

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

B.M., Appellant	)	
	)	
and	)	<b>Docket No. 11-1693</b>
	)	<b>Issued: February 6, 2012</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>ALEXANDRIA VETERANS</b>	)	
<b>ADMINISTRATION MEDICAL CENTER,</b>	)	
<b>Pineville, LA, Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 15, 2011 appellant filed a timely appeal from a June 14, 2011 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish that she sustained a stress-related condition in the performance of duty causally related to factors of his federal employment.

On appeal appellant generally asserts that her condition is employment related.

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On April 28, 2011 appellant, then a 58-year-old supply clerk, filed a traumatic injury claim. On April 27, 2011 she was working in a very stressful environment in the canteen which caused anxiety, a panic attack and right arm pain. Appellant stopped work that day. By letter dated May 11, 2011, OWCP advised her of the evidence needed to support her claim, and to submit a description of the employment-related conditions or incidents she believed contributed to her condition together with a narrative medical report. It also requested that the employing establishment respond to the claim. Appellant returned to regular duty on May 13, 2011.

In an April 27, 2011 report, Dr. Jose F. Andino, Board-certified in family medicine, noted that appellant was brought from employee health after developing visual acuity problems, headaches and dizziness. Appellant stated that she worked in a difficult and probably hostile environment due to staffing shortages and the demands of the job. Dr. Andino diagnosed an anxiety attack. In an April 28, 2011 treatment note, Dr. Brian C. Jobe, a Board-certified family physician, reported a history that appellant was working in a very psychologically stressful environment in the canteen that caused anxiety and physical symptoms of right arm pain. Appellant appeared anxious and tearful. Dr. Jobe diagnosed psychological stress and anxiety. Appellant was to follow-up with her primary care doctor for a cardiac evaluation. Dr. Jobe found that appellant could not work. On a form report, he checked that the illness was work related. Dr. Rajinder Verma, Board-certified in family medicine, provided reports dated May 9, 2011. He noted a history of stress at work. Dr. Verma provided physical examination findings, diagnosed acute anxiety and advised that appellant could return to full-time work on May 13, 2011. On May 13, 2011 Dr. Jobe noted appellant's report that her anxiety level had improved and she wanted to return to work. He diagnosed psychological stress secondary to work environment, and anxiety and advised that she could return to work with no restrictions.

By decision dated June 14, 2011, OWCP denied the claim. It found that, while appellant submitted medical evidence, she did not complete a statement describing the events that occurred on April 27, 2011 that caused her stress. Therefore, appellant failed to substantiate any compensable employment factors.

## **LEGAL PRECEDENT**

To establish her claim that she sustained a stress-related condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.<sup>2</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>3</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes

---

<sup>2</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>3</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>4</sup>

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*,<sup>5</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.<sup>6</sup> 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.<sup>7</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>8</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>9</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment on April 27, 2011. The evidence of record does not substantiate any compensable employment factors.

Appellant submitted medical evidence in which Drs. Andino, Jobe and Verma diagnosed anxiety, and Dr. Jobe related the condition to work stress. She was advised by OWCP on May 11, 2011 to submit a further description of the employment incidents and/or conditions that contributed to her stress. Appellant did not do so. Rather, she generally alleged stress due to her work environment in the canteen and possible staff shortages. The general assertion on appellant's claim form that she worked in a stressful environment is insufficient to substantiate any work factor as factual. In order to establish her claim, she must submit factual evidence identifying specific employment factors or incidents as having caused or contributed to her condition.<sup>11</sup> Appellant's allegation is nonspecific and there are no statements by any coworkers

---

<sup>4</sup> *Id.*

<sup>5</sup> 28 ECAB 125 (1976).

<sup>6</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>7</sup> *Lillian Cutler*, *supra* note 5.

<sup>8</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>9</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>10</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>11</sup> *Leslie C. Moore*, *supra* note 2.

or managers to substantiate any staffing shortages or the value of the work she performed. As she did not submit the requested information, she did not establish that she sustained a stress-related condition in the performance of duty. OWCP properly denied her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a stress-related condition in the performance of duty on April 27, 2011.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 6, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>12</sup> The Board notes that simultaneous with her appeal to the Board, appellant requested a review of the written record with OWCP. As noted by OWCP in an October 5, 2011 letter, the Board and OWCP may not have simultaneous jurisdiction over the same issues. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction. *A.J.*, Docket No. 10-619 (issued June 29, 2010). Appellant also submitted evidence with her appeal to the Board. The Board may not consider this evidence as its review of the record is limited to reviewing the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB 293 (2008).