

ISSUE

The issue is whether appellant met her burden of proof to establish survivor benefits for the benefit of the deceased employee's son.

FACTUAL HISTORY

On June 6, 2014 appellant filed a claim for compensation by widow, widower, and/or children (Form CA-5) in her capacity as mother and guardian of the minor son of the deceased employee. She claimed that the employee's death on February 10, 2012 was causally related to his work as a correctional officer for the employing establishment.³ The record contains an amended certificate of death, issued by Santa Barbara County on March 19, 2012, listing the employee's immediate cause of death on February 10, 2012 (estimated time, 7:36 a.m.) as "gunshot wound of head,"⁴ The manner of death as "suicide," and "other significant conditions" as depression, bipolar disorder, and paranoia.⁵

In an undated statement received on June 9, 2014, appellant indicated that she was the mother of the employee's minor son who was born on April 9, 2006. She noted that she moved with her son to Wyoming in March 2011 and later divorced the employee, but that she still remained good friends with the employee and talked with him nearly every day. Appellant asserted that, beginning about May 2011, the employee repeatedly told her that he was afraid of what might happen to him at work. The employee told her that he found a weapon with his name on it, which was not his weapon, and kept saying, "They're going to kill me," referring to people at the prison. Appellant noted that the employee had been receiving treatment in 2011 for emotional problems and took medications which he told her made him "feel bad."

In an undated statement received by OWCP on June 9, 2014, the employee's stepmother indicated that in August 2011, after his divorce, the employee came to live with her, his father, and his brother and sister. She noted that the employee was saddened by losing his son and by his girlfriend making him move out of the residence they shared. The employee's stepmother related that the employee reported being harassed and threatened at work by two coworkers, that he was very afraid of one of these coworkers, and that agents from the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) were following him and calling him.

³ Appellant indicated on the form that she was not living with the employee at the time of his death. Other documents of record, including marriage and birth certificates, show that the minor son was born to appellant and the employee while they were married. Divorce papers for appellant and the employee were filed in April 2011 and were finalized in August 2011. The employee worked as a correctional officer at the time of his death.

⁴ The description of how the injury occurred was listed as "decedent shot himself in the head with a handgun."

⁵ A March 29, 2012 coroner's report from the Santa Barbara County Sheriff indicated that on February 10, 2012 the employee committed suicide at work with a prison-issued weapon. The report contains statements from several interviewees, including the employee's mother who indicated that he was being treated for depression related to his divorce, his girlfriend who noted that he had commented on "having problems at work," and his psychiatrist who indicated that he displayed signs of paranoia by reporting that unspecified people were out to get him. A March 2, 2012 toxicology report showed post-death positive findings for caffeine, nicotine/cotinine, and Olanzapine (an anti-psychotic medication).

The employee's stepmother noted that one night in October 2011 the employee came home and told his brother that a "hit" had been placed on him and that a Washington, DC, gang tried to kill him. The employee reported that he proceeded to lock up a prisoner in a cell and was then cornered in the cell by six Washington, DC gang members, one of whom was crouched down with a weapon. The employee's stepmother noted that the employee stated that, before the gang members harmed him, a prisoner (whom the employee previously protected against guards) came into the cell, called off the gang members, and yelled, "Remember, I saved you." She indicated that the employee claimed to have hit the panic button to call for backup but that no one came and that, the next evening when he was off on sick leave, a fellow guard told him that they found a plexiglass shank "on the keyboard by [his] office." The employee's stepmother discussed the employee's medical treatment after this incident and noted that the employee asserted that there was a "hit" on the family and that the FBI and the "feds" were watching all of them.

Counsel at the time produced a timeline document discussing the employee's personal, work, and medical histories. It detailed the incidents and conditions at work believed to have contributed to his suicide. The document reflected that, on December 3, 2009, the employee assisted two officers who were handcuffing an inmate, on August 10, 2010, he was threatened by a coworker who said that he would assault him when he saw him downtown, on August 15, 2010, the same coworker stared at him threateningly and told him that he and another coworker would be waiting for him in the parking lot;⁶ and on September 29, 2011 the employee found a knife in a lockbox in his unit at work and called for assistance. The summary document noted that, on an unspecified October 2011 date, several prisoners cornered and attacked the employee. The employee allegedly pressed a panic button, but did not receive immediate assistance. It was indicated that a prisoner saved the employee by calling off the attack after the employee reminded him of a favor he had done for him and that the employee believed that the attack was a "set-up." The document noted that a plexiglass knife was later found near the employee's office and that, on unspecified dates in October 2011, the prisoner who saved the employee from attack was beaten by prison guards and transferred to another location shortly thereafter.

The record contains a photocopy of a photograph of an object identified as a homemade weapon comprised of two pieces of plexiglass (approximately five-and-a-half inches long) fused together and sharpened on one end. The document indicates that the weapon was found on October 5, 2011 in the F-Unit on top of the D-Range lock box.

The record contains notes of sessions conducted by the employee's marriage and family therapist. On October 17, 2011 the therapist indicated that the employee had reported that he had a traumatic incident at work approximately two and half weeks prior and that he thought he was going to get killed. She noted that the employee reported that he had been cornered by inmates in a cell and that people were "messing [with] him" at work. The employee also indicated that his divorce had been finalized several months prior and that his ex-wife got full custody of their child with "phoney" job papers.

⁶ The document indicated that, on an unspecified date in September 2010, the coworker repeated his threats and that, on an unspecified date in November 2010, the coworker's wife told the employee that the coworker intended to provoke him at work.

In a report dated October 20, 2011, Dr. Steven K. Yao, an attending Board-certified emergency medicine physician, indicated that the employee presented with a chief complaint of paranoia and reported symptoms of gradual onset within the past four days. He noted that the employee believed that there was a “hit on his life” from a man in prison and that he had been followed by the FBI and the U.S. Secret Service for the past four days. The employee also noted that “other individuals” informed him that the FBI would stop following him if he went to the hospital. Dr. Yao indicated that the employee did not display suicidal ideation, but that he exhibited evidence of acute psychosis characterized by paranoid delusions. The employee voluntarily admitted himself to the hospital and was given medication.⁷ A hospital discharge summary dated October 23, 2011 contained the diagnosis of bipolar I disorder, most recent episode mixed, severe with psychotic features.⁸

In reports and notes from late October 2011, Dr. Angeline Y. DeGuzman, an attending Board-certified psychiatrist, noted that the employee claimed to have had flashbacks from an incident at work, that there was an investigation because he reported a problem with a coworker, that he felt he was being watched at work, and that a knife was found in his unit on September 29, 2011. On October 27, 2011 Dr. DeGuzman diagnosed bipolar I disorder, most recent episode manic with psychotic features, rule out alcohol and cannabis abuse.

In an October 31, 2011 note, Dr. DeGuzman related that in the beginning of October 2011 the employee alleged to have been cornered in a cell when getting bags from an inmate and the other prisoners gave him the death look. The employee indicated that he was able to leave unharmed but that his “gripe” was that he was left alone in a cell block (with no lock down) and he felt that he could have been killed. In a November 7, 2011 note, the employee’s therapist noted that the employee believed that prison officials were monitoring him and, in other notes from mid to late 2011, he mentioned “his incident” or “precipitating event.” He claimed in his December 17, 2011 report that the employee had shown improvement with treatment and was cleared to return to work. On March 15, 2011 Dr. DeGuzman noted that she had advised the employing establishment after the employee’s death that the employee had bipolar disorder and had been depressed because he felt that people “were messing with his life” with respect to work and personal matters.

In a report dated May 22, 2014, Dr. Seth Bricklin, a clinical psychologist, who evaluated the case at the request of counsel, interpreted the evidence of record as a “precipitating event” which led to the employee’s mental health diagnosis which ultimately caused his suicide. He described the precipitating event as occurring in early 2011 when the employee was cornered by several prisoners and, as the prisoners were closing in and about to attack, another prisoner intervened and stopped the attack. Dr. Bricklin diagnosed the employee as having chronic post-

⁷ In other medical records dated October 20 and 21, 2011, the employee indicated that he was having frequent flashbacks to a prison incident two weeks prior “where his safety and the safety of his unit was [sic] compromised,” that an inmate put a “hit on me on the street,” that a friend was told by the FBI that there was a “hit on me,” and that he was subjected to camera surveillance at a friend’s house and followed by the U.S. Secret Service. The records show that he tested positive for marijuana and amphetamines.

⁸ The discharge summary noted that the employee felt that the FBI had been following him and reported that his symptoms especially worsened after “an incident at work when he had unsafe interactions with prisoners.”

traumatic stress syndrome (PTSD) prior to the employee's February 10, 2012 death and indicated, "In my opinion, the [precipitating event], which occurred while [the employee] was performing his work duties, caused his diagnosis of PTSD. Furthermore, the impairment caused by his diagnosis of PTSD was the primary cause of his suicide." Dr. Bricklin opined that, while there were several stressors that may have impacted the employee's functioning (*i.e.*, the separation from his son, break-up with his girlfriend, and reported cannabis use), none of them were sufficient to break the chain of causation between the precipitating event and his suicide.

OWCP sent July 31 and August 14, 2014 letters to the employing establishment requesting information about the employee's work and incidents or conditions that might have caused him stress. Each letter provided the employing establishment 30 days to respond. The employing establishment did not respond to either letter in the allotted time.

In an August 14, 2014 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for survivor benefits, including any relevant witness statements or findings of any grievance or formal complaint.

In an August 26, 2014 letter, counsel indicated that he was unable to obtain any further witness statements regarding the employee's work situation prior to his death on February 10, 2012.

By decision dated September 22, 2014, OWCP denied appellant's claim for survivor's benefits for the benefit of the deceased employee's son because she had failed to establish any compensable employment factors that could have caused an emotional condition that led to the employee's suicide on February 10, 2012. It noted that, while various workplace incidents were alleged, "the specific incident of being cornered by inmates in October 2011 was not verified by any of the evidence received in file." OWCP indicated, "The employing [establishment] has not confirmed that the alleged harassment took place nor has other corroborating evidence been received in file, such as statements from coworkers who witnessed the harassment, a workers' compensation claim made by the decedent prior to his death, or findings of an agency/board/arbitrator/investigative report...."

LEGAL PRECEDENT

A claimant for survivor benefits has the burden of proving by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to his or her employment.⁹ To establish his or her claim that a deceased employee sustained stress in the performance of duty, which precipitated his or her death, a claimant must submit the following:

"(1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition;

"(2) rationalized medical evidence establishing that his or her death was due to or aggravated by an emotional reaction; and

⁹ *L.R. (E.R.)*, 58 ECAB 369 (2007).

“(3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her death.”¹⁰

Appellant has the burden of establishing by a preponderance of the reliable, probative, and substantial evidence the existence of a causal relationship between the employee’s death by suicide and factors of his federal employment.¹¹ The suicide itself must arise out of the employee’s assigned duties to such an extent as to be regarded as arising out of and in the course of employment.¹² In determining whether an employee’s suicide is causally related to factors of his employment, OWCP has adopted the chain of causation test.¹³ OWCP’s procedure manual explains that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)¹⁴ and provides, “[C]ompensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee’s domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide.”¹⁵ The emphasis is on a showing of genuine brain derangement or psychosis, as distinguished from mere melancholy, discouragement, or other sane condition such as depression.¹⁶ Under the chain of causation test, OWCP’s procedure manual provides that, if the injury and its consequences directly resulted in a mental disturbance, or physical condition which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgment so as to control that compulsion, then the test is satisfied and the suicide is compensable.¹⁷ OWCP’s procedure manual adds that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.¹⁸

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. In the case of *Lillian Cutler*,¹⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within

¹⁰ See *Martha L. Watson*, 46 ECAB 407 (1995).

¹¹ *Rosita Mahana (Wayne Mahana)*, 53 ECAB 503 (2002).

¹² *Id.*

¹³ *Id.*

¹⁴ Section 8102(a)(2) of FECA precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee’s intention to bring about the injury or death of himself, herself, or another. See 5 U.S.C. § 8102(a)(2).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

¹⁶ A. Larson, *The Law of Workers’ Compensation* § 38.01 (2016).

¹⁷ See *supra* note 15 at Chapter 2.804.15(b)(2).

¹⁸ *Id.* at Chapter 2.804.15(b)(3).

¹⁹ 28 ECAB 125 (1976).

coverage under FECA.²⁰ Where the claimed condition 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 condition comes within the coverage of FECA.²¹ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.²²

For harassment to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment are not determinative of whether such harassment occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.²³ Mere perceptions and feelings of harassment will not support an award of compensation.²⁴

In cases involving emotional or stress-related 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.²⁵ 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.²⁶

ANALYSIS

On June 6, 2014 appellant filed a claim for compensation by widow, widower, and/or children in her capacity as mother and guardian of the minor son of the deceased employee. Appellant claimed that the employee's February 10, 2012 death by suicide was related to his work as a correctional officer for the employing establishment. She alleged that the employee committed suicide on February 10, 2012 due to an emotional condition caused by incidents and conditions related to his job as a correctional officer for the employing establishment. Appellant claimed that numerous work factors between 2009 and 2012, including an incident when the employee was attacked by inmates in October 2012, caused him to develop an emotional condition that led to his suicide. She submitted medical reports in which some of the claimed

²⁰ See *Robert W. Johns*, 51 ECAB 137 (1999).

²¹ *L.S.*, Docket No. 16-0769 (issued July 11, 2016).

²² *Roger Williams*, 52 ECAB 468 (2001).

²³ *James E. Norris*, 52 ECAB 93 (2000).

²⁴ *Beverly R. Jones*, 55 ECAB 411 (2004).

²⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

²⁶ *Id.*

factors were discussed, including medical reports of treatment of the employee shortly before he died.

The Board has duly considered the matter and concludes that this case is not in posture for decision.

In developing the case, OWCP sent July 31 and August 14, 2014 letters to the employing establishment requesting information about the employee's work and incidents or conditions that might have caused him stress. Each letter provided the employing establishment 30 days to respond. The employing establishment did not respond to either letter in the allotted time. In its September 22, 2014 decision, OWCP denied appellant's survivor benefits claims because she had failed to establish any compensable employment factors that could have caused an emotional condition that led to the employee's suicide on February 10, 2012. In reaching this determination, it indicated that, while various workplace incidents were alleged, "the specific incident of being cornered by inmates in October 2011 was not verified by any of the evidence received in file." OWCP noted, "The employing [establishment] has not confirmed that the alleged harassment took place nor has other corroborating evidence been received in file, such as statements from coworkers who witnessed the harassment, a workers' compensation claim made by the decedent prior to his death, or findings of an agency/board/arbitrator/investigative report...." It did not make any further findings regarding the numerous employment factors the appellant alleged the employee was exposed to between 2009 and 2012.

The Board notes that OWCP procedures provide:

"If an employing agency fails to respond to a request for comments on the claimant's allegations, the [claims examiner] may usually accept the claimant's statements as factual. However, acceptance of the claimant's statements as factual is not automatic in the absence of a reply from the agency, especially in instances where performance of duty is questionable. [The Board] has consistently held that allegations unsupported by probative evidence are not established. The [claims examiner] should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination."²⁷

The Board finds that OWCP has not properly developed appellant's claim for survivor's benefits for the benefit of the deceased employee's son. Appellant alleged that numerous work factors between 2009 and 2012 caused the employee to develop an emotional condition that led to his suicide, but OWCP had not adequately developed regarding these allegations.

On remand, OWCP should obtain additional information from the employing establishment, including information about the employee's alleged work and incidents or conditions that might have caused him stress prior to his death on February 10, 2012.²⁸

²⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011). See also *R.B.*, Docket No. 14-1663 (issued September 29, 2015) (citing Chapter 2.800.5(d)(1)).

²⁸ See *G.V.*, Docket No. 15-1899 (issued February 11, 2016); *T.M.*, Docket No. 14-1631 (issued December 2, 2014).

Therefore, the case will be remanded to OWCP for further development to include the issuance of a *de novo* decision regarding appellant's claim for survivor's benefits which contains adequate facts and findings.

CONCLUSION

The Board finds that the case is not in posture regarding whether appellant met her burden of proof to establish entitlement to survivor's benefits for the benefit of the deceased employee's son.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 19, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board