



## **FACTUAL HISTORY**

On November 3, 2015 appellant, then a 43-year-old sales/service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that, on October 23, 2015, he sustained stress causally related to factors of his federal employment. The claim specifically involved an encounter with a customer, both at his home and at a store, who asked about packages that he had not received.<sup>3</sup>

In a November 18, 2015 attending physician's report (Form CA-20a), Dr. Frank Escobar-Roger, a psychiatrist, advised that he evaluated appellant on November 6, 2015 after a customer appeared at his home and at a store threatening him. He diagnosed recurrent major depressive disorder and checked a box marked "yes" that the condition was caused or aggravated by employment.

In a January 4, 2016 statement, G.D., appellant's supervisor, related that he could neither "concur nor disapprove the statements made by [appellant]" as he had not investigated the matter. He advised that investigators with the Office of Inspector General (OIG) had investigated the alleged incident. G.D. related, "According to [appellant] he has no relationship with the alleged perpetrator [T.F.] but they do live relatively near to each other. The only relationship they might have is professional in nature since [T.F.] picked up parcels from the [employing establishment] frequently." G.D. indicated that appellant was an "excellent employee."

Appellant, in an undated statement submitted with an OIG report, related that a few weeks before October 23, 2015 unusual parcels began arriving for a particular mailbox. He notified his supervisor, who decided to send the parcels to employing establishment inspectors. The customer for that mailbox came to pick up his parcels and appellant's supervisor told him not to deliver the parcels, but instead tell him that the notice was for another mailbox. The customer left without incident. On Friday, October 23, 2015, appellant was in his backyard with his wife and children when two men came to his house. One man remained in the vehicle. The other man asked if he had seen a lost dog and also asked about the motor vehicle tires. When appellant left work on Saturday, October 24, 2015, he stopped at a market and again encountered the man who had come to his house about the dog. The man told appellant that he had been looking for him rather than for a dog because he was not giving him his parcels. Appellant realized that he was the customer whose packages were being held for inspection. The man told him to stay away from the situation because he had a family. Appellant could not sleep over the weekend and told his wife about the matter, and she left with their children to go stay with her mother for a week. He told his supervisor about the incident on Monday, October 26, 2015, and the supervisor notified employing establishment inspectors.

An assistant special agent with the OIG's office provided a case summary report dated January 14, 2016. He related that on December 8, 2015 OIG agents interviewed appellant's supervisor, G.D., who related that on October 26, 2015 appellant informed him that on October 23, 2015 he was outside having a cookout with his family when a man came to his home

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<sup>3</sup> The employing establishment indicated that it first received notice of the injury on December 5, 2015. However, appellant's supervisor signed the claim form on November 3, 2015.

purportedly looking for his dog. On Saturday, October 24, 2015, appellant saw the man again and asked whether he had found his dog, and the man told him that he was not looking for a dog, but instead for appellant because he wanted to receive his packages.

On December 9, 2015 the OIG interviewed S.H., a union steward. The OIG agent related:

“[S.H.] stated that [appellant] informed him during the meeting with [G.D.] that on Friday, October 23, 2015, a man came to his home while he was outside having a family cookout activity and asked about a lost dog described as a black Labrador. [S.H.] stated that [appellant] indicated [that] the individual who asked about the dog was in a Lexus automobile and was accompanied by another unidentified individual who stayed inside the vehicle. [S.H.] stated that [appellant] informed him that on Saturday, October 24, 2015, [he] encountered the subject once again at a local store close to his residence in [Puerto Rico] and asked him if he had found the dog, to which the subject replied that he was not looking for any dog, but that he was looking for him because he had parcels that were supposed to be delivered to him and he had not received them.

“[S.H.] also stated that [appellant] told him that the subject told him to stay away from his parcels because he was a family man and something was going to happen. [He] also stated that [appellant] told the subject that if he was doing something wrong through the [employing establishment] he would get caught.”

Appellant told S.H. that he was worried after the incident and sought treatment with the Department of Veterans Affairs (DVA).

An OIG agent interviewed appellant on December 10, 2015. He advised that he had a service-connected disability with DVA for post-traumatic stress disorder and a lumbar condition. Appellant related that around two weeks before October 23, 2015, his work location began receiving parcels with broken scan codes for a particular mailbox. A week before October 23, 2015, a customer came to his window to pick up one of the suspicious parcels. Appellant asked his supervisor what to do, and the supervisor instructed him not to deliver the parcel, but instead send it to the inspection service. The evening of October 23, 2015, the customer and another individual came to his home while he was having a cookout. The individual remained in his vehicle and the customer asked him about a lost dog. On October 24, 2015 appellant “stopped at a small business/liquor store near his home after leaving work to get a drink and saw the subject once again.” The subject informed him that he had been looking for him rather than his dog the evening before, warned him to stop “messing with his parcels,” and told him to “stay away from this because he was a family man and something was going to happen.” Appellant recognized the man as the customer who owned the mailbox that was receiving suspicious parcels. On December 14, 2015 he went to the police to file a complaint against the customer for the events of October 24, 2015.

The OIG agent also interviewed appellant’s physician on December 21, 2015, who advised that he had discussed the incident with the customer in an appointment. Dr. Escobar-Roger indicated that appellant had not taken prescribed antidepressants.

In the investigative report, the OIG agent related that he spoke with police about appellant's complaint against the customer. The police advised that based on his version of events, the incident "was not considered a threat, but instead it would be considered at most an apparent attempt at intimidation and that [appellant] would need the name of the subject involved in order to proceed and summon the subject." He told the police that he did not know the name of the customer.

The OIG agent maintained that appellant did not establish an injury in the performance of duty as the alleged incident took place at a liquor store when appellant was off duty and consuming alcohol as he was not "forthcoming" in his interview with the OIG regarding whether he knew the customer. He noted that the statements from appellant and the customer were contradictory regarding the events on October 23 and 24, 2015. The OIG agent additionally noted that appellant's physician indicated that he was not taking his medication as prescribed and had other family problems that could aggravate his condition.

In a November 3, 2015 memorandum of interview accompanying the OIG report, an employing establishment inspector indicated that he interviewed appellant on October 26, 2015 in connection with an alleged threat. Appellant told him about his encounters with the customer when he tried to pick up a package on October 22 or 23, 2015 and when he encountered him on October 23 and 24, 2015. He informed the inspector that both he and the customer lived in the same neighborhood and indicated the residence of the customer on a map.

In response to OWCP's request for additional information, on January 20, 2016 appellant related that a couple of weeks before October 23, 2015 a customer began receiving suspicious packages, one of which was sent for investigation. The investigators told the supervisor to hold all of the packages for that mail box "because some drugs were going on." The customer who owned the mailbox came to pick up a package and saw appellant talking with his supervisor and holding packages. The customer came to appellant's house on October 23, 2015 and when he and his wife came out asked about a lost dog, and also about his vehicle. On October 24, 2015 he saw the customer in a market near his house. The customer advised that he was looking for appellant and that appellant should stay away because he "was a family guy and somebody will get hurt." Appellant notified his supervisor of the incident and filed a report. He advised that he did not have a relationship with the customer outside of delivering his parcels. Appellant noted that the employing establishment offered to relocate him, but they indicated that drug dealers would find him wherever he went. He indicated that he also experienced stress due to his mother's dementia and from events that occurred when he was stationed overseas.

The employing establishment, on January 25, 2016, controverted the claim, asserting that appellant had nonemployment-related emotional conditions for which he received compensation from the DVA.

On April 29, 2016 OWCP requested that a knowledgeable supervisor review and comment on the accuracy of appellant's statements. In a May 14, 2016 response, G.D. related that he did not concur with appellant's receipt of continuation of pay. He noted that employing establishment investigators found that the alleged incident occurred outside of work hours. The investigators learned that appellant knew the name and address of the customer even though he initially indicated that he did not know who had threatened him. G.D. also noted that appellant

was at a liquor store, not a fruit store when he encountered the customer, and that the inspectors did not find any threats made after an investigation. The customer did not come back to claim any more packages and the mailbox was closed as of December 2015. G.D. asserted that there was no proof the customer threatened him, noting that the customer denied the allegation. He indicated that appellant told several different versions of the alleged incident.

By decision dated June 10, 2016, OWCP treated appellant's emotional condition claim as one for an occupational disease and denied it, finding that he had not established that the October 23 and 24, 2015 incidents occurred as alleged, as his statements conflicted and were not supported by corroborating evidence. OWCP noted that the OIG found that appellant was off duty and at a liquor store when the incident(s) allegedly occurred and that the accused customer's account varied from appellant's version of the incident. Appellant also identified the customer and where he lived on a map after saying that he had no personal knowledge of the individual. OWCP additionally noted that the medical evidence of record did not establish a diagnosed condition due to any alleged work incident.

On appeal, appellant's contends that he is disabled from work due to his injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</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>6</sup>

An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>9</sup> An employee's

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>6</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *See Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> *Id.*

<sup>9</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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. 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.<sup>11</sup> 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.<sup>12</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.<sup>13</sup> 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>14</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging that he sustained occupational stress after a customer came to his house on October 23, 2015 and threatened him again on October 24, 2015. As he alleged events occurring over the course of more than one workday, his claim is properly adjudicated as an occupational disease claim.<sup>15</sup> OWCP denied the claim after finding that appellant had not factually established the occurrence of the claimed work incidents.

The Board finds that the evidence of record does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the events of October 23 and 24, 2015. He notified

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<sup>10</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>11</sup> 5 U.S.C. § 8101 *et seq*; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>12</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>13</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>14</sup> *Id.*

<sup>15</sup> A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

his supervisor of his encounters with the customer on October 26, 2015, as verified by the supervisor during an interview with an OIG agent. Appellant provided generally consistent accounts of the incidents, relating that a customer visited his house on October 23, 2015 purportedly looking for a lost dog, and that on October 24, 2015 the customer informed appellant that he was looking for him, not a dog and warned him to stay away from his packages or that something would happen. Appellant sought medical treatment on November 6, 2015. The employing establishment asserted that he did not inform investigators in a timely manner that he knew the name and residence of the customer. However, an inspector with the employing establishment advised that during an October 26, 2015 interview, appellant described his encounters with the customer on October 23 and 24, 2015 and that he knew the name and address of the customer. It further contended that the incident on October 24, 2015 may have occurred at a liquor store and that the customer contradicted his version of events. However, the fact that the customer in question disagreed with appellant's account of the incident does not render the claim factually deficient, nor does the type of store where the incident occurred. Appellant's course of action is consistent with his account of the facts of the case and there are no discrepancies, inconsistencies, or contradictions in the evidence which cast serious doubt that the events occurred as alleged.<sup>16</sup> The Board finds that, under the facts of this case, appellant's allegations have not been refuted by strong or persuasive evidence.<sup>17</sup>

As noted, workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.<sup>18</sup> 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.<sup>19</sup>

OWCP failed to make the necessary findings of fact regarding which, if any, of the implicated employment factors constituted compensable factors of federal employment to be considered by a physician when providing an opinion on causal relationship and which incidents are not deemed factors of employment and may not be considered.<sup>20</sup> The Board will remand the case so that OWCP may properly exercise its adjudicatory function.<sup>21</sup> After such further development as it considers necessary, it shall issue a *de novo* decision.

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<sup>16</sup> See *V.M.*, Docket No. 08-2304 (issued May 21, 2009).

<sup>17</sup> See *Leonard T. Munson*, Docket No. 98-1478 (issued December 23, 1999) *Margarita Bell*, 48 ECAB 172 (1996).

<sup>18</sup> See *Norma L. Blank*, 43 ECAB 384 (1992).

<sup>19</sup> See *Terri L. Peebles*, Docket No. 93-2214 (issued September 5, 1995).

<sup>20</sup> See *T.P.*, Docket No. 13-0392 (issued November 4, 2013).

<sup>21</sup> *Id.*

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: February 22, 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