statement regarding her exposure to heat during her August 2012 business trip and opined that, based on the figures she cited, she endured temperatures above 100 degrees on August 7 and 8, 2012. He advised that her exposures to very hot temperatures would be expected to tax her adrenal system, result in the production of cortisol, aggravate her chronic fatigue syndrome, and impact the regulation of her body temperature. Dr. Ellis concluded that appellant had an already overtaxed adrenal system and when her body attempted to create more cortisol in response to the heat, it caused additional adrenal insufficiency resulting in an aggravation of her chronic fatigue syndrome.

By decision dated October 21, 2016, OWCP denied modification of the May 24, 2016 decision. It did not accept her account of being exposed to heat at the levels she alleged in her June 2016 statement, nor did it accept her account of events on August 7, 2012. OWCP found that it was not credible that, in the presence of her husband, and given her alleged condition, she would perform a taxi driver's function of placing luggage in the taxi at the airport and removing it at the hotel. It further found that appellant did not establish the distances she allegedly walked from the airport terminal to the taxi and from the taxi to the hotel. OWCP asserted that it was not credible that she walked 3/4 mile for 20 minutes to the conference in the morning, and then walked or was assisted by her husband for approximately one hour on the return trip in the evening given her description of her condition the prior evening, particularly when taxi service was available.[6] It also found that Dr. Ellis' opinion in his June 10, 2016 report was based on exposure times and circumstances that had not been established or accepted. OWCP determined that his opinion did not establish a causal relationship between accepted work factors and the diagnosed condition based on a complete and accurate factual and medical background.

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*,[7] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.[8] There are situations where an injury or

[6] OWCP rejected appellant's argument that she did not use taxis because it was not a reimbursable expense. It further noted that she received per diem for the conference and the information packet provided for her conference indicated that public transportation was available.

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

[8] *Supra* note 2

illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[9] 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.[10] In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is insufficient to constitute a personal 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.[11]

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.[12] 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.[13] A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.[14]

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.[15] Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[16] 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.[17] Where the disability results from an employee's emotional reaction to his or her regular or specially

[9] *See Robert W. Johns*, 51 ECAB 136 (1999).

[10] *Supra* note 2.

[11] *Id.*

[12] *Charles D. Edwards*, 55 ECAB 258 (2004).

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

[14] *Roger Williams*, 52 ECAB 468 (2001).

[15] 20 C.F.R. § 10.5(q).

[16] *L.D.*, 58 ECAB 344 (2007).

[17] *A.K.*, 58 ECAB 119 (2006).

assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[18]

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 record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[19]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[20] The claimant has the burden of proof to submit rationalized medical evidence establishing that her claimed conditions were causally related to the accepted compensable employment factors.[21]

ANALYSIS

On appeal counsel argues that OWCP did not give adequate consideration to the evidence presented and that it erred in not finding that appellant established a compensable work factor based on being forced to work excessive hours, engaging in extensive travel, and being exposed to heat. He contended these factors resulted in the development of her chronic fatigue syndrome and her emotional conditions. Counsel also contended that OWCP erred in finding that her assertion that she was exposed to hot temperatures during the August 2012 conference was not credible. He asserts that Dr. Ellis provided a detailed explanation of how appellant's proven exposures contributed to the aggravation of her chronic fatigue syndrome.

The Board notes initially that OWCP adjudicated this case as one based on both an emotional condition and one for a physical condition, her preexisting chronic fatigue syndrome. Appellant has alleged that she was exposed to stressful conditions which aggravated her diagnosed chronic fatigue syndrome and has provided medical evidence to support this allegation. OWCP has accepted one factor of employment: flying to and attending a work conference in Washington, DC from August 7 to 10, 2013. Because appellant was performing her regularly assigned duties while traveling, the Board notes that this established work factor is related to her regular or specially assigned duties under *Lillian Cutler*.[22] It is uncontested that appellant established a compensable factor of employment with respect to her traveling to a conference in August 2012.

[18] *Trudy A. Scott*, 52 ECAB 309 (2001); *supra* note 7.

[19] *Robert Breeden*, 57 ECAB 622 (2006).

[20] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[21] *See D.R.*, Docket No. 16-0605 (issued October 17, 2016); *see also A.V.*, Docket No. 15-1394 (issued December 22, 2015).

[22] *See supra* note 7.

Appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under FECA. To establish her claim for an emotional condition, she must also submit medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.[23]

Appellant submitted numerous reports from Drs. Ellis and Warren in support of her claim. Dr. Ellis diagnosed chronic fatigue syndrome in an August 28, 2012 report in which he recommended that appellant be placed on family medical leave from August 28 to September 9, 2012 and work no more than 20 hours per week from September 9 to October 1, 2012. He advised in a December 30, 2012 report that appellant was initially diagnosed with post-viral chronic fatigue syndrome in 2006. Appellant was treated with occupational therapy, physical therapy, and medication management and her condition stabilized in approximately 2008. Dr. Ellis reported that appellant experienced periodic flare-ups of her condition, most notably in August 2012 after attending two consecutive work-related conferences. Appellant also experienced mood and anxiety symptoms which resulted in diagnoses of mood disorder and anxiety disorder due to a general medical condition. Dr. Ellis advised that appellant was unable to exert the physical and mental energy necessary to sustain extended periods of work activities and noted that overexertion exacerbated her symptoms and led to relapses which made her unable to be at work on a consistent and reliable basis. In his February 25, 2013 report, Dr. Ellis diagnosed anxiety disorder and mood disorder in addition to chronic fatigue syndrome. He reiterated his opinion regarding chronic fatigue syndrome and its relationship to stress caused by factors of employment in several subsequent reports, as noted above. Dr. Warren diagnosed recurrent major depression, anxiety disorder, and mood disorder and noted symptoms of anxiety and depression which were related to a general medical condition in her June 6, 2013 report.

In their February 17, 2016 report, Drs. Ellis and Warren summarized their findings. They noted that there were multiple employment factors which resulted in her experiencing physical or emotional stress, which contributed to the aggravation of her chronic fatigue syndrome. Drs. Ellis and Warren opined that appellant's working long hours and traveling to a training session that exposed her to high temperatures contributed to the worsening of her chronic fatigue syndrome. Dr. Ellis reiterated his opinion that appellant had experienced a worsening of chronic fatigue syndrome symptoms in the summer of 2012, coinciding with a period of intense work activity which exposed her to air travel, extreme heat, and long working hours. Drs. Ellis and Warren concurred that her long work hours contributed to the worsening of her chronic fatigue syndrome and that the effects of air travel and exposure to extreme heat contributed to the worsening of appellant's condition. They referenced the consensus opinion in the scientific community that stress worsens chronic fatigue syndrome. Drs. Ellis and Warren explained the process as follows: stressful situations, both physical and mental, cause the body to try to produce cortisol and when a person with chronic fatigue syndrome experiences stressful situations, the body continues to try and make cortisol to keep the body working under stress, which leads to adrenal fatigue. Drs. Ellis and Warren advised that adrenal fatigue and its concomitant low production of cortisol and a number of other regulatory hormones, exacerbates chronic fatigue syndrome and this had occurred with appellant based on their clinical

[23] *See William P. George*, 43 ECAB 1159, 1168 (1992).

examinations. As appellant experienced stress in trying to meet her professional obligations and from working more than 50 hours per week, this caused an aggravation of her chronic fatigue syndrome, which was worsened by her air travel and exposure to high temperatures in Washington, DC in 2012.

Dr. Ellis essentially reiterated the above findings and conclusions in his June 10, 2016 report. He advised that the impact that air travel, exposure to heat, and working long hours had on appellant was physical and caused an overtaxing of her adrenal system and resulted in an aggravation of her chronic fatigue syndrome. Dr. Ellis noted that air travel is a stressful activity for many individuals, involving uncertainty, waiting in long lines, ensuring everything is packed, arriving on time for the flight, etc. He opined that in a person diagnosed with a psychological condition, as well as compromised by chronic fatigue syndrome, travel-related stress has a greater effect. In addition, Dr. Ellis reviewed appellant's statement regarding her exposure to heat during her August 2012 business trip and opined that, based on the figures she cited, she endured temperatures above 100 degrees on August 7 and 8, 2012. He advised that her exposures to very hot temperatures would be expected to further tax her adrenal system, resulting in the production of cortisol, which aggravated her chronic fatigue syndrome and impacted the regulation of her body temperature. Dr. Ellis concluded that appellant had an already overtaxed adrenal system and when her body attempted to create more cortisol in response to the heat, it caused additional adrenal insufficiency resulting in an aggravation of her chronic fatigue syndrome.

The Board finds that the reports from Drs. Ellis and Warren are consistent in indicating that appellant sustained an emotional condition and aggravated a preexisting chronic fatigue syndrome due to an accepted work factor, her August 2012 plane trip to a work conference, and are not contradicted by any medical or factual evidence of record. In addition, OWCP indicated in its May 24, 2016 decision that a weather website confirmed that the temperatures for Washington, DC on August 7 and 8, 2012 were well above 100 degrees on both dates. Thus it erred in deleting the portion of the accepted employment factor stating "it was warm when she attended." Drs. Ellis and Warren provided a thorough explanation and clinical analysis of how traveling on a plane and being exposed to extreme heat can cause stress and aggravate chronic fatigue syndrome. It is unnecessary to prove a significant contribution of employment factors for the purpose of establishing causal relationship.[24] The Board finds that these reports raise an uncontroverted inference between appellant's diagnosed conditions and the accepted work factor and are sufficient to require OWCP to further develop the medical evidence and the case record.[25]

Appellant has also alleged that she needed to work overtime and was subjected to stress-inducing deadlines in order to meet her professional guidelines. If established, these elements relate to her job duties under *Lillian Cutler*[26] and would be compensable employment factors. The Board finds that appellant has not submitted sufficient evidence supporting her allegations

[24] *See Richard E. Simpson*, 55 ECAB 490 (2004).

[25] *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

[26] *Supra* note 7.

that she was overworked or that she was required to work overtime. Without evidence substantiating these allegations, appellant has failed to meet her burden of establishing a compensable factor of employment under *Lillian Cutler*.

In *Thomas D. McEuen*[27] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the facts surrounding the administrative or personnel action established error or abuse by employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.

Appellant asserted that management refused her requests to reduce her work hours and change to a more flexible schedule. These allegations were rebutted by W.C., who denied appellant's allegation that she was forced to work more than 40 hours per week and stated that she chose to work additional hours and did not accede to management's recommendations to operate on a normal work schedule. The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of FECA.[28] The managerial conduct and actions of W.C. toward appellant involved administrative functions which, absent agency error or abuse, were not compensable. The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under FECA.[29] Appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions.

Appellant has provided no substantiation for her allegations sufficient to establish alleged error or abuse in an administrative action under *McEuen*. The Board has held that an emotional condition related to stress from situations in which an employee is trying to meet the requirements of her position are compensable.[30] Appellant did not provide any evidence that the employing establishment acted in an abusive or unreasonable manner in setting performance guidelines for her. She has not submitted evidence indicating that the employing establishment

[27] *See Thomas D. McEuen*, *supra* note 13; *supra* note 7.

[28] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[29] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[30] *See M.D.*, 59 ECAB 211 (2007).

imposed an unusually heavy workload and unreasonable deadlines.[31] Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.[32]

The case will be remanded to OWCP for further evidentiary development regarding the issue of whether appellant experienced stress, sustained an emotional condition, and aggravated a preexisting chronic fatigue syndrome condition due to an accepted work factor, her August 2012 plane trip to a work conference. OWCP should prepare an amended statement of accepted facts, to include the fact that she was exposed to extremely hot temperatures during her August 2012 trip, and obtain a second opinion on this matter. After such development of the case record as OWCP deems necessary, it shall issue an appropriate *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish an emotional condition and an aggravation of preexisting chronic fatigue syndrome in the performance of duty. The case is remanded to OWCP for further development.

[31] *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

[32] In prior OWCP decisions, appellant raised the issue of whether management made reasonable accommodations for her medical restrictions, in addition to numerous other allegations considered by OWCP. OWCP found that these allegations did not establish any additional, compensable factors of employment. These allegations were not raised by appellant in the decisions over which the Board has jurisdiction and are not at issue in the instant decision.

ORDER

IT IS HEREBY ORDERED THAT the October 21 and May 24, 2016 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 19, 2018
Washington, DC

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

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

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