

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

---

T.S., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,  
NORTH TEXAS HEALTHCARE SYSTEM,  
Dallas, TX, Employer

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 11-1997  
Issued: September 28, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2011 appellant filed a timely appeal from a July 22, 2011 decision of the Office of Workers' Compensation Programs (OWCP). 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 OWCP met its burden of proof to rescind acceptance of appellant's emotional condition claim.

**FACTUAL HISTORY**

On February 8, 2008 appellant, then a 42-year-old human resources assistant, filed a claim alleging a traumatic injury on January 11, 2008. She noted that the human resources

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

specialist under whom she worked had threatened to commit suicide. The employer controverted the claim, asserting that appellant voluntarily left her workstation and the premises that day and her condition did not arise from factors of her federal employment.<sup>2</sup>

In an April 9, 2008 statement, appellant noted that she worked in Human Resources (HR) as an assistant to Karen Miller, an HR specialist. On Friday, January 11, 2008, between 3:30 p.m. and 4:00 p.m., Patricia Hilsgen, the Chief of HR, called to inform appellant that Ms. Miller would no longer be working in HR.<sup>3</sup> Thereafter, appellant was called by Ms. Miller, who asked appellant to sign some change of beneficiary forms. The record reflects that, earlier that day, Ms. Miller received a notice of termination of employment and was not on the premises of the employing establishment at the time she called. Appellant noted that Ms. Miller was upset during their conversation, cried, yelled and threatened harm to herself. She told Ms. Miller to bring the forms and she would sign them.

Appellant notified Ms. Hilsgen of the conversation and was advised to contact Wanda Jackson, a coworker and friend of Ms. Miller who called back and told appellant that she would call when she arrived outside the back of the office building. Ms. Jackson arrived and walked with appellant outside to discuss the situation. Upon reentering the building, Ms. Hilsgen called to inform them that a psychologist from mental health was coming. Dr. Catherine Orsak, Associate Chief of Mental Health and a Board-certified psychiatrist, arrived and spoke to both employees. Appellant alleged that Dr. Orsak told her that she needed to get Ms. Miller to come inside the building in order that the psychiatrist could commit her.

When Ms. Miller arrived by car, appellant went outside to review and sign the beneficiary forms. She observed that Ms. Miller was distraught. When appellant realized the beneficiary forms were for Ms. Miller personally, she told Ms. Miller that she could not sign them. Ms. Miller became upset and stated that she wanted to go to the cemetery and kill herself.<sup>4</sup> Appellant thereafter discovered that Ms. Miller had a revolver in a shoebox on the console/armrest.

Ms. Jackson arrived and got Ms. Miller relocated to the passenger seat. Two police officers of the employing establishment approached the vehicle but did not attempt to apprehend Ms. Miller. Ms. Jackson told appellant that she and Ms. Miller were going for a ride. Appellant realized that Ms. Jackson was unaware of the gun in the vehicle and entered the back of the car. She moved the box with the gun towards her. Thereafter, Ms. Jackson and appellant drove with Ms. Miller for several hours.

Appellant related that no one told her how she should get Ms. Miller to come inside or whether the police would intervene. She stated that dealing with Ms. Miller was a horrific experience that caused panic attacks, memory loss and trouble sleeping with nightmares.

---

<sup>2</sup> The claim was initially denied by OWCP in a March 26, 2008 decision; however, it was reopened on April 2, 2008 as appellant was not allotted 30 days to submit evidence in support of her claim.

<sup>3</sup> Appellant's tour of duty was listed as 8:30 a.m. to 5:00 p.m.

<sup>4</sup> The record reflects that Ms. Miller's husband had died some nine months prior and was buried at a local national cemetery.

In a January 11, 2008 report, Ms. Jackson advised that at 4:40 p.m. she received a call from appellant, who informed her that Ms. Miller was on her way to the employing establishment. When she tried to telephone Ms. Hilsgen, who did not answer, Ms. Jackson called Ms. Miller, who was very upset. Ms. Jackson attempted to calm her down. She then went to meet with appellant, who told her that Ms. Miller had been let go and had told appellant that she had a gun. Appellant again called Ms. Miller, who told Ms. Jackson that she had a gun, could not take it anymore and hung up. Upon arrival, Dr. Orsak inquired if Ms. Miller had a gun. Ms. Jackson replied that she was not sure but that Ms. Miller had stated she did. When Ms. Miller arrived at the parking lot, appellant went outside. Ms. Jackson followed shortly behind and Dr. Orsak remained inside on the telephone. She heard Ms. Miller crying and appellant attempting to console her. Ms. Jackson went to the driver's side of Ms. Miller's vehicle, opened the door and hugged Ms. Miller. She consoled Ms. Miller and stated, "let's go for a ride and talk." Ms. Miller got into the passenger side. Ms. Jackson told appellant she was going for a ride and appellant entered the vehicle. They then left the employing establishment grounds.

In a January 11, 2008 report, Michelle Knight, a coworker, stated that she contacted Ms. Miller that day to discuss an employing establishment matter. Ms. Miller was very distraught as she had lost her husband, her children had problems and stated that her job was in jeopardy. She told Ms. Knight that she would stop by the employing establishment, go by the national cemetery to visit her husband's gravesite, and then murmured something and hung up. Ms. Knight contacted Mary Wilson, a supervisor, to discuss her concerns about Ms. Miller's well-being.

In a February 25, 2008 statement, Ms. Wilson controverted appellant's claim. An HR officer received a call from appellant at approximately 4:40 p.m., who related that she received a call from Ms. Miller who was bringing a change of beneficiary form to the office. Ms. Wilson stated that Ms. Miller had received a proposed removal from federal employment that day. Because she thought Ms. Miller might try to harm herself, Dr. Orsak was called. At about 4:50 p.m. Ms. Wilson received a call from Ms. Knight who reported that Ms. Miller was very upset. She maintained that, because appellant voluntarily entered Ms. Miller's vehicle and drove off the employing establishment grounds at 5:00 p.m., she was not in the performance of duty.

In a February 25, 2008 statement, Ms. Hilsgen stated that she contacted appellant on January 11, 2008 to inform her that Ms. Miller would not be coming to work for an extended period of time. Thereafter, she received a call from appellant telling her that Ms. Miller had called her, was upset and would drop-off beneficiary forms. Ms. Hilsgen told appellant to call Ms. Jackson. She then heard from Ms. Wilson that Ms. Knight had also called to report that Ms. Miller was upset and threatening to harm herself. Ms. Hilsgen called Dr. Orsak and asked that she check on Ms. Miller. Dr. Orsak told her that Ms. Miller had a gun and that Ms. Jackson had retrieved the gun and removed the bullets. Ms. Hilsgen related that Ms. Jackson and appellant drove around with Ms. Miller until around midnight. Appellant had not returned to work.

In reports dated February 21 and March 3, 2008, Dr. Gayle Smith-Blair, a Board-certified psychiatrist, reviewed a history of the January 11, 2008 incident in which appellant was with Ms. Miller from 4:00 p.m. to midnight. She diagnosed depression, anxiety and post-traumatic

stress disorder (PTSD). In a March 24, 2008 report, Linda A. Mims, a psychotherapist, stated that appellant was seen weekly since January 23, 2008 for PTSD and depression. Appellant was forced to ride in a car with a coworker who threatening suicide and had a gun. In an April 7, 2008 report, Dr. Jill Waggoner, a Board-certified family physician, related that appellant was asked to retrieve documentation from a suicidal coworker who was in a car with a gun. She diagnosed fear, anxiety, depression, helplessness and panic and advised that appellant was totally disabled due to this event.

In a January 14, 2008 report, received to the record on April 3, 2008, Dr. Orsak related that on January 11, 2008 she was contacted around 4:45 p.m. by Ms. Hilsgen about an employee who had been terminated and was upset. Ms. Miller told another employee that she wanted to harm herself after she filled out a new beneficiary form. After Dr. Orsak arrived, she spoke to appellant and Ms. Jackson, who reported that Ms. Miller had a gun and was out back in her car. While she was on the telephone calling the police for help, Ms. Jackson and appellant went outside. When Dr. Orsak went outside, they had gone. The police dispatcher told Dr. Orsak that an officer had observed a car with an upset female and two other females talking with her and that they all got in the car and left the premises.

On June 27, 2008 OWCP accepted appellant's claim for unspecified acute reaction to stress. Appellant filed a claim for compensation beginning January 14, 2008.

On July 9, 2008 OWCP proposed to rescind acceptance of the claim. It found that appellant was not required to interact with Ms. Miller regarding any matter on January 11, 2008. She was not instructed by any manager to engage or interact with Ms. Miller. As such, the incident did not arise in the performance of duty and any medical condition arising there from was not compensable under FECA.

On August 1, 2008 appellant disputed the statements submitted by Ms. Jackson, Ms. Wilson and Ms. Hilsgen. She stated that she began work with Ms. Miller in August 2007. When Ms. Miller called her on January 11, 2008, she assumed it was work related and that it was common practice to retrieve documents from locations other than regular work areas. Appellant was under the impression that Ms. Jackson was driving Ms. Miller to the emergency room when they drove away from the employing establishment.

In a June 10, 2008 report, Dr. Waggoner advised that appellant could return to work at half days in a different area. On July 17, 2008 Dr. Smith-Blair also advised that appellant could not return to her previous position in human resources, which could cause a setback.

In a September 4, 2008 decision, OWCP rescinded acceptance of appellant's claim finding that her injury did not arise in the performance of duty. It determined that she voluntarily got into a private motor vehicle with Ms. Miller and left the employing establishment's premises. OWCP noted that there was no corroborating documentation to establish that appellant was instructed by a manager or Dr. Orsak to interact with Ms. Miller upon her arrival at work.

Appellant requested a hearing that was held on December 18, 2008. She testified that she was told by Dr. Orsak to go outside and bring Ms. Miller into the building so that she could be committed. Appellant also stated that Ms. Miller was not allowed to enter the building. When

they drove away from the building, she thought that Ms. Jackson was driving Ms. Miller to an emergency room. Appellant stated that a policeman was standing behind Ms. Miller's car but did not do anything. They drove around and went to Ms. Miller's boyfriend's house. When they arrived, Ms. Jackson put the shoebox holding the gun in a grocery bag and relocated it under a car seat. Ms. Miller began drinking and, at one point went to the car and retrieved the gun. She and appellant had a tug-of-war over it. Later appellant was driven home, where she talked with house guests and her husband spoke with Ms. Miller. Appellant testified that she then got back in the car and returned to the house of Ms. Miller's boyfriend. She was then driven to the employing establishment to get her car. Appellant stated that she was upset and could not sleep. The next day she went to Ms. Miller's house to check on her. Since her panic attacks, she did not trust Ms. Hilsgen, Ms. Wilson, Ms. Jackson, or Ms. Knight and disputed their statements. Appellant also had confrontations with Dr. Orsak in the past. She was not allowed to return to work in human resources but worked as a secretary in nuclear medicine. Appellant's husband appeared and testified on her behalf. Appellant submitted additional treatment notes from Dr. Smith-Blair.

By decision dated March 4, 2009, an OWCP hearing representative affirmed the September 4, 2008 decision.

In a March 20, 2009 decision, OWCP denied appellant's claim for wage-loss compensation on the grounds that the claim had been denied.

On March 1, 2010 appellant requested reconsideration of the March 4, 2009 decision. She asserted that she was required to work with Ms. Miller on January 11, 2008 and her actions were within the performance of duty. Appellant submitted copies of e-mails regarding her job duties as HR assistant, employer suicide prevention policies, and treatment notes from Dr. Waggoner dated January 14 to December 3, 2008.

In a merit decision dated May 14, 2010, OWCP denied modification of the prior decisions.

On May 10, 2011 appellant again requested reconsideration. She asserted that in her position she was assigned to Ms. Miller, who called her on January 11, 2008 to process an official HR document. Appellant asserted that she was in the performance of duty when she walked outside to retrieve the documents from Ms. Miller. She reiterated that she was ordered to go outside by Dr. Orsak, and exposed to danger in the form of a gun. Appellant submitted a job description. In a February 23, 2009 report, Amy Dyer, a counselor, advised that appellant was admitted to an outpatient program for daily treatment. In an April 5, 2011 report, Dr. Waggoner advised that appellant had no psychiatric problems prior to January 11, 2008 when she was forced to ride in a car with a coworker who had a gun and was threatening suicide. In reports dated March 25, 2009 to April 14, 2011, Dr. Rajinder S. Shiwach, a Board-certified psychiatrist, advised that appellant was admitted to an outpatient program in February 2009 for diagnoses of major depressive disorder and PTSD. On June 14, 2011 he advised that she was totally disabled.

In a merit decision dated July 22, 2011, OWCP denied modification of the prior decisions.

## LEGAL PRECEDENT

Section 8128 of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.<sup>5</sup> The Board has upheld OWCP's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. The power to annul an award, however, is not an arbitrary one and an award for compensation can only be set aside in the manner provided by the compensation statute. OWCP's burden of justifying termination or modification of compensation holds true where OWCP later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, OWCP is required to provide a clear explanation of its rationale for rescission.<sup>6</sup>

In the compensation field, to occur in the course of employment, an injury must occur: (1) at a time when the employee may be reasonably said to be engaged in the master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of the employment or engaged in doing something incidental thereto.<sup>7</sup>

## ANALYSIS

On June 27, 2008 OWCP accepted that appellant sustained an unspecified acute reaction to stress on January 11, 2008. In a September 4, 2008 decision, it rescinded acceptance of her emotional condition claim.

The Board finds that OWCP properly determined that the rescission was appropriate because the record does not contain sufficient evidence to establish that appellant was in the performance of duty on January 11, 2008 when she left her office and drove away with Ms. Jackson and Ms. Miller. Appellant acknowledged that Ms. Hilsgen, the HR chief, called her earlier that day to inform her that Ms. Miller would no longer be working in HR. Although Ms. Miller called appellant and stated that she had some beneficiary forms to be signed, the record does not support that appellant's job required her to leave her workstation or meet with Ms. Miller upon her arrival. From the statements of record, appellant was very aware that Ms. Miller was upset and possibly armed. Ms. Hilsgen sent both Ms. Jackson, a friend of Ms. Miller, and Dr. Orsak, a psychiatrist, to meet with her. Appellant contends that she was in the performance of duty because Dr. Orsak ordered her to go outside and bring Ms. Miller into the building so she could be committed. This statement, however, was contradicted by Dr. Orsak, who related that, while she was on the telephone calling the police for help, Ms. Jackson and appellant went outside. By the time Dr. Orsak went outside, appellant and Ms. Jackson had departed the premises with Ms. Miller.

---

<sup>5</sup> 5 U.S.C. § 8128.

<sup>6</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>7</sup> *R.A.*, 59 ECAB 581 (2008).

Appellant asserted that she got into the car with Ms. Jackson and Ms. Miller because Ms. Jackson was not aware that Ms. Miller had a gun. Ms. Jackson, however, reported that both appellant and Ms. Miller told her that she had a gun. Further, Ms. Jackson told Dr. Orsak that Ms. Miller had a gun. When Ms. Jackson had Ms. Miller move to the passenger seat and told appellant they were going for a ride, appellant was standing outside the vehicle and the police were close by. Instead of informing the police that Ms. Miller had a gun, appellant entered the car. While she thought Ms. Jackson would drive to an emergency room, there is nothing in the record to support this assumption. Appellant described the events after they left the employing establishment premises, noting that they rode around for a number of hours, went to the home of Ms. Miller's boyfriend, then to appellant's house where they visited with guests and appellant's husband, and then back to the house of Ms. Miller's boyfriend. Finally that night, she was driven to the employing establishment to pick up her car.

The Board finds that the documentary evidence does not support that appellant was instructed by any manager or Dr. Orsak to leave the building in which she worked, to enter Ms. Miller's car or leave the employing establishment premises. The evidence does not establish that appellant was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.<sup>8</sup> While her personal motives to help Ms. Miller are commendable, her actions did not arise in the performance of duty. For these reasons, OWCP provided sufficient justification for the rescission of acceptance of her claim.<sup>9</sup>

### CONCLUSION

The Board finds that OWCP met its burden of proof to rescind its acceptance of appellant's claim for an acute reaction to stress.

---

<sup>8</sup> *Id.*

<sup>9</sup> *D.G.*, 59 ECAB 734 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2012  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board