United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 18-1128**
	)	**Issued: December 17, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Capitol Heights, MD, Employer	)	

Appearances:
Appellant, pro se
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 May 14, 2018 appellant filed a timely appeal from an April 12, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional or physical condition due to a claimed January 11, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On January 26, 2018 appellant, then a 60-year-old equal employment opportunity (EEO) specialist, filed a traumatic injury claim (Form CA-1) alleging that, on January 11, 2018, she sustained injury when N.G, an EEO manager, snatched a tub from her hands and dumped her personal belongings on the floor. She described her claimed employment-related injuries as "blood pressure," "left arm," and "anxiety." Appellant stopped work on January 11, 2018.

Appellant submitted a January 11, 2018 statement in which she indicated that, on the same date, she was in possession of tubs which contained personal items she needed to move out of her worksite because it was undergoing renovation. She asserted that N.G asked about the items in the tubs and she advised N.G. that the tubs contained personal items. N.G. then claimed that she had a right to look through anything in the worksite and appellant asked her not to do so because the personal items in the tubs included notes she made about other jobs she held with the employing establishment. Appellant asserted that N.G. then looked through drawers in her worksite and indicated, after being asked what she was looking for, "Nothing, as the manager I am doing an office audit and I can look through anything I want." N.G. then began to look through three tubs which contained appellant's personal items and appellant reached out in order to pull the tubs near her. Appellant claimed that N.G. grabbed at the tubs and told her to "back up" in a menacing tone. N.G. then "snatched" a tub out of her hands and threw most of the items in the tub out on the floor, including a coffee mug that broke. Appellant asserted that N.G. stated, "Now pick it up" and then made the statement, "I said pick it up," after she questioned the first statement. N.G. then "snatched up" a landline telephone that appellant was reaching for and appellant used her mobile telephone to call an employing establishment official who advised her to follow N.G.'s instructions. The record also contains another version of appellant's January 11, 2018 statement, which contains substantially the same information.

In a January 11, 2018 report, a postal police officer from the U.S. Postal Inspection Service indicated that appellant had provided a voluntary statement. It is unclear whether the officer was referring to either of the above-noted January 11, 2018 statements of appellant.

In a January 19, 2018 statement, A.G, a coworker, indicated that on January 11, 2018 she heard N.G. ask appellant what items were in her tubs and noted that, after appellant stated they contained personal items, N.G. advised that the office belonged to the employing establishment and that she was conducting an office audit. Appellant then pulled some tubs towards herself and, when N.G. grabbed the side of one of the tubs, appellant grabbed the other side of the tub, resulting in a "slight tug of war." A.G. asserted that N.G. gave appellant a direct order to "let go" and then "flipped the tub over" such that the items in the tub fell onto the floor. N.G. then stated to appellant, "Now pick it up."

In an undated statement, J.F., another coworker, noted that on January 11, 2018 he witnessed appellant and N.G. "arguing" about the contents of some tubs and about whether N.G. could look through them as part of an audit. He indicated that he walked away from where appellant and N.G were situated and then heard a loud noise, but he noted that he did not actually witness what had caused the noise.

Appellant submitted a February 13, 2018 report from Dr. Norman G. McKoy, an attending Board-certified family practitioner, who indicated that on January 11, 2018 he referred appellant for psychiatric treatment and noted that she was disabled from January 12 to March 4, 2018.

In a January 15, 2018 statement, N.G. asserted that on January 11, 2018 she appropriately conducted an office audit of appellant's worksite and properly questioned her regarding items contained in several tubs. She noted that appellant asked her in a rude and unprofessional manner what she was looking for and she advised appellant that she was conducting an office audit and that the office belonged to the employing establishment. N.G. indicated that she bent down to pick up a tub and appellant pushed down on the tub such that she could not pick it up. She advised that appellant ignored her multiple requests to let go of the tub. N.G. asserted that appellant wrongly claimed that she threw items from the tub to the floor. Rather, the items fell to the floor when she let go of the tub because of appellant's refusal to let go of it. N.G. indicated that she then told appellant to pick the items off the floor. N.G. offered to help appellant pick the items up after realizing that it was wrong to tell her to do so, but she refused her offer of assistance.

In a March 2, 2018 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. In response, appellant submitted an April 5, 2018 statement providing additional details regarding the events of January 11, 2018, which she believed caused the injury. She submitted an EEO official audit checklist, photocopies of photographs of her worksite, e-mails and other documents concerning the renovation of her worksite, and copies of previously submitted statements (other than her own) with her handwritten comments.

Appellant also submitted a February 8, 2018 report from Dominique Clark, an attending physician assistant, who discussed appellant's treatment for psychiatric problems and provided a diagnosis of adjustment disorder with anxiety. In a March 1, 2018 report, Gena Harmon, an attending licensed clinical professional counselor, detailed appellant's psychiatric condition and, in a March 1, 2018 note, she found that appellant should be excused from work from March 5 to 12, 2018. In a March 14, 2018 note, Dr. McKoy indicated that appellant was medically cleared to resume full-duty work.

In a March 9, 2018 statement, J.S., another EEO manager, asserted that N.G. acted appropriately in conducting an office audit of appellant's worksite on January 11, 2018.

By decision dated April 12, 2018, OWCP denied appellant's claim for employment-related emotional and physical conditions. It found that appellant had established that she was a federal civilian employee who filed a timely claim and that "the evidence supports that an incident you claimed occurred as described." OWCP further found, however, that appellant's claim was denied because she had not established the medical component of fact of injury. Under the heading, "Accepted Event(s) That Are Factors of Employment," in the "findings of fact" portion of the decision, it noted, "There are no accepted events that are factors of employment." Under the heading, "Accepted Event(s) That Are Not Factors of Employment," OWCP provided a summary of appellant's account of the events of January 11, 2018 and a discussion, which purported to be

its own account of the events of that date.[3] Under the heading, "Incident(s) Alleged Which [OWCP] Finds Did Not Occur," OWCP indicated, "There are no alleged incidents, which [OWCP] finds did not occur." In the "legal analysis" portion of the decision, OWCP further noted, "Based on these findings, your claim is denied on the medical component of fact of injury because the medical evidence does not support that you have a medical condition in connection to the accepted factors of your employment. The requirement has not been met for establishing that you sustained an injury as defined by FECA."

LEGAL PRECEDENT

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 timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.[5] An employee must also establish that such event, incident, or exposure caused an injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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.[8] 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.[9]

When a claimant has alleged an employment-related emotional or physical condition, he or she has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[10] This burden includes the submission of a detailed description

[3] OWCP stated that N.G. had a right to view the contents of the tub as part of her audit inspection, and that appellant failed to follow the instructions of N.G. to release the tub.

[4] 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

[6] *Id.*

[7] *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[10] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[11] 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.[12]

ANALYSIS

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

Appellant claimed that she sustained emotional and physical injuries on January 11, 2018 due to the actions of N.G., an EEO manager. She claimed that N.G. aggressively flipped over a tub she was holding, which contained personal items and ordered her to pick the items off the floor. OWCP denied appellant's claim for emotional and physical conditions by decision dated April 12, 2018, but the Board finds that there are deficiencies in this decision which require appellant's case to be remanded to OWCP for further development.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.[13] The Federal (FECA) Procedure Manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."[14] These requirements are supported by Board precedent.[15]

Given the above-described precedent, the Board finds that OWCP's April 12, 2018 decision does not contain adequate factual findings and/or recitation of the reason(s) for the denial of appellant's claim. OWCP's April 12, 2018 decision contains a number of inconsistencies which would prevent appellant from understanding the reason for the disallowance of the claim and the evidence necessary to overcome the defect of the claim.[16]

In its April 12, 2018 decision, OWCP explained its denial of appellant's claim by initially noting that appellant had established that she was a federal civilian employee who filed a timely

[11] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[12] *Id.*

[13] 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

[14] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

[15] *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

[16] *See supra* note 14.

claim and that "the evidence supports that an incident you claimed occurred as described." OWCP then indicated, however, that appellant's claim for compensation was denied because she had not established the medical component of fact of injury.

First, the Board notes that OWCP did not provide a clear explanation of what aspects of appellant's assertions regarding the events of January 11, 2018 had been accepted as compensable employment factors. Second, other portions of the April 12, 2018 decision cast confusion over whether OWCP did, in fact, accept a compensable employment factor. For example, under the heading, "Accepted Event(s) That Are Factors of Employment," in the "findings of fact" portion of the decision, OWCP noted, "There are no accepted events that are factors of employment." However, it did not provide any further elaboration of its rationale for making this statement. Under the heading "Accepted Event(s) That Are Not Factors of Employment," OWCP provided a summary of appellant's account of the events of January 11, 2018 and a discussion which purported to be its own account of the events of that date. It did not, however, provide discussion of which aspects of these competing accounts of the events of January 11, 2018 were accepted as factual. Under the heading "Incident(s) Alleged Which [OWCP] Finds Did Not Occur," OWCP indicated, "There are no alleged incidents which [OWCP] finds did not occur," but it failed to provide an explanation for this statement. Given these above-noted statements, OWCP's further discussion in the "legal analysis" portion of the decision does not provide meaningful clarification of its findings of facts or rationale(s) for denying appellant's claim. It noted, "Based on these findings, your claim is denied on the medical component of fact of injury because the medical evidence does not support that you have a medical condition in connection to the accepted factors of your employment."

For these reasons, the case must be remanded to OWCP for further development. Upon remand, OWCP shall issue a *de novo* decision regarding appellant's claim for emotional and physical conditions, which contains adequate findings of fact and recitation of the reason(s) for its holdings. In producing this decision, OWCP shall describe in detail which aspects of appellant's claimed employment factors it holds to be factual and which aspects of any factually established matters constitute employment factors within the meaning of FECA.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: December 17, 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