



## **FACTUAL HISTORY**

On July 31, 2015 appellant, then a 61-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging stress and tremors on May 10, 2015. He noted that his disease began in 2010 following an interrogation by a diplomatic security agency. On May 10, 2015 appellant's supervisor told him that he was immediately terminated and to leave the premises. Appellant's tremors became uncontrollable on May 15, 2015. The employing establishment related that he was terminated from employment on May 21, 2015. Appellant's supervisor, Alan Weller, indicated that appellant had not claimed a medical emergency and was granted time to gather his belongings and was escorted from the building.

A May 21, 2015 partial report from the emergency department of Holy Cross Hospital indicated that appellant presented at 12:52 p.m. to the emergency department with shaking in his arm and legs. The report indicated that appellant had a history of Parkinson's disease.

In an August 13, 2015 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence, including a detailed narrative report from his physician which included a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed conditions. Appellant was afforded 30 days to submit such evidence. He was also requested to complete a questionnaire explaining how his employment contributed to his preexisting Parkinson's disease.

In response to the development letter, OWCP received a claim for compensation (Form CA-7), for the period beginning May 10, 2015; an April 20, 2015 reasonable accommodation request; an April 2, 2013 statement regarding disability/reasonable accommodation; a September 26, 2011 statement from Helen Jones, a licensed certified social worker, to appellant encouraging the consideration of a transfer for appellant; and a May 30, 2013 statement from appellant to Patricia M. Pittarelli regarding accommodations.

In an August 20, 2015 statement, appellant alleged that there was mobbing and group bullying within the passport services office. He claimed that the effect of the unnecessary stress and the psychological violence he endured resulted in Parkinson's disease, central retinopathy, essential tremors, and depression. Appellant alleged that several requests for transfers, supported by four doctors, were ignored. On May 21, 2015 he was terminated from employment based on false allegations of improper personal conduct and failure to complete an assignment. Appellant indicated that he started to have uncontrollable tremors in both his upper and lower extremities and went to the emergency room for treatment. He claimed that his supervisor lied and claimed that he was in an altercation with him when the tremors started. Appellant alleged that he was exposed to all sorts of psychological atrocities after he questioned errors and omissions during his annual review in 2003. He claimed the employing establishment prevented him from having access to crucial supporting documents. Appellant alleged his supervisor would impose assignments he knew were detrimental to his medical condition and he was denied reasonable accommodations. He alleged that he was isolated for more than seven years. Appellant indicated that his tremors first started in 2008 and became permanent in 2010 after an interrogation with two diplomatic security agents, which he claims turned out to be "a mental water-boarding," where he was grilled with false accusations and threats.

A July 28, 2015 notice of approval from the Florida Department of Economic Opportunity reemployment assistance program indicated that appellant was discharged for reasons other than misconduct connected with work and was eligible to receive benefits for the period beginning May 17, 2015.

May 21, 2015 test results from Holy Cross Hospital Laboratory were received along with a completed May 21, 2015 emergency room report noting appellant had preexisting Parkinson's disease.

In a February 23, 2015 report, Dr. Corneliu C. Luca, a neurologist, evaluated appellant and diagnosed essential tremors/Parkinson's disease stage 2 and mood disorder.

Earlier medical reports submitted document that appellant has other medical conditions which the physicians considered to be stress related. In a January 15, 2014 report, Dr. Joel Sandberg, a Board-certified ophthalmologist, indicated that appellant had stress-related central retinopathy and recommended that he work in a less stressful work environment.

In a March 6, 2013 report, Dr. Melvin M. Grossman, a neurologist, indicated that appellant suffered from an essential tremor and that anxiety and stress were major provocateurs of this tremor. He indicated that there was no medical reason for the essential type of tremor. Magnetic resonance imaging (MRI) scans of the brain suggested there might be nonspecific changes of cerebral vascular integrity. Dr. Grossman recommended that appellant be reassigned and placed on an anti-anxiety medication.

In a November 11, 2013 report, Dr. Herold J. Merisier, a Board-certified family practitioner, indicated that four years ago appellant was diagnosed with essential tremors, which caused uncontrollable shaking of the hands and that since April 2013 the condition had also affected both of his lower extremities. He indicated that the tremors worsened under stressful situations such as appellant's current work environment and suggested that he would benefit from a transfer to a different work location.

In a December 25, 2013 report, Dr. Grossman indicated that appellant had an anxiety disorder associated with tremulousness. Appellant's essential tremors had been more severe with anxiety or stress, some of this obviously occurring at work. Dr. Grossman indicated that he suggested that appellant be reassigned because of the stressors at work. He recommended that appellant refrain from travel and try to limit his anxiety exposure, including a reassignment at work, if possible. Dr. Grossman noted that appellant's son died in April 2013 from drowning and this was another factor which increased appellant's tremors.

By decision dated October 6, 2015, OWCP considered appellant's claim for traumatic injury and accepted that the alleged work incident occurred in the performance of duty. However, it denied his claim because the medical evidence of record failed to establish that his essential tremors/Parkinson's disease stage 2 and mood disorder were medically connected to the May 10, 2010 work incident.

On November 25, 2015 OWCP received appellant's October 28, 2015 request for review of the written record by an OWCP hearing representative. The date of the postmark was November 23, 2015.

Appellant submitted copies of statements previously of record describing the conditions of his workplace.

By decision dated December 16, 2015, OWCP denied appellant's request for review of the written record by an OWCP hearing representative as untimely. It considered his request within its discretion, but found that his case could be addressed equally well by a request for reconsideration and the submission of evidence showing that he has a condition causally related to factors of his federal employment.

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

An employee seeking benefits under FECA has the burden of proof to establish 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 employment injury.<sup>2</sup> 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.<sup>3</sup>

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. If a claimant does implicate 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.<sup>4</sup>

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

OWCP accepted, and the facts support, that on May 10, 2015 appellant's supervisor informed him that he was immediately terminated and ordered off the employing establishment premises. His termination from employment became effective on May 21, 2015. OWCP denied his claim for compensation for a traumatic injury as the medical evidence submitted did not establish a causal relationship between the May 10, 2015 incident and the claimed mood disorder and Parkinson's condition.

Initially the Board notes that while OWCP treated this claim as a claim for traumatic injury, appellant had filed an occupational disease claim. Following OWCP's August 13, 2015

---

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *See S.G.*, Docket No. 12-0386 (issued August 20, 2012) wherein the Board reviewed appellant's claim that his Parkinson's disease was aggravated by stress at work as a claim for an emotional condition.

development letter, appellant alleged in his August 20, 2015 statement several factors of employment spanning over several years which he claimed caused and/or exacerbated his medical conditions. These include, but are not limited to, a stressful work environment, the denial of transfer and reasonable accommodation requests, his annual performance review in 2003, the inaccessibility of crucial documents, assignments detrimental to his health, a 2010 interrogation incident and events leading to or causing his May 21, 2015 termination. As previously noted, whether an injury occurs in the performance of duty is a preliminary issue before the merits of the claim are adjudicated.<sup>5</sup>

OWCP, however, did not develop this aspect of the claim. 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 work 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 compensable factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.<sup>7</sup> Where the matter asserted is a compensable factor of employment and the evidence of record established the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>8</sup>

OWCP made no findings as to whether appellant's alleged factors of employment occurred in the performance of duty. As it failed to develop appellant's allegations as set forth in his August 20, 2015 supplemental statement, the case will be remanded to OWCP to adjudicate such matters and, after any development deemed necessary, issue a *de novo* decision.<sup>9</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

---

<sup>5</sup> *Supra* note 3.

<sup>6</sup> *See Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>8</sup> *See Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>9</sup> Given the disposition of issue 1, issue 2 is moot.

**IT IS HEREBY ORDERED THAT** the October 6, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: August 9, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board