



## **FACTUAL HISTORY**

On January 30, 2012 appellant, a 43-year-old facility revenue technician, completed a traumatic injury claim (Form CA-1) alleging that on December 30, 2011 an “[a]ngry veteran came into our work area and was threatening to shoot us if we did not return his money. A coworker heard veteran state that he had a gun.” Appellant alleged that he suffered from stress due to this employment incident.<sup>2</sup>

OWCP requested further information regarding the incident from appellant and the employing establishment. Appellant forwarded a statement dated January 10, 2012 wherein he stated that on December 30, 2011 he was in his office when a veteran came to the office and he assisted him. Appellant noted that the veteran was loud and was upset and had red eyes. He indicated that the veteran walked away for a moment so he could calm down and came back and told him that his money was taken from him by the employing establishment. Appellant indicated that he looked in the system and noticed nothing had been taken from his account, so he made a call, and told the veteran he was waiting for a return call. He noted that at that time a couple of other employees tried to get his attention, and that he then left his cubicle and went to them. They told him that the veteran he was assisting had a gun and that they heard him talking in the bathroom saying that if he did not get his money back that very day he was going to kill someone and that the police had been called. Appellant noted that when he turned around he saw many police in the hallway with their guns drawn making signs to each other, and that all of a sudden they went into his cubicle and tackled and handcuffed the veteran. He indicated that after the incident he could not stop shaking.

Official reports by the employing establishment and the police were received by OWCP. A December 30, 2011 document entitled “VHA Issue Brief,” authored by the Acting Assistant Medical Center Director, noted that on that date a veteran who was meeting with a patient billing representative, was arrested by the police for the employing establishment for making a verbal threat to do bodily harm with an alleged concealed handgun. The report noted that the veteran was previously in the men’s restroom and remarked to an employee that he had a gun and had better get the money he was owed and that the employee alerted the employing establishment’s police. The police responded with multiple officers securing the area and entering the restroom, but the veteran was found in the patient billing office and was clearly aggressive and making verbal threats to the employee. The report indicated that the veteran was physically restrained and arrested. The report noted that after a thorough search, no weapon was found. The veteran was charged with threat to do bodily injury. The report indicated that a routine health examination would be conducted prior to releasing the veteran, and that the employees involved were seen in employee health and were subsequently excused from duty for the remainder of the day.

The employing establishment responded to OWCP’s request for further information with a letter dated February 27, 2012 from Carol A. Hitz, Acting Facility Revenue Manager. She agreed that the incident of December 30, 2011 took place and that appellant had been conducting his normal workday requirements in the revenue office, by providing face-to-face and telephonic customer service care with a particular focus on issues related to billing and payments. She

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<sup>2</sup> An occupational disease claim had been filed on appellant’s behalf on January 13, 2012. This claim was not signed by appellant, a witness, a supervisor or any other party.

further agreed that the incident involved a veteran patient who was upset about having his disability checks garnished for nonpayment of bills. Ms. Hitz agreed that appellant was the individual who was assisting the upset veteran but in light of the fact that appellant was never directly threatened or overheard the veteran state he had a weapon and was planning on harming anyone, and that appellant had no knowledge of the veteran's alleged intentions until after he excused himself from the office at the request of other employees, it did not believe the incident warranted a permanent disability. She further described the position in which appellant had been assigned and noted that appellant had completed training on December 10, 2010 on handling conflict in the workplace.

In a Uniform Offense Report by the police for the employing establishment, Officer Ricks indicated that Henry Williams was charged with disorderly conduct for the incident that occurred on December 30, 2011. The police narrative also indicated that on December 30, 2011 at 10:34 a.m., the dispatcher received numerous Lynx panic alarm notifications and several telephone calls from employees on the 5<sup>th</sup> floor of the Taylor Pavilion stating that there was a man with a gun in the men's room stating that he was going to shoot someone if he did not get his money. Officer Ricks also noted that there were calls placed to the police stating that there was a man near room 5222 of the 5<sup>th</sup> floor of the Taylor Pavilion with a gun in his hand. All available police personnel were dispatched. Officer Ricks indicated that the police approached the cubicle and noted they "observed the veteran calmly sitting in a chair looking down at his cell phone, as he held it in both hands, with his back positioned to us unaware of our presence." The report continued that the police then entered the cubicle quietly, applied a wrist grab to take down the suspect, and Mr. Williams was subdued and placed in hand cuffs. The police canvassed the area for a weapon or other evidence but this met with negative findings. The report detailed the witness statements of Leslie Barnett, Aaron Sims and Robert Hayes, all of whom had notified the police of the situation. The statements indicated that Mr. Sims and Mr. Hayes encountered the veteran in the men's room and that he had made threats about getting his money. Mr. Hayes indicated that the veteran stated that he was going to hurt someone with his "Gat." Ms. Barnett indicated that she heard from another employee that the veteran had a gun and she called 911. She noted that, when she talked to the dispatcher, she was informed that the police had been dispatched to the area.

By letter dated April 16, 2012, OWCP asked appellant and the employing establishment for further clarification on the incident, particularly whether the veteran had been directly threatened by the veteran.

In response, appellant submitted two statements from colleagues that were in his area when the incident occurred. In a January 3, 2012 statement, Marilyn Eldridge stated that, on December 30, 2011, she heard a veteran loudly inquire if this was the MICCP department. She stated that appellant assisted the veteran. Ms. Eldridge indicated that she overheard the veteran state that the agency took money from him and that appellant told him he needed to calm down. She then noted that she went out of her cubical to talk to "Evelyn [a colleague]" about the monthly report when she noticed two employees walking back and forth looking into cubicles. When Ms. Eldridge inquired as to what was wrong, one of them told her that the guy with appellant had a gun and that the veteran had stated that the employing establishment took out all his money from a check and left him with only \$40.00. If he did not get the money back the veteran said he was going to kill someone. She noted that she began to think of the safety of her coworker, appellant, because there was only one way out and that he would have to get pass the

veteran to get to safety. Ms. Eldridge called appellant over and informed him of the situation. She noted that she then saw the police in the hallway with their guns drawn, speaking to each other with hand gestures. Ms. Eldridge then heard the veteran scream and tell the police that he did not have a gun. When she got back to her seat, she was shaking and began to cry. Ms. Eldridge noted that the employing establishment closed the office for the remainder of the day.

In a January 4, 2012 statement, Evelyn Wilborn stated that on December 30, 2011 at about 10:00 a.m., she saw the veteran speaking with appellant. At one point appellant had come to her cubicle to get a telephone number but then returned to his cubicle. Ms. Eldridge came over to see Evelyn and they started to talk about reports when the Secretary for the Chief informed her that the veteran that appellant had in his cubicle had a weapon and that security had been called. Ms. Wilborn noted that Ms. Eldridge called appellant back to the cubicle to inform him of what was happening and that they could see security approaching. They were later informed to leave. She noted that she turned and saw security taking the veteran to the floor. Ms. Wilborn noted that Ms. Eldridge was shaking and was terrified.

The employing establishment submitted a May 9, 2012 letter from Loretta M. Gulley, Director, who noted having reviewed appellant's statements and the police reports of the incident. Ms. Gulley noted that, "According to [appellant's] statement, he was not threatened by the veteran. He was not aware of the veteran's alleged statement that he had a gun. [Appellant] only became aware of the alleged statement after he was called into the hallway and informed by [other] employees. According to [his] statement, when he turned back to his office, [employing establishment] police officers were on the scene." She agreed that the incident occurred but again argued that the incident did not warrant a disability because appellant was never directly threatened, the interactions took place in a well-lit, open area with easy egress, and that there were supervisors as well as other staff available nearby to assist, if necessary. In light of that, the employing establishment did not concur that the incident warranted a permanent disability.

By decision dated May 22, 2012, OWCP denied appellant's claim. It determined that as appellant failed to establish that he was directly threatened by the veteran during his work activities, any emotional response would be considered self-generated and that therefore appellant did not establish an employment factor.

On June 1, 2012 appellant requested reconsideration.

By decision dated July 12, 2012, OWCP denied appellant's request for reconsideration without conducting a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>3</sup>

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<sup>3</sup> See *Debbie J. Hobbs*, 43 ECAB 135, 144 (1991).

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her 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 his or her employment or engaged in doing something incidental thereto.<sup>4</sup>

Workers compensation law does not apply to each and every illness that is somehow related to an employee's employment. There are situations where an injury or 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 regular or specifically assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>5</sup> 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 his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>6</sup>

Appellant has the burden of proof to establish by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation, was caused or adversely affected by employment factors.<sup>7</sup> This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions, for which compensation is claimed.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In his claim, appellant stated that an "[a]ngry veteran came into our work area and was threatening to shoot us if we did not return his money to him. A coworker heard the veteran state that he had a gun." Appellant claimed stress "from threats from angry veteran." Although appellant claimed he had been threatened by the veteran, the facts reflect that appellant only learned of the threats the veteran had made after the fact. It was not until after the police had handcuffed the veteran that appellant learned of any danger from the coworker.

There are many witness statements with regard to this incident, a police report and a report by the employing establishment. These statements and reports confirm that appellant was unaware of the situation until the threat had been removed, *i.e.*, the police had removed the veteran from the office. Officer Ricks indicated that the veteran was later charged with disorderly conduct. There was no weapon found on the veteran or in his vehicle.

The Board finds that appellant's reaction to the situation after the threat had already been removed by the police was self-generated and did not arise out of or in the course of employment

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<sup>4</sup> *L.G.*, Docket No. 09-276 (issued August 11, 2009); *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>6</sup> *See Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *id.* at 131.

<sup>7</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>8</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

and thus is not a compensable employment factor.<sup>9</sup> The fact that an employee learns of a situation after the fact and sustains an emotional condition, does not, in and of itself, provide the necessary nexus to establish that the emotional condition occurred while in the performance of duty, as required by FECA.<sup>10</sup>

The Board finds that appellant's emotional condition is not compensable as it resulted from his reaction to the subsequent revelation that there might have been a threat, rather than from his day-to-day duties, specially assigned duties, or any other requirement imposed by his federal employment.

For the foregoing reasons, the Board finds that appellant has not established any compensable employment factors under FECA and has not met his burden of proof to establish an emotional condition in the performance of duty.<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered; or by constituting relevant and pertinent evidence not previously considered.<sup>12</sup> Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case for merit review.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

In support of his request for reconsideration, appellant submitted pages from a statement which restated the facts and expressed his feelings surrounding the event.

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<sup>9</sup> See, e.g., *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998). In that case, the Board found that appellant's condition arose from the knowledge that her grandson, coworkers and acquaintances had died in the Oklahoma bombing, rather than from the performance of her day-to-day duties, specially assigned duties or any other requirement imposed by her employment. See also *Donna C. Lewis*, Docket No. 04-2051 (issued April 25, 2005). Appellant learned later that students she had earlier approached in the school gymnasium had a loaded gun. As appellant's reaction was to the subsequent revelation about the gun, rather than from her day-to-day duties, the Board found appellant's reaction to be self-generated and not compensable; *L.G.*, *supra* note 4, where the Board found, *inter alia*, that an air traffic controller's emotional reaction to a proximity event and an operational error involving aircraft was not compensable where he was present in the room but did not have operational responsibility for the aircraft involved. Cf. *A.C.*, Docket No. 12-1050 (issued December 28, 2012) where the Board found a compensable factor a controller's emotional reaction to a possible conflict of separation guidelines where he was responsible for the aircraft involved and attempted to resolve the conflict. He was later disciplined for his role in the incident.

<sup>10</sup> See *id.*

<sup>11</sup> As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

<sup>12</sup> 20 C.F.R. § 10.606(b). See *Charles A. Jackson*, 53 ECAB 671 (2002).

<sup>13</sup> *Id.*

The Board finds that the statement is essentially duplicative of his prior statements already of record. Appellant has not shown that OWCP erroneously applied or misinterpreted a point of law, has not advanced a relevant legal argument not previously considered, or submitted relevant, new evidence in support of his request for reconsideration. The Board finds that OWCP did not abuse its discretion by denying further merit review of his claim.

**CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish a compensable factor of employment and the Board finds that OWCP properly denied a merit review of appellant's claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 12 and May 22, 2012 are affirmed.

Issued: August 16, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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