United States Department of Labor
Employees' Compensation Appeals Board

N.S., Appellant	)	
and	)	**Docket No. 16-0914**
	)	**Issued: April 10, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

Appearances:
Jennifer Raymond, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2016 appellant, through counsel, filed a timely appeal from an October 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has met her burden of proof to establish an emotional condition in the performance of duty.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 7, 2013 appellant, then a 42-year-old supervisor of customer service, filed an occupational disease claim (Form CA-2) alleging that she sustained mental stress in the performance of duty. She indicated that she received an e-mail from a coworker, who threatened to blow up the employing establishment and kill a supervisor. Appellant explained that after it was discovered that she had called the inspection service to report the threat, she was then removed from her position. Additionally, she sent an e-mail alleging that she was involved in an additional incident. J.C., another supervisor, indicated that he had not seen the e-mail that appellant was referring to on her claim and that he was unaware of her contacting the inspection service. He indicated that he became aware that she had used someone else's e-mail, which was a violation of the Privacy Act, and that he was investigating the allegations of what had occurred. J.C. also argued that the e-mail did not appear that day and appellant worked after the e-mail discovery and never indicated that she feared for her job and life. Appellant indicated that February 7, 2013 was the date she first realized her mental stress was caused or aggravated by factors of her federal employment. She stopped work on February 7, 2013.

In a February 8, 2013 report, Dr. Snehal B. Patel, Board-certified in family medicine, diagnosed anxiety state unspecified and requested that appellant be excused from work for the period February 7 to March 7, 2013 due to illness.

OWCP received March 5, 27, and 29, 2013 reports from a physician assistant.

In a March 27, 2013 report, Dr. James Harberger, a Board-certified family practitioner, noted that appellant had a workplace situation in which a senior official threatened to blow up two employing establishment buildings in a work e-mail and also threatened to kill appellant. He noted that she was given the e-mail by another supervisor and that afterwards she was harassed by her supervisor and accused of making a scene in the workroom. Appellant had a panic attack and was accused of using e-mail illegally. Dr. Harberger opined that her panic attacks were related to passing by the employing establishment. He diagnosed stress reaction other acute, and placed her off work. Dr. Harberger continued to treat appellant.

By development letter dated May 9, 2013, OWCP advised appellant that the evidence submitted in support of her claim was insufficient and requested that she submit additional supportive factual and medical evidence. Appellant was afforded 30 days to provide the requested information.

In a March 29, 2013 attending physician's report (Form CA-20), Dr. Adelle Kutz, a Board-certified family practitioner, noted the history of injury as anxiety, stress, and panic attacks. She responded "no" in response to whether there was a preexisting history of concurrent or preexisting injury or disease or physical impairment. Dr. Kutz checked a box marked "yes" in response to whether she believed that the condition was caused or aggravated by an employment activity.

In a May 9, 2013 report, Dr. Harberger diagnosed stress reaction other acute, anxiety state unspecified, and depressive disorder major recurrent moderate and continued appellant off work.

In an undated narrative statement, received by OWCP on June 10, 2013, appellant explained that on December 18, 2012, supervisor L.L., sent her to the Hanover facility to help the postmaster there with issues he was having. While there, another supervisor, A.M., gave her an e-mail which revealed that L.L. "wanted to blow up the Hanover and Lebanon employing establishment and that she was also getting ready to 'f'n kill Linda.' (This e[-]mail was dated Feb. 4, 2013)." Appellant explained that postal guidelines required her to report this information to the employing establishment's inspection service and she proceeded to notify them of the threatening e-mail. She indicated that the next day, she discovered that L.L. had found out that she reported the threatening e-mail. Appellant explained that she was sitting next to A.M. that day, and overheard his telephone conversation with L.L., who indicated that "if he did n[o]t do exactly as she told him to do, he'd be delivering mail in Alaska." Shortly, thereafter, she was removed from the Hanover facility and all the other projects she was working on, and was instructed to report back to the York facility. Appellant then informed the York postmaster, M.B., of what happened. She asserted that she was being retaliated against because she had called the inspection service to report the threatening e-mail on February 6, 2013, and she sat in the office for six hours before anyone spoke to her. Appellant was ultimately ordered to discipline a clerk whom she had never met. She was ordered to inform the employee that if he missed any more scans he would be fired. Another supervisor, E.F., then arrived to "take statements" and claimed that appellant had "yelled at him and was very emotionally upset." Appellant alleged that it was unusual for both a Postmaster and a Branch Manager to issue the same orders, multiple times in a short amount of time. She was given three orders from M.B. as well as five telephone calls from J.C. to simply talk to an employee in regards to a minor infraction. Appellant noted that tasks were typically assigned by only one superior officer and usually followed with an e-mail or an in person consult upon the next meeting. She believed that she "was being set up for discipline" to discount her credibility and to protect L.L. from any ill effect due to the threatening e-mail.

Appellant explained that the postal inspector, T.G., stated that L.L. was retaliating against her. She advised that she had received a 14-day suspension due to unauthorized use of postal property and E.F. was a witness to her panic attack. Appellant noted that E.F. mentioned to J.C. over the telephone that appellant was crying hysterically and she did not know what to do. Additionally, in the weeks that followed, M.B. and J.C. proceeded to call appellant in reference to how she would be disciplined. Appellant alleged that "the simple act of my telephone ringing would send me into another attack." She explained that her physician had to place her on a do not call order, which resulted in her receiving letters demanding that she report to work only to have them discounted later through her physician's orders. Appellant also advised that she wrote her statement with the assistance of her husband as "the memories of what has happened, my sentences become slurred and it becomes hard to concentrate." She provided a graph which revealed that: the branch manager was J.C., the York Postmaster was M.B., and the supervisor was L.L.

In a June 4, 2013 e-mail, M.B. indicated that he had no direct knowledge of a bomb threat/e-mail. Regarding harassment, he explained that appellant was supervising in the downtown station and he received a call that she was screaming at an employee. M.B. indicated that he instructed E.F. to obtain statements from both the employee and appellant. He explained that "during this time frame [appellant] sent an e[-]mail from E.F.'s account without permission." M.B. noted that, shortly after the incident, appellant informed the employing

establishment that she was ill and left the building. He indicated that she had not returned to work. Furthermore, appellant was disciplined for the unauthorized use of another person's e-mail account.

In a letter dated June 18, 2013, P.Y., a human resources manager, controverted the claim and provided a copy of appellant's position description and physical requirements. She argued that appellant was not required to do any more than her normal hours of work in a normal day. P.Y. also indicated that statements from the postmaster and the supervisor disputing the allegations made by appellant were attached. She explained that a proposed letter of warning in lieu of time-off suspension, was issued to appellant on May 1, 2013 for improper conduct. P.Y. argued that there was no evidence to support that appellant was injured while performing any duties of her employment. Regarding charges of harassment or improper treatment, she explained that the employing establishment had not seen, nor was it provided with, factual evidence from any witnesses to support appellant's allegations. P.Y. indicated that there was no evidence to establish that appellant was treated improperly and the mere perception of harassment was not compensable under FECA.

In a June 6, 2013 statement, J.C. noted that he did not concur with appellant's allegations. He did not see the threatening e-mail that she referred to, which she initially believed that created her condition. J.C. indicated that appellant reported to work and seemed to be herself. He related that he did not see any differences and she acted as she had in the past. J.C. explained that he discussed the possibility of appellant having to assist with the rural mail count and having to work on Saturday and she was not happy about that option. He noted that, after their discussion, she reported to the downtown location to correct scanning issues they were having and at no time to his knowledge did she appear to be upset or struggling with the issues that she raised on her claim form.

OWCP received additional notes from a physician assistant.

By decision dated August 15, 2013, OWCP found that the evidence of record failed to establish an emotional condition in the performance of duty, as she had not established any compensable factors of employment.[3]

[3] OWCP noted that appellant reported that she was in fear of being fired due to the disciplinary action brought against her for unauthorized use of other employee e-mail accounts and for inappropriate behavior in disciplining an employee. However, it found that the employing establishment acted reasonably in bringing about the disciplinary action (administration of personnel matters) because the complaints were brought by the affected employees who demanded action. OWCP found that this incident occurred, but that it was not a compensable factor of employment because the disciplinary action was not brought against appellant in an erroneous or abusive manner. Regarding her claim that she was retaliated against by being transferred back to the York employing establishment from the Hanover employing establishment, OWCP determined that the transfer was made due to a Hanover employee's complaint that she wrongfully accessed his e-mail account. As a result, the employing establishment acted reasonably in carrying out this administrative matter. OWCP found that the incident occurred, but was noncompensable because the transfer was not made in an erroneous or abusive manner. Regarding appellant's claim that she was in fear for her life, the e-mail was not produced and A.M. denied its existence. OWCP found that her fear was based upon an unsubstantiated fact. It noted that appellant had not produced a copy of the e-mail. OWCP found that this incident did not occur.

OWCP received a July 19, 2013 report from Dr. Preeti M. Murudkar, a Board-certified family practitioner, diagnosed depressive disorder, major, recurrent moderate, stress reaction other acute, and anxiety state unspecified. Dr. Murudkar indicated that appellant was terrified to return to work and placed her off work.

OWCP also continued to receive reports from physician assistants.

On March 4, 2014 OWCP received e-mail correspondence dated November 26, 2012 between appellant and A.F., regarding appellant's responsibilities related to having the mail delivered in a timely manner.

In an undated work capacity evaluation (OWCP-5a), Dr. John R. Stevens, a licensed clinical psychologist, indicated that appellant's inability to work was due to anxiety attacks and post-traumatic stress syndrome as a direct result of the incident described in the performance of her duties. He explained that she felt threatened by her current supervisors and unsafe, which caused her to experience symptoms of anxiety, depression, and panic attacks. Dr. Stevens explained that appellant feared for her safety, as the senior operations manager threatened to "blow up" certain offices and to "f***ing kill" one of the supervisors under her jurisdiction.

On March 4, 2014 appellant, though counsel, requested reconsideration. Counsel argued that she had a compensable claim as her condition was related to her regular or specially assigned duties. She noted that appellant suffered retaliation after reporting L.L.'s e-mail, along with overwork. Counsel also argued that the medical evidence supported that her condition was work related. On March 4, 2014 OWCP received a February 28, 2014 affidavit from appellant, wherein she denied that she yelled at the clerk. She also indicated that she was forced to work overtime for months and months and to do the work of more than one person.

A copy of a January 8, 2013 e-mail exchange between L.L. and A.M. was received by OWCP. In the e-mail exchange, L.L. indicated that she wished to blow up the Hanover and Lebanon facilities. A.M. responded, "[t]hat hurts. What about my PDI." L.L. replied, "Trying, but think I am getting the flu and can barely get my all clear done" and "Working on it ready to kill f 'n' Linda."

OWCP also received e-mail correspondence from A.F., the manager of operations, discussing workload issues and supervisory issues. In a November 24, 2013 e-mail chain, between appellant and A.F., they were discussing supervisory issues and assistance. A.F. indicated that she did not look for assistance and was blaming others for her failure of her office to complete their duties and being out past 6.00 p.m. He also indicated that appellant was informed in advance of the schedule and the other offices secured assistance by making personal telephone calls and copying him on the e-mail conversations. A.F. indicated that he had not received any such messaging or correspondence from her. He denied that he was asking appellant to deliver mail. A.F. indicated "I am asking you to stop making excuses, stop whining, and simply manage better. POT and carriers out past 1800 are not acceptable. This has become the norm for you and I need you to turn it around." Appellant responded that she would not be speaking with him again as she did not wish to be spoken to in such a manner.

OWCP received reports dated October 17, 2013 and February 20, 2014 from Dr. Stevens. Dr. Stevens indicated that appellant was traumatized by A.M. accusing her of accessing his e-mail illegally, despite asking her to look at the e-mail, and subsequently denying the existence of an e-mail.

In a letter dated June 20, 2014, M.B. addressed appellant's allegation that she felt isolated and that he deliberately left her waiting for four and a half hours until he called her. He explained that in reality, upon her return to York, he did not have time to assign her specific duties and she was instructed to report to the York facility and familiarize herself with the delivery operation by speaking with the supervisors managing the delivery operation and he would contact her later in the morning with more specific instructions. M.B. argued that "contrary to [appellant's] claim, she was not isolated." He noted that appellant spent time in the delivery unit and the customer service support office. M.B. advised that, later in the morning, he requested that she report to the downtown station and investigate why they were having issues with finalizing mail. He noted that he also requested that appellant address an issue with an employee who had failed to scan a barcode. M.B. explained that her position as supervisor of customer service operation required that she was in the employee's direct report. He noted that appellant was his and J.C.'s subordinate, and they were merely asking her to address a performance issue that she was assigned to supervise. M.B. explained that her not knowing the employee was immaterial, as it did not relieve her of her responsibility to assess an employee's performance or provide direction. He related that, on occasion, all supervisors were required to address employees that were not known to them as a result of the employees being new. Furthermore, M.B. advised that appellant was not instructed how to address his performance. He explained that her position was a level 17 supervisor of customer service and noted her hours and days could fluctuate to meet the needs of the operation/postal installation. M.B. also indicated that the individual appellant disciplined filed a complaint against her and then appellant filed her claim. He also noted that she also utilized the computer of E.F., and finished typing an e-mail as if she were E.F. without authorization and had engaged in a similar actions at the Hanover location. M.B. indicated that appellant was given a proposed letter of warning in lieu of a suspension for engaging in confrontations with craft employees. He explained that she used another person's e-mail a second time and disrespected the work force a second time and there was no option other than a letter of warning in lieu of suspension.

M.B. also explained that he had no knowledge of appellant's allegations that she was physically attacked on two occasions when she worked in the York location. He indicated that J.C. was the supervisor of the York location since 2000 and J.C. was not aware of an incident where she was physically attacked. Furthermore, despite inquiring amongst several people, no one could recall a physical attack happening with regard to appellant. M.B. indicated that she left work on February 5, 2013 on emergency placement following her unauthorized use of E.F.'s e-mail. He advised that J.C. contacted appellant and requested that she return to work, but she had not returned. M.B. explained that he believed that her claim was filed when she believed that she was going to be disciplined for her behavior earlier in the day regarding the incident involving her unauthorized use of another's e-mail. He provided e-mails pertaining to a predisciplinary interview on December 18, 2013 in which appellant indicated that she was unaware that she was using profanity towards customers and employees. M.B. also provided a June 27, 2014 e-mail, from A.F., who confirmed that there was no information to support over work. He also noted that appellant was removed from her OIC detail because of improper

conduct due to using inappropriate language, grabbing carriers, and a lack of dignity and respect as a manager.

By decision dated August 7, 2014, OWCP denied modification of its prior decision.

In a letter dated July 21, 2015, appellant, through counsel, again requested reconsideration. Counsel argued that appellant had established her claim including the allegation of overwork. She also noted that appellant was providing a statement from her coworker, J.M., who would support her allegation that appellant was attacked at the York location. Counsel explained that they would focus on two factors of appellant's employment to support her claim for an emotional condition, namely overwork/job functions and the aftermath of the physical attack on appellant at the employing establishment's York facility. She argued that it was verified and undisputed that an attack had occurred. Counsel also noted that appellant experienced extreme stress as a result of overwork, especially during the time frame from November 2011 to January 2013. She also argued that A.F.'s response to deny that she was overworked was "irrelevant and prejudicial discourse." Counsel argued that appellant was required to work 10 to 12 hours a day, 6 days a week from September 2012 to November 29, 2012. She explained that appellant had two clerks in her office and one was out for a back injury and the other was out for a majority of the time, leaving her without the necessary personnel. Counsel indicated that appellant was accused of whining by A.F. and ignored her requests for help. Furthermore, she argued that OWCP erred by not taking into consideration her assertions. M.B. argued that appellant's requests for assistance were ignored. She further argued that appellant felt insulted and this further attributed to her emotional condition. As such, counsel argued that the medical evidence was sufficient to establish appellant's claim, or in the alternate, sufficient to have the case remanded for further development.

In an August 21, 2014 statement, J.M. indicated that she remembered appellant being attacked when the York city carriers occupied the downtown location. She explained that they were informed to use the buddy system when exiting the building and walking to their vehicles. In a July 7, 2015 statement, another coworker, whose signature is illegible, recalled that appellant was attacked while outside the York location. She did not recall the dates, however.

By decision October 19, 2015, OWCP denied modification of its August 7, 2014 decision. It accepted as factual that appellant was attacked while working at the York location. However, it was not a compensable factor of employment because no one was able to recall a specific date, time, location, witnesses, or more importantly, why she was attacked and if it stemmed from her work. Regarding overwork and appellant's requests for assistance being ignored, OWCP explained that the issue was addressed in the previous reconsideration decision and it would not be addressed further.

LEGAL PRECEDENT

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.[4] 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 or her frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

To establish a claim for 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.[6]

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 the physician when providing an opinion on causal relationship and, which working conditions are not deemed factors of employment and may not be considered.[7] 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 the matter establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[8]

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of incidents at work. However, on July 21, 2015, counsel explained that the focus was limited to only two factors of her employment to support her claim for an emotional condition. She specified that the two factors they would focus on included overwork/job functions and the aftermath of a physical attack at the employing establishment's York facility. The Board will limit its review to only those two alleged employment factors and will initially consider whether they are compensable employment factors under FECA.

As under *Cutler*,[9] appellant attributes her emotional condition, in part, to the stress of carrying out her workload and overwork. The Board has held that conditions related to stress

[4] *Supra* note 2.

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 126 (1976).

[6] *See P.H.*, Docket No. 17-0673 (issued December 19, 2017); *Trudy A. Scott*, 52 ECAB 309 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

[9] *Supra* note 5.

resulting from situations in which a claimant is trying to meet his or her position requirements are compensable.[10] Counsel noted that appellant experienced extreme stress as a result of overwork, especially during the time-frame from November 2011 to January 2013. She noted that A.F.'s response to appellant's requests for assistance was to deny that she was overworked, which was "irrelevant and prejudicial discourse." Counsel argued that appellant was required to work 10 to 12 hours a day, 6 days a week from September 2012 to November 29, 2012. She explained that appellant had two clerks in her office and one was out for a back injury and the other was out a majority of the time, leaving her without the necessary personnel to complete her work duties.

Counsel explained and referenced the e-mails from A.F., in particular the e-mail chain from November 24, 2013. She indicated that appellant was accused of whining by A.F. and that he ignored her requests for help. In the e-mail, A.F. noted that he had not received any requests for assistance from appellant. Appellant was trying to obtain assistance from him, but her claims were dismissed and she was told to stop whining and stop making excuses.

The Board finds that further details regarding appellant's duties and workload should have been further developed by OWCP. This is especially important as the e-mail from A.F. confirms that a discussion of her workload was taking place and that she was attempting to obtain assistance. Counsel has also alleged that appellant was short staffed and had to fill in for these shortcomings, the existence of which were never investigated by OWCP. The Board finds that OWCP has not made adequate findings regarding her claim that she sustained an emotional condition as they did not investigate her claims that she was short staffed and forced to overwork for months at a time, working at times for 10 to 12 hours a day, 6 days a week from September 2012 to November 29, 2012. As noted above, 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.[11] In this case, further findings by OWCP are needed.

The Board further finds that OWCP did not investigate the allegation that appellant was attacked at the York location and that she remained fearful at that location. This is important as the record contains two witness statements to support that an attack occurred and that employees were counseled to use the buddy system. This is also important as there are contrasting statements in which the employing establishment indicated that they were unaware of attacks, yet two witnesses recalled an attack and subsequent counseling by the employing establishment. The Board finds that further investigation is warranted to ascertain the circumstances surrounding the matter.

OWCP has a responsibility in the development of the factual evidence, especially when such evidence is of the character normally obtained from the employing establishment or other

[10] *Richard H. Ruth*, 49 ECAB 503 (1998).

[11] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

government source.[12] However, it failed to make an adequate attempt to obtain all the relevant evidence regarding appellant's claim. In particular, OWCP should have obtained the work records during the alleged period that she has claimed overwork, and records with regard to the amount of support that she was receiving. Likewise, it should also conduct an investigation into the attacks that occurred at the York station and why appellant was moved from that location.

For these reasons, the case must be remanded to OWCP for further development of the factual aspect of appellant's emotional condition claim. It should attempt to obtain any relevant investigative reports, court decisions, and witness statements. After such development as it deems necessary, OWCP shall issue a *de novo* decision which adequately considers all relevant evidence.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision.

Issued: April 10, 2018
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

[12] *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).