

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

A.D., Appellant)	
)	
and)	Docket No. 20-1265
)	Issued: November 18, 2022
DEPARTMENT OF STATE, BUREAU OF)	
EUROPEAN & EURASIAN AFFAIRS,)	
Washington, DC, Employer)	
)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 4, 2020 appellant, through counsel, filed a timely appeal from a March 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a stress-related condition causally related to the accepted compensable employment factors.

FACTUAL HISTORY

On September 9, 2016 appellant, then a 41-year-old foreign service officer/press officer, filed an occupational disease claim (Form CA-2) alleging that she sustained Cushing's syndrome, left adrenal tumor, postoperative adrenal insufficiency, anxiety, and depression due to factors of her federal employment. She noted that she first became aware of her claimed conditions on September 27, 2013 and realized their relation to her federal employment on May 27, 2016. Appellant stopped work on April 25, 2014. In a May 27, 2016 statement, she claimed that, while working in the press office of the Bureau of European and Eurasian Affairs as a press officer, she would commonly work from 6:30 a.m. until 10:30 p.m. under high-pressure conditions, which included being in a position with top visibility and being subjected to tight deadlines. Appellant asserted that she was expected to check her e-mails at least once in the morning and every hour in the evening including weekends to see if there was any breaking news that required her attention and response. She advised that, during a typical workday, she would get up and check her BlackBerry device at 6:30 a.m. and read the major headlines and stories of the day. Before 8:30 a.m., appellant would have to read the major stories, select the biggest issues, and brief the office director before she went into her morning meeting with the Assistant Secretary. She asserted that her mornings were typically hectic. From her arrival at work at 8:00 a.m., appellant would "scramble" to find out what topics needed to be briefed to the spokesperson for the employing establishment, work with the other offices in her bureau to draft and clear press guidance, and then have the topics fully ready for the briefing to the Spokesperson at approximately 11:30 a.m. Appellant alleged that there was almost never any down time in the mornings, and she usually had to work on two or more press issues at the same time.

Appellant further claimed that she was expected to stay in the office and wait for the Office Director to return from late afternoon religious services in order to attend the last meeting of the day and receive a briefing from her. In the meantime, she waited for the release of the daily press briefing transcript and then would distribute any messages regarding Eastern Europe to the appropriate offices. Appellant asserted that sometimes the transcript arrived before she left the office, and sometimes it would arrive after she left the office, and that she would have to send the information from home. She indicated that, after leaving work at approximately 6:00 p.m., she was required to check her BlackBerry every hour until approximately 10:30 p.m. Appellant claimed that it was common for her to have to process after-hour clearances or statements and that this task could consume hours of her evening. She asserted that the Office Director expected her to be responsive to e-mails at all hours and that she also was expected to be available to work on weekends.

Appellant submitted a September 8, 2016 report from Dr. Maximilian Oshalim, a Board-certified internist, who indicated that she had been diagnosed with cyclical Cushing's syndrome secondary to a left adrenal tumor as confirmed by testing in 2013. Dr. Oshalim advised that appellant first exhibited signs and symptoms of Cushing's syndrome in 2012 and still had signs/symptoms of the condition, including adrenal insufficiency, cognitive deficits, profound

fatigue, limited mental and physical stamina, memory loss, poor balance/coordination, muscle damage, pain, and hip issues. He advised that he was familiar with appellant's written statements regarding her employment duties and conditions. Dr. Oshalim asserted that the scientific community was in agreement that stress worsens both Cushing's syndrome and postoperative adrenal insufficiency. When stressful situations continue to occur for a person with Cushing's syndrome, the body increases cortisol levels and the condition worsens with additional body damage, including muscle wasting, weakness, and bruising. Dr. Oshalim indicated that, when a patient's cortisol levels drop after adrenal surgery, stress places additional demands on the body and causes the patient to burn more cortisol, a circumstance which increases vulnerability to adrenal crisis. He noted, "[w]e believe this process occurred with [appellant] based on our clinical examination." Dr. Oshalim indicated that, based on her written and oral statements, appellant experienced physical, emotional, and mental stress while working as a press officer with a demanding portfolio. He asserted that stress from working more than 80 hours per week, combined with the pressure of the press officer role itself and meeting the high expectations of management, caused constant stress on appellant's adrenal glands with a corresponding increased output of cortisol. Dr. Oshalim opined that this increased cortisol output caused an aggravation of appellant's Cushing's syndrome. He indicated that the overwork and stress appellant experienced after surgery caused a delay in her recovery since her body could not wean from the cortisol and she was more vulnerable to adrenal crisis and other infections.

In a January 4, 2017 statement, appellant's immediate supervisor outlined appellant's work duties, noting that she had been responsible for the preparation of daily press guidance covering the entire range of policy issues for the Bureau of European and Eurasian Affairs. He noted that the job required developing close contacts with a variety of journalists and foreign press officials, as well as briefing officials, including the agency's spokesperson.

In a February 10, 2017 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of additional factual and medical evidence required and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In response, appellant submitted a March 7, 2017 statement in which she further discussed her work duties/conditions and detailed the course of her ongoing medical treatment. She advised that she underwent surgery in 2014 to remove an adrenal tumor.

Appellant submitted additional medical evidence, including reports dated between January 18 and March 13, 2017 from Dr. Michael B. Lee, a Board-certified internist, and Dr. Mark Sklar, a Board-certified endocrinologist. In a September 30, 2013 report, Dr. Sklar advised that testing revealed that appellant appeared to have Cushing's syndrome due to an autonomous left adrenal adenoma. In their reports, the physicians reported the findings of their periodic physical examinations and discussed their management of appellant's medical condition.

On June 2, 2017 OWCP referred appellant for a second opinion examination and evaluation with Dr. Michael Emmer, a Board-certified endocrinologist. It provided Dr. Emmer with a copy of the case record and a current statement of accepted facts (SOAF) and a series of

questions. The SOAF indicated that OWCP had accepted that, as a foreign service officer/press officer, appellant was responsible for covering press conditions and policies for 20 countries, and for managing daily press briefings, which were broadcast throughout the world. It also accepted that appellant's job required long hours of work. OWCP requested that Dr. Emmer evaluate whether appellant sustained any employment-related conditions, including aggravation of Cushing's syndrome.

In a June 18, 2017 report, Dr. Emmer discussed appellant's factual and medical history, noting that in 2012 she began to display symptoms of Cushing's disease, including hypertension, 60-pound weight gain, obesity around the face, unusual fat deposition in the cervicodorsal/supraclavicular areas, muscle weakness, easy bruising, and skin fragility. He advised that in September 2013 testing confirmed that appellant had Cushing's syndrome and that in January 2014 a left adrenal adenoma (tumor) was surgically removed. Dr. Emmer reported the findings of his physical examination and indicated that appellant still displayed some residuals/symptoms of Cushing's disease, including decreased stamina, muscle weakness, truncal obesity, cognitive difficulties, word choice problems, depression and anxiety. He opined that it could not be determined with certainty whether appellant's extreme job stress was the true cause of her developing Cushing's syndrome since the true cause of the condition was the development of the left adrenal adenoma, which is not known to be a stress-related condition. Dr. Emmer noted, "[a]gain, I cannot state with certainty that job stress was a true cause of her Cushing's, but certainly added [sic] to her symptomatology." He opined that there was no aggravation of Cushing's disease with the January 2014 surgical resection of the adrenal gland. Dr. Emmer indicated that the residuals of the Cushing's syndrome included overproduction of adrenocortisol hormone, but that these residuals were related to the adrenal tumor and "could not be specifically attributed to a work-related condition." He further noted, "I believe that [appellant's] illness was entirely caused by the adrenocortical tumor and, in that sense, is not and has not been a work-related illness." Dr. Emmer advised that, while it was true that stress can worsen Cushing's syndrome, he did not believe that appellant's condition "was truly a work-related condition." In a June 18, 2017 work capacity evaluation (Form OWCP-5c), Dr. Emmer indicated that appellant could work two hours per day with restrictions including lifting, pushing, and pulling no more than five pounds.

By decision dated July 18, 2017, OWCP indicated that it had accepted compensable employment factors in the form of appellant's duties as a foreign service officer/press officer. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment factors.

On July 17, 2018 appellant, through counsel, requested reconsideration of the July 18, 2017 decision. Appellant submitted an October 10, 2018 report from Dr. Samuel Potolicchio, a Board-certified neurologist, who discussed the symptoms of Cushing's syndrome experienced by appellant and noted that the condition had profound and pervasive impacts on neurological symptoms, which were long-lasting and did not resolve with surgery. He indicated that the high levels of cortisol caused by Cushing's syndrome "fry" the brain and neurological networks, leading to permanent changes on a molecular level and even changes in brain volume. Dr. Potolicchio indicated that a magnetic resonance imaging (MRI) scan of appellant's brain showed focal white matter signal abnormality. He noted that, in line with other Cushing's syndrome patients, appellant experienced fibromyalgia, cognitive deficits, poor mental/poor concentration, profound physical

fatigue, and an altered stress response. Dr. Potolicchio opined that appellant's work stress, including the high volume of her work, her long hours, her inability to rest due to the demands of her job, and the constant need for her to be available at all hours, aggravated her Cushing's syndrome and her neurological symptoms. He noted errors in Dr. Emmer's June 18, 2017 report, such as Dr. Emmer's interchangeable references to Cushing's syndrome versus Cushing's disease.

In November 2018 OWCP received additional medical evidence from the early stages of the evaluation and treatment of appellant's Cushing's syndrome commencing in 2012. In periodic progress reports dated between 2013 and 2017, Dr. Sklar continued to diagnose appellant with Cushing's syndrome.

On December 12, 2018 OWCP requested clarification from Dr. Emmer of his June 18, 2017 report. In a supplemental January 8, 2019 report, Dr. Emmer indicated that he continued to stand by the opinions expressed in his June 18, 2017 report. He clarified that appellant had Cushing's syndrome, not Cushing's disease and noted that the two conditions had similar symptoms. Dr. Emmer noted that, while he did reject the notion that work stress played a role in appellant developing Cushing's syndrome, he did concur with her physicians that she was continuing to suffer the sequelae of longstanding undiagnosed Cushing's syndrome and indicated that he could not anticipate the length of time required for adequate recovery enabling her to return to work.

By decision dated January 17, 2019, OWCP denied modification of the July 18, 2017 decision.

On March 12, 2019 appellant, through counsel, requested reconsideration of the January 17, 2019 decision.

By decision dated April 17, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On January 16, 2020 appellant, through counsel, again requested reconsideration.

Appellant submitted a January 11, 2020 report from Dr. Sklar, who opined that appellant's unrelenting work schedule and volume significantly contributed to her poor health and to the difficulty of tapering off hydrocortisone after her surgery for Cushing's syndrome. Dr. Sklar advised that the large amount of stress that appellant was under required her to have a high output of cortisol from her remaining adrenal gland. The remaining adrenal gland could not meet her needs for cortisol production because it was dormant due to being turned off for so many years by the over-functioning of her adrenal tumor. Dr. Sklar indicated that, as a result, appellant would feel as though her body was frequently "crashing" with symptoms of adrenal insufficiency including nausea and dizziness. He noted that the high doses of hydrocortisone taken by appellant to treat the symptoms of Cushing's syndrome significantly delayed the recovery of her remaining adrenal gland. Dr. Sklar indicated, "[f]rom what I have stated above, it should now be clear that [appellant's] work situation played a significant role in making the process of recovery from adrenal Cushing's syndrome difficult and very prolonged."

In a January 16, 2020 report, Dr. Potolicchio indicated that overwork aggravated appellant's Cushing's syndrome, delayed her postoperative recovery, delayed the successful

completion of her wean from cortisol, and made her more susceptible to adrenal crises. He asserted that if Dr. Emmer was correct that appellant's condition was only caused by her tumor, then she should have recovered completely soon after the surgery that removed the tumor. Dr. Potolicchio opined that the postoperative healing process was delayed primarily because of appellant's stressful job and work situation.

By decision dated March 27, 2020, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficient to establish a diagnosed stress-related condition causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish a stress-related or emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed stress-related or emotional condition; (2) medical evidence establishing that he or she has a diagnosed stress-related or emotional condition; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed stress-related or emotional condition.⁶

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 or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁷ 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

³ 5 U.S.C. § 8101 *et seq.*

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁰

In cases involving stress-related or 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.¹¹ 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, it must base its decision on an analysis of the medical evidence.¹²

ANALYSIS

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

In a June 18, 2017 report, OWCP referral physician Dr. Emmer opined that it could not be determined with certainty whether appellant's extreme job stress was the true cause of her developing Cushing's syndrome since the true cause of the condition was the development of the left adrenal adenoma, which is not known to be a stress-related condition. He opined that there was no aggravation of Cushing's disease with the January 2014 surgical resection of the adrenal gland. Dr. Emmer indicated that the residuals of the Cushing's syndrome included overproduction of adrenocortisol hormone, but that these residuals were related to the adrenal tumor and "could not be specifically attributed to a work-related condition." In a supplemental January 8, 2019 report, he indicated that he continued to stand by the opinions expressed in his June 18, 2017 report. Dr. Emmer noted that, while he did reject the notion that work stress played a role in appellant developing Cushing's syndrome, he did concur with her physicians that she was continuing to suffer the sequelae of longstanding undiagnosed Cushing's syndrome.

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

In contrast, Dr. Oshalim indicated in a September 8, 2016 report that the stress from appellant working extended hours per week, combined with the pressure of the press officer role itself and meeting the high expectations of management, caused constant stress on her adrenal glands with a corresponding increased output of cortisol. He opined that this increased cortisol output caused an aggravation of appellant's Cushing's syndrome. Dr. Oshalim indicated that the overwork and stress appellant experienced after surgery caused a delay in her recovery since her body could not wean from the cortisol and she was more vulnerable to adrenal crisis and other infections.

In an October 10, 2018 report, Dr. Potolicchio indicated that patients with Cushing's syndrome have high levels of cortisol that "fry" the brain and neurological networks, leading to permanent changes on a molecular level and even changes in brain volume. He advised that an MRI scan of appellant's brain showed focal white matter signal abnormality. Dr. Potolicchio opined that appellant's work stress, including the high volume of her work, her long hours, her inability to rest due to the demands of her job, and the constant need for her to be available at all hours, aggravated her Cushing's syndrome and her neurological symptoms. In a January 16, 2020 report, he indicated that overwork aggravated appellant's Cushing's syndrome, delayed her postoperative recovery, delayed the successful completion of her wean from cortisol, and made her more susceptible to adrenal crises. Dr. Potolicchio asserted that if Dr. Emmer was correct that appellant's condition was only caused by her adrenal tumor, then she should have recovered completely soon after the surgery, which removed the tumor. He opined that the postoperative healing process was delayed primarily because of appellant's stressful job and work situation.

In addition, Dr. Sklar opined in a January 11, 2020 report that appellant's unrelenting work schedule and volume significantly contributed to her poor health and to the difficulty of tapering off hydrocortisone after her surgery for Cushing's syndrome. He advised that the large amount of stress that appellant was under required her to have a high output of cortisol from her remaining adrenal gland. Dr. Sklar indicated that, as a result, appellant would feel as though her body was frequently "crashing" with symptoms of adrenal insufficiency including nausea and dizziness. He noted that the high doses of hydrocortisone taken by appellant to treat the symptoms of Cushing's syndrome significantly delayed the recovery of her remaining adrenal gland. Dr. Sklar indicated, "[f]rom what I have stated above, it should now be clear that [appellant's] work situation played a significant role in making the process of recovery from adrenal Cushing's syndrome difficult and very prolonged."

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹³ This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁴ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the

¹³ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁴ 20 C.F.R. § 10.321.

opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵

The Board finds that a conflict exists in the medical opinion evidence between the OWCP referral physician, Dr. Emmer, and the attending physicians, Dr. Oshalim, Dr. Potolicchio, and Dr. Sklar, on the issue of whether appellant sustained an employment-related condition, including the question of whether her Cushing's syndrome was aggravated by the accepted employment factors.

Because there remains an unresolved conflict in the medical opinion evidence regarding whether appellant has an employment-related stress condition, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the medical record and a statement of accepted facts, to an appropriate Board-certified specialist for an impartial medical examination to evaluate whether appellant has a diagnosed stress condition casually related to the accepted employment factors. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim for a work-related stress condition.

CONCLUSION

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

¹⁵ *S.S.*, Docket No. 19-0766 (issued December 23, 2019); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 18, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board