

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

C.H., Appellant)

and)

U.S. POSTAL SERVICE, MORGAN)
PROCESSING & DISTRIBUTION CENTER,)
New York, NY, Employer)

**Docket No. 14-37
Issued: March 27, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2013 appellant filed a timely appeal from a September 3, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained an emotional condition in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, appellant described a series of incidents in which coworkers struck or swore at her.²

FACTUAL HISTORY

On June 24, 2013 appellant, then a 51-year-old district operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that she sustained stress with consequential hypertension due to a June 21, 2013 incident that occurred at 8:00 p.m.

In a July 2, 2013 letter, the employing establishment controverted the claim, asserting that appellant was able to manage the postal operation without difficulty from 8:00 p.m. on June 21, 2013 through the end of her work shift at 2:00 a.m. on June 22, 2013. Appellant did not report the incident until June 24, 2013.

In a July 25, 2013 letter, OWCP advised appellant of the evidence needed to establish her claim, including a complete description of the alleged June 21, 2013 incident together with factual corroboration and witness statements. It also requested a statement from her attending physician explaining how and why the June 21, 2013 incident caused the claimed emotional condition. Appellant was afforded 30 days to submit such evidence.

In support of her claim, appellant submitted a July 29, 2013 statement asserting that she was able to complete her work shift on June 21, 2013 but did so while stressed. She mentioned an “assault by an employee” and that she was “cursed out by another employee” when reprimanding them for failing to follow instructions. Appellant also submitted reports dated June 24 to July 17, 2013 from Dr. Barry A. Baker, an attending Board-certified internist, who held appellant off work due to an anxiety disorder, hypertension and cardiac issues which he attributed to unspecified work stress.

By decision dated September 3, 2013, OWCP denied appellant’s claim on the grounds that fact of injury was not established. It found that she did not submit a sufficient description of the claimed June 21, 2013 incident or any witness statements corroborating what had occurred. OWCP further found that appellant failed to describe additional workplace incidents involving any physical assault or verbal altercation.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the

² Appellant submitted new evidence accompanying her request for appeal. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to OWCP accompanying a request for reconsideration.

employment injury.³ 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.⁴

Where disability results from an employee's 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.⁵ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ 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.⁷

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing 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.⁸ If a claimant implicates 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, OWCP must base its decision on an analysis of the medical evidence.⁹

ANALYSIS

Appellant alleged that she sustained an emotional condition due to an incident or incidents occurring on June 21, 2013. She noted in general that she was assaulted by one employee and cursed at by another; however, appellant did not provide a detailed description of the incidents of June 21, 2013, or any factual evidence that the incidents took place at the time, place and in the manner alleged.

The Board notes that OWCP advised appellant by a July 25, 2013 letter of the need to provide a complete description of the claimed June 21, 2013 incidents, together with factual evidence or witness statements corroborating her account of events. Appellant did not submit such evidence. The employing establishment's statement noting that appellant finished her work shift on June 21, 2013 and did not report an incident until June 24, 2013 casts doubt on her claim. Appellant submitted insufficient evidence to establish that the claimed June 21, 2013

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *Effie O. Morris*, 44 ECAB 470 (1993).

⁸ *See Norma L. Blank*, 43 ECAB 384 (1992).

⁹ *Marlon Vera*, 54 ECAB 834 (2003).

incident was factual.¹⁰ The Board therefore finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty as alleged.

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.

CONCLUSION

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2013 is affirmed.

Issued: March 27, 2014
Washington, DC

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

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

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

¹⁰ *Effie O. Morris*, *supra* note 7.