

FACTUAL HISTORY

On April 30, 2013 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim alleging post-traumatic stress disorder and agoraphobia as a result of her federal duties. When asked to explain the relationship of her condition to her employment, she stated that she had a strong dislike for barking dogs; could not tolerate the pain in her arms, leg and back; and could not tolerate micromanagement by her managers trying to make her work faster.

Appellant noted a prior incident when, on August 12, 1992, she was mauled by a dog while delivering mail. She described the details of the attack and the aftermath.² Appellant discussed an employment-related motor vehicle accident on September 22, 2012. On that date, while delivering mail, she made a right turn onto a street and noticed two girls riding bikes on the wrong side of the street towards her. Appellant slammed on her brakes, but a six-year-old girl struck her vehicle. She was driving approximately five miles per hour (mph) at the time of the accident. Appellant's supervisor, Tony Johnson, arrived at the scene of the accident as did the police. After the accident, appellant secured her truck, provided a statement and reminded Mr. Johnson that she was to start vacation on Monday. Mr. Johnson responded that she would be on administrative leave. Appellant left for several days to clean out her late mother's house. When she returned, her husband informed her of a letter that stated that she had been placed in an off-duty status without pay. Appellant stated that she was stunned that she was placed on an indefinite suspension pending her removal. Her panic attacks resumed when she realized that the employing establishment was trying to fire her after 26 years.

Appellant described difficulties with her suspension from work, filing for unemployment and appealing the emergency placement decision. She alleged that the witness statements provided by the employing establishment with regard to the accident were false, and that she became obsessed with proving her case. Appellant discussed the stress caused by meeting deadlines with regard to the arbitration process. She stated that she won the arbitration decision but was not satisfied as the suspension should never have occurred. Appellant won the arbitration decision and was told to report to work the next day, but was advised by telephone and not in a formal letter. She stated that this caused confusion as she received a letter from the employing establishment forbidding her to enter the postal establishment except in the lobby. When appellant returned to work, she experienced panic attacks and had difficulty going out in public. She also discussed her family situation. Appellant indicated that she spent hours each day doing paperwork with regard to the motor vehicle accident and was behind in her housework, which bothered her husband. Her husband was depressed and they had financial problems due to the suspension. Appellant's youngest son also returned from Iraq with a back injury and post-traumatic stress disorder. Other than her husband's depression and her son's illness, the majority of her stress was caused by the issues with regard to the employing establishment.

By letter dated June 3, 2013, the employing establishment controverted appellant's claim. It submitted multiple statements from employees with regard to the September 22, 2012 accident

² Appellant had a prior claim, OWCP File No. xxxxxx020, that was accepted for multiple dog bites. In pleadings with regard to her current claim, she discusses the dog bites incident and resulting panic attacks.

and other matters. In a May 23, 2013 statement, Arnez Mayberry advised that he was the manager of customer service operations for the prior three years. He did not manage any letter carrier nor had ever managed appellant's day-to-day operations. Mr. Mayberry was not aware of the 1992 dog attack, but was aware that appellant was involved in a motor vehicle accident and was terminated. Appellant's removal went to arbitration and the arbitrator ruled in her favor. Mr. Mayberry was informed that she reported back to work, informed her manager that she could not perform her work duties and left work. He noted that appellant had not returned. In a May 31, 2013 note, Mr. Johnson stated that he was appellant's station manager for six months from April to October 2012. He was not her manager in 1992 but was her manager at the time of the May motor vehicle accident. Appellant was immediately placed off work pending investigation and relieved of her duty. Mr. Johnson noted that she grieved the removal and recovered her job. In a statement dated May 30, 2013, Deborah Carter stated that she supervised appellant from February 12 to May 12, 2013 and that appellant was very helpful. During that time, appellant never reported or showed any symptoms of panic attacks nor was harassed. On June 6, 2013 Pamela Floyes, a manager, stated that she first met appellant when she reported to duty on February 16, 2013 after receiving her job back following arbitration. She did not know that appellant returned to work until another carrier came to her desk and informed her that appellant was having an anxiety attack. Ms. Floyes spoke with appellant, who informed her that she could not stay and work.

The employing establishment also submitted statements relevant to its investigation of the motor vehicle accident. A September 22, 2012 joint statement, signed by Justin Baxter and Bernie Sauce, noted that the carrier made the corner at about 15 mph. A little girl was stopped in the street and the other girl went into the grass as carrier was turning right. The statement noted, "I observed her head down as she was looking at or was doing something to the mail." After the collision with the mail truck, one girl took off running and they picked the other girl up from the street and carried her to her parents. In an October 11, 2012 statement, Mr. Johnson advised that he typed the joint statement for Mr. Baxter and Mr. Sauce. He did not know the location where Mr. Baxter and Mr. Sauce observed the accident. Mr. Johnson did not know why Mr. Sauce did not give a statement to the police or why Mr. Baxter's statement did not match the one he provided the police on the scene.

In statements dated October 1 and 11, 2012, appellant advised that she was delivering mail when she noticed that Mr. Sauce and his wife were washing the vinyl siding of their home. She stated that Mr. Sauce's house was not directly in front of the intersection where the accident occurred. Appellant stated that two girls were heading straight for her on the wrong side of the road. One tried to avoid her to the right while the other passed on the left. Appellant could not swerve to avoid the collision and applied her brakes. She was driving less than five mph. Appellant denied looking down or "doing something with the mail." She wore trifocal lenses and may have moved her head to adjust her vision for seeing medium to far distances. Appellant saw a flash of blonde hair behind the pine tree on the corner. There were many children out that day, so she was looking right and left in the mirrors. Appellant also submitted an October 3, 2012 note signed by Bobbie and James Lacy, Sr., who stated that appellant was cautious and did not speed on the street.

An Alabama Uniform Traffic Crash Report was submitted for the September 22, 2012 accident. The police officer noted that a six-year-old cyclist was riding her bike south bound on

the wrong side of the road. He spoke with several residents but only one witnessed the incident. The police officer noted a blind spot on the corner. In a witness statement, Mr. Baxter stated that the mail lady was headed down Holden Drive and turned right on Holden North when she struck the little girl. On September 24, 2012 the employing establishment placed appellant on emergency placement in an off-duty status without pay. Appellant was instructed that she could not enter any postal facility, other than the lobby area, without the authorization of a postal supervisor or manager. Latonia P. Johnson, the manager, explained that the action was being taken due to the September 22, 2012 accident. Appellant was given instructions for grieving the action.

Appellant grieved the suspension. On October 18, 2012 the employing establishment argued that the emergency placement was for just cause as she failed to observe safety rules and regulations. The union responded that it was an unfortunate accident. On February 11, 2013 an arbitration award was issued. The arbitrator noted that appellant had been employed for 25 years. On September 22, 2012 appellant was in a motor vehicle accident when she struck a child on a bicycle when making a right turn in her postal vehicle. She was immediately placed in a nonpay status and a notice of removal was issued on October 5, 2012. After reviewing the evidence, the arbitrator found insufficient evidence between September 22 and 24, 2012 that remotely suggested that appellant was at fault for the automobile accident. Therefore, appellant was improperly placed on emergency placement by her managers. The arbitrator described the emergency placement as a “knee jerk” reaction that was not based on any evidence at the time of the accident. The arbitrator noted multiple deficiencies in witness statements and noted they were contradicted by the police report. The skid marks at the accident scene supported the police report that appellant was travelling at five mph at the time of the accident. The arbitrator stated that the employing establishment predetermined the outcome of case prior to any investigation taking place and that the employee’s subsequent investigation was clearly partial at best. Appellant determined that had management properly considered all the pertinent facts of the case, the notice of removal would not have issued. The arbitrator directed that the emergency placement and notice of removal be expunged from appellant’s record and she be reinstated to her position and made whole.

By decision dated October 3, 2013, OWCP denied appellant’s claim. It found that she had not established a compensable factor of employment. As noted, the dog bite incident was fully considered in a decision in OWCP File No. xxxxxx020 and appellant was paid compensation, OWCP determined that the only remaining issue regarded the September 22, 2012 motor vehicle accident, finding that she did not establish any administrative error.

LEGAL PRECEDENT

To establish a claim that he or she sustained an emotional condition in the performance of duty, an employee must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.³ Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁴ There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.⁵ Where the disability results from an employee's emotional 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.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁷ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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 and which working conditions are not deemed factors of employment and may not be considered.¹⁰ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.¹¹ 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.¹²

³ 20 C.F.R. § 10.5(q).

⁴ *L.D.*, 58 ECAB 344 (2007).

⁵ *A.K.*, 58 ECAB 119 (2006).

⁶ 5 U.S.C. §§ 8101-8193. *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *See William H. Fortner*, 49 ECAB 324 (1998).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *D.L.*, 58 ECAB 217 (2006).

¹¹ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

¹² *Robert Breeden*, 57 ECAB 622 (2006).

ANALYSIS

OWCP found that appellant should have filed a claim for traumatic injury for the accident that occurred on September 22, 2012. Appellant alleged that she sustained an emotional condition due to various factors that occurred over a period of time, not simply the date of the motor vehicle accident. The Board notes that she did not allege that she sustained an emotional condition as a direct result of the September 22, 2012 accident; rather, she attributed her emotional condition to the aftermath of the accident, *i.e.*, the fact that the employing establishment initiated disciplinary action including emergency placement and suspension to be followed by possible termination from her employment. Appellant also challenged the manner in which she was told to report to work after the arbitration decision was issued. As her emotional condition developed over a period of more than one work shift, her claim is appropriately considered one for occupational disease rather than traumatic injury.¹³

The Board notes that appellant did not attribute her emotional condition to the performance of her regular or specially assigned duties as a letter carrier under *Lillian Cutler*.¹⁴ Although appellant made a general allegation with regard to her fear of dogs following a 1992 incident in another claim, she did not provide specific evidence with regard to incidents pertaining to her work duties. Rather, she contends that her emotional condition was related to actions taken by the employing establishment following the September 22, 2012 motor vehicle accident.

Appellant made specific allegations regarding administrative and personnel actions with regard to administrative discipline by her managers after the September 22, 2012 accident. After reviewing the evidence of record including arguments by the employing establishment and appellant, witness statements, the police report and the arbitrator's decision, the Board finds that she has established a compensable factor with regard to error by the employing establishment in the discipline following the accident.

In *Thomas D. McEuen*,¹⁵ the Board held that an employee's emotional reaction to administrative or personnel matters by the employing establishment is generally not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁶

¹³ *T.A.*, Docket No. 09-109 (issued February 24, 2009).

¹⁴ *Supra* note 6.

¹⁵ *Supra* note 7.

¹⁶ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

The Board has previously considered whether a finding by an arbitrator that the employing establishment acted improperly in a disciplinary matter established a compensable factor of employment. In *T.G.*,¹⁷ the employee claimed an emotional condition as a result of issuance of a notice of removal and then the reduction of the punishment to a 105-day suspension without pay. The employee submitted an arbitrator's decision reducing the suspension to seven days, finding that the employing establishment's response to the employee's misconduct was excessive. The Board found that the employee established a compensable factor of employment. The record established that, although the employee's actions were worthy of discipline, the arbitrator found that the notice of removal was inappropriate as the employee had no prior disciplinary action in his record and the employing establishment did not establish two of the charges against the claimant.¹⁸ In *R.G.*,¹⁹ the employing establishment indefinitely suspended the employee for filing a false tax return and fraudulent bankruptcy petition; but the arbitrator found that the suspension was premature as the tax investigation was still in process. The Board found that the decision by the arbitrator constituted sufficient evidence to establish the employing establishment erred in prematurely suspending the employee from work. There was no evidence of record that the employee had committed fraud at the time he was suspended. Accordingly, the Board found that the claimant established a compensable factor of employment pertaining to error in the administrative action of his suspension.²⁰ In *Prentis Rucker, Jr.*,²¹ the arbitrator found that the employing establishment improperly issued claimant a letter of warning; and the Board determined he established a compensable factor of employment.

On September 22, 2012 appellant was delivering mail when a six-year-old girl on a bicycle collided with her postal vehicle. The employing establishment immediately placed appellant in a nonpay status and a notice of removal was issued on October 5, 2012. The matter went to arbitration. The arbitrator faulted appellant's managers in suspending her, forbidding her entry to the work site and proposing her removal following the accident. In a February 11, 2013 award, the arbitrator determined that there was no evidence to suggest that appellant was at fault in the motor vehicle accident. Accordingly, appellant was erroneously placed on emergency leave. The arbitrator cited to numerous defects in the statements by witnesses for the employing establishment, and noted that, if management had considered all the pertinent facts of the case, the notice of removal should never have issued. The Board finds the arbitrator's decision constitutes persuasive evidence that the employing establishment erred in suspending appellant.²²

The evidence of record establishes that the administrative discipline by appellant's managers were not reasonable. Accordingly, the Board finds that appellant has established a compensable factor of employment.

¹⁷ Docket No. 11-1176 (issued December 22, 2011).

¹⁸ *Id.*

¹⁹ Docket No. 10-947 (issued April 25, 2011).

²⁰ *Id.*

²¹ Docket No. 05-1843 (issued January 20, 2006).

²² *See R.G.*, *supra* note 19.

The case will be remanded to determine whether appellant sustained a medical condition causally related the established compensable factor of employment. Therefore, OWCP should issue a *de novo* decision on this matter.

CONCLUSION

The Board finds that this case is not in posture for decision. As appellant has established a compensable factor of employment, OWCP must review the medical evidence. After such further development as deemed necessary, OWCP shall issue a *de novo* decision on this matter.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 3, 2013 is set aside, and the case remanded for further proceedings consistent with this decision.

Issued: October 21, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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