

ISSUE

The issue is whether OWCP has met its burden of proof to rescind the acceptance of appellant's claim for major depressive disorder.

FACTUAL HISTORY

On January 31, 2019 appellant, then a 52-year-old program specialist, filed an occupational disease claim (Form CA-2) alleging that she developed major depression causally related to factors of her federal employment, including work-related stress. She stopped work on December 24, 2018.

In an undated statement received February 13, 2019, appellant related that at work from 2011 to the present she was humiliated, exploited, and failed to receive recognition or credit. She asserted that when she was on leave from July 28 to August 1, 2014 four coworkers received administrative leave for performing the work that she usually did that required her to work overtime. Appellant received a letter of warning on April 12, 2018 for being unprofessional and disrespectful when she was overwhelmed with work and requested help prioritizing duties. In 2010, management denied her request to attend training. In 2014, appellant attended a program that was being discontinued and became distraught in public as a result. In 2012, she was the only member of her team that did not have a choice of her manager. Appellant's manager, S.D, lived across the country. In 2012, S.D. took away her ability to approve travel vouchers. In 2013, appellant worked overtime and skipped lunch in order to meet her responsibilities for multiple positions. A.V., a team member, told appellant had he would not follow her instructions. Appellant was afraid of A.V., but he was not terminated.

Appellant further related that management denied her request for training and placed her in a growth rather than leadership track. In August 2015, she received the basic appreciation award while her coworkers received enhanced appreciation awards. At the 2016 employment appreciation day celebration, appellant received a less expensive gift than her coworkers. Her coworkers were allowed to access a program with survey results, but she was not even though she was the committee chairperson. When appellant attended mandatory training in September 2017, she almost got into trouble for failing to attend another mandatory meeting that had been scheduled at the same time. Management did not make her the chairman of the safety committee. In 2018, appellant was working overtime and a manager walked by without saying a word even though he wished her coworker, T.H., a good evening.

In September 2018, appellant organized a teleconference, but a manager did not tell her he was unable to attend. Management required her to attend an appointment with a psychiatrist. Appellant moved to a new office with windows. T.H. and another coworker, R.M., made fun of her curtains. In 2012, T.H. asked appellant if she was going to eat all the food she had gotten for breakfast. In 2014, appellant received a letter of warning when she had outbursts due to extreme stress trying to perform her work duties. She advised that, from April 2014 to April 2015, she worked significant overtime hours and had excessive stress. In 2014, management accused appellant of requesting annual and sick leave to coincide with the weekend, even though her coworkers regularly scheduled days off near a weekend. Management delayed approving a leave

request for 20 days. On several occasions from 2014 to 2016 N.C., a manager, told appellant that she should start walking and watched the amount of food that she ate.

In a development letter dated February 19, 2019, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provided additional information regarding her alleged employment-related emotional condition, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and explaining areas of disagreement. OWCP afforded both parties 30 days to submit the requested evidence.

Thereafter, OWCP received a December 17, 2018 letter from the employing establishment directing appellant to appear for a fitness-for-duty examination with Dr. Stacy B. Woods, a Board-certified psychiatrist.

Dr. Woods evaluated appellant on December 22, 2018. She noted that appellant believed that she had been harassed and treated unfairly at work. Dr. Woods “admits that [appellant] does have outburst[s] because [appellant] is overwhelmed and stressed.” She diagnosed major depressive disorder, moderate recurrent, and an anxiety disorder not otherwise specified. Dr. Woods attributed appellant’s angry outbursts to the diagnosed condition, feeling overwhelmed, lack of sleep, and coping skills, and “the perception that [appellant] is being treated unfairly at the workplace.” She found that appellant could not work for six months and that when appellant returned to work, she should telework four days a week.

In a March 4, 2019 response to OWCP’s development letter, appellant attributed her condition to “unequal treatment, exploitation, harassment, and bullying” by managers and coworkers, “working countless overtime hours,” skipping lunch, and lack of sleep, which she asserted caused her to experience frequent bouts of shingles.

Appellant submitted a January 24, 2019 report from Dr. J. Christopher Fleming, Board-certified in family medicine, who noted that she attributed her stress to working overtime and interactions with managers and coworkers.³ Dr. Fleming advised that stress increased her risk of future shingles episodes.

OWCP received further evidence from the employing establishment. In a March 8, 2019 statement, S.D. related that she had supervised appellant since 2012. She advised that she concurred “in general with [appellant’s] overall claim.” S.D. indicated that appellant raised her voice on occasion and that she believed that appellant had an underlying mental condition. She noted that appellant had to work “on competing priorities during the same time frame” and that their location had more numbers requiring reconciliation than any other location. S.D. advised that appellant had a strained relationship with one of her coworkers. She indicated that she had requested the fitness-for-duty examination for appellant. S.D. responded in the affirmative that staffing shortages had affected appellant’s workload during the implicated period. She indicated

³ Appellant also submitted evidence from licensed clinical social workers. She also submitted statements from relatives and friends in support of her claim.

that appellant could generally perform her duties, but that when the “workload was time sensitive, [appellant’s] emotions were not always controlled.”

In an e-mail dated March 10, 2019, J.H., a former coworker, advised that she had overheard T.H. talking about how much food appellant had prepared for breakfast. She noted that appellant had cried when her training request was denied and indicated that she felt “stressed and overwhelmed by the amount of work assigned to her.”

In a statement of accepted facts dated July 25, 2019, OWCP accepted as compensable work factors that appellant had difficulty meeting the requirements of her workload and completing assignments despite reasonable effort, meeting deadlines, and reacting to her workload. It listed as an accepted event that was not a compensable factor of employment that coworkers received administrative leave for the same tasks that she performed without receiving an award.

On July 25, 2019 OWCP accepted appellant’s claim for recurrent, moderate major depressive disorder. It found that the opinion of Dr. Woods was sufficient to show that appellant sustained major depressive disorder causally related to the accepted employment factors.

On January 24, 2020 OWCP notified appellant of its proposed rescission of its acceptance of her claim for major depressive disorder. It found that it had prematurely accepted her case as she had not provided corroborating evidence substantiating that she had difficulty completing assignments and meeting deadlines. OWCP listed appellant’s allegations and requested that she submit supporting evidence. It afforded her 30 days to respond to the proposed rescission with additional evidence or argument.

In a February 20, 2020 notarized statement, S.D. related that she had supervised appellant from 2012 until her retirement March 2019. She related that she had provided the documentation for the fitness-for-duty examination and requested the retrieval of appellant’s laptop. S.D. advised that she primarily supervised appellant from San Francisco, which required her to “work irregular hours to meet the time zone differences from the East to West Coast and work hours beyond [appellant’s] [eight]-hour day...” She indicated that appellant routinely worked 12 to 15 hours and that she “performed [appellant’s] duties at my direction with no complaints.” Appellant told S.D. that she had not been allowed to select her manager and that her coworkers had mocked her when she was assigned a supervisor 3,000 miles away. S.D. further related that appellant’s authority to approval travel was revoked, that in 2013 a supervisor had heard A.B. yell at appellant, and that management had denied appellant’s request for training and failed to place her in a leadership track. She indicated that appellant was upset when she did not receive a mini-Bose speaker at the appreciation awards in 2016 and was not selected for training at headquarters or designated as a safety committee chairperson. S.D. related that she had forgotten that she was completing mandatory training in 2017 when she had missed a mandatory meeting. She advised that appellant had cried when a manager failed to acknowledge her when he left the office and felt like she lacked value when a manager failed to attend her telecom meeting. S.D. indicated that appellant had maintained that T.H. and J.M. laughed at appellant’s curtains.

Appellant submitted e-mails and other documents regarding her training requests, the denial of requests to attend meetings, and leave matters. She also submitted an August 12, 2014 letter of warning that she received for insubordination and disrespectful conduct.

By decision dated May 15, 2020, OWCP rescinded its acceptance of appellant's claim for major depressive disorder. It found that she did not submit evidence corroborating the claimed employment factors. OWCP determined that it had erroneously accepted as compensable workload requirements, difficulty completing assignments with reasonable effort, meeting deadlines, and reacting to appellant's workload.

LEGAL PRECEDENT

Section 8128 of FECA⁴ provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁵ The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under section 8128 of FECA and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁶ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁷

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.⁸ It is well established that, once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. Its burden of justifying termination or modification of compensation holds true where it later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of the rationale for rescission.⁹

ANALYSIS

The Board finds that OWCP has not met its burden of proof to rescind its acceptance of appellant's claim for major depressive disorder.

OWCP bears the burden of proof to rescind the acceptance of a claim.¹⁰ In establishing that the prior acceptance was erroneous, it must provide a clear explanation of the rationale for

⁴ *Supra* note 1.

⁵ 5 U.S.C. § 8128.

⁶ *D.R.*, Docket No. 16-0189 (issued September 2, 2016).

⁷ *See* 20 C.F.R. § 10.610.

⁸ *See D.V.*, Docket No. 16-0849 (issued March 6, 2017); *L.C.*, 58 ECAB 493 (2007).

⁹ *L.G.*, Docket No. 17-0124 (issued May 1, 2018); *W.H.*, Docket No. 17-1390 (issued April 23, 2018).

¹⁰ *D.V.*, *supra* note 8.

rescission.¹¹ The Board finds, however, that OWCP did not provide a sufficient rationale for its rescission.

On July 25, 2019 OWCP accepted appellant's claim for major depressive disorder. It found that she had established as compensable employment factors her difficulty with her workload requirements, completing assignments, meeting deadlines, and her reaction to her workload. By decision dated May 15, 2020, OWCP rescinded its acceptance of appellant's claim, finding that it had erroneously accepted the claimed employment factors. It determined that she had not submitted evidence in response to its proposed rescission of her claim that addressed the accepted factors. OWCP further generally found that appellant had not submitted evidence sufficient to corroborate the remaining claimed employment factors.

OWCP bears the burden to establish that the accepted employment factors were not compensable.¹² In its rescission decision, it provided a cursory description of appellant's allegations and summarily concluded that the allegations were not compensable. OWCP did not attempt to present evidence or argument in support of its rescission of her claim. Rather, it impermissibly shifted the burden of proof to appellant to establish compensable employment factors and an employment-related emotional condition.¹³ OWCP generally found that appellant had not submitted any evidence substantiating her claim that she had difficulty with her workload, completing assignments, and meeting deadlines. However, S.D., appellant's direct supervisor, confirmed in a March 8, 2019 notarized statement that staffing shortages affected appellant's workload, that appellant was required to work simultaneously on assignments with competing priorities, and that she worked in a location with higher numbers to reconcile than at other locations. S.D. also indicated that appellant had difficulty controlling her emotions with time-sensitive work. On February 20, 2020 she advised that appellant had to work irregular hours and more than an eight-hour workday due to a time zone differential. OWCP did not discuss this evidence or address why it was sufficient to support a rescission of appellant's claim. The reasons provided by OWCP for its rescission are not supported by the evidence.¹⁴ Consequently, OWCP failed to meet its burden of proof to rescind the accepted condition of major depressive disorder.¹⁵

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to rescind its acceptance of appellant's claim for major depressive disorder.

¹¹ *Id.* See also *S.R.*, Docket No. 14-1313 (issued January 22, 2015).

¹² See *R.B.*, Docket No. 12-455 (issued February 25, 2013).

¹³ See *T.Y.*, Docket No. 10-0231 (issued September 2, 2010).

¹⁴ See *D.V.*, *supra* note 8.

¹⁵ *Id.*; *V.C.*, 59 ECAB 137 (2007).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2020 decision of the Office of Workers' Compensation Program is reversed.

Issued: October 24, 2022
Washington, DC

Alec J. Koromilas, 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