

**United States Department of Labor
Employees' Compensation Appeals Board**

M.C., Appellant)	
)	
and)	Docket No. 18-1354
)	Issued: April 2, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
JESSE BROWN MEDICAL CENTER,)	
Chicago, IL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 3, 2018 appellant filed a timely appeal from a May 31, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant had filed a timely request for oral argument in this case. By order dated December 6, 2018, the Board exercised its discretion and denied appellant's request as oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument*, Docket No. 18-1354 (issued December 6, 2018).

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 22, 2017 appellant, then a 48-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2017 she had a panic attack while in the performance of duty. She explained that she saw a bedbug on her isolation gown while helping a nurse change a patient's diaper. Appellant noted that she was already under stress when she encountered the bedbug. She stopped work on August 10, 2017 and returned on August 22, 2017. The employing establishment noted that, pending a final investigation into the matter, a challenge letter would follow.³

Witness statements dated August 9, 2017 from Registered Nurses J.W., J.G., and V.A. were received. They reported that appellant was screaming that she could not breathe while walking around the nurse station. They also noted that a physician and several nurses in the hallway attempted to attend to her and the rapid response team was called. Appellant was put in a wheelchair, but she refused to sit in it, and she started walking towards the elevators. J.W. indicated that multiple physicians from the rapid response team walked with appellant. J.G. noted that the employing establishment police were called for assistance. V.A. indicated that appellant was helping a licensed practical nurse in the contact isolation room when she suddenly started yelling and left the room. She noted that the 4E manager and float manager escorted appellant to "employee health."

In an August 9, 2017 report, a certified physician assistant from the employee health unit provided an assessment of "employee anxiety/anger issues." She reported that appellant was seen because she was upset about the work she had been assigned. Appellant admitted becoming upset when her nursing supervisor asked her to perform a task when she wanted to go on her break. She related that she had waited for a patient to finish his breathing treatment and go to the bathroom, when her nursing supervisor again told her to perform a different task. Appellant then told her supervisor that she needed to take her break.

By development letter dated September 1, 2017, OWCP informed appellant that further medical evidence was necessary to establish her claim. It advised appellant that she should submit a rationalized medical report from her treating physician which explained how a diagnosed medical condition was causally related to factors of her federal employment. OWCP afforded appellant 30 days to submit the necessary evidence.

In an August 29, 2017 letter, the employing establishment controverted the claim. It indicated that appellant had not experienced an actual exposure to a bedbug. Rather, the anxiety appellant experienced was over an administrative issue in connection with her break time.

³ Appellant has filed a number of other claims alleging physical and emotional conditions causally related to factors of her federal employment. These claims have not been consolidated.

Dr. Paulette Wilson, a Board-certified internist, cosigned a September 7, 2017 report by Deborah Fosco, a licensed clinical social worker, which referenced the alleged employment incident. Ms. Fosco noted that upon appellant's return from an extended psychiatric leave, she had been provided with a cell phone and was instructed to carry it while on duty so that the nurses could contact her at any time. She indicated that on August 9, 2017 the cell phone rang while appellant was changing bed linens and she did not answer it, however she answered the cell phone when it rang a second time. When the charge nurse who phoned showed up in person, appellant was instructed to perform a different task in 10 minutes. However, the patient was receiving breathing treatment and then had to use the bathroom. Ms. Fosco noted that while waiting for the patient to come out of the bathroom, a nurse asked appellant for help in cleaning another patient who had been diagnosed with Methicillin-resistant Staphylococcus aureus (MRSA) and bedbugs. Appellant was noted to have become anxious when she noticed a bedbug on her gown. Ms. Fosco concluded that because appellant has obsessive compulsive disorder, a panic attack resulted from fear of contamination from MRSA and bedbugs and she exited the (second) patient's room screaming. She explained that anxiety, panic, and obsessions/compulsions do not respond to logic. Ms. Fosco diagnosed obsessive-compulsive disorder, panic disorder, major depressive disorder, and post-traumatic stress disorder. She concluded that the exposure to contagious and noncontagious diseases profoundly affects appellant's psychological and physiological response and that her multiple psychiatric illnesses impair optimal occupational functioning.

By decision dated October 5, 2017, OWCP denied appellant's claim. It found that she had not established a compensable factor of employment and, thus, had not established an emotional condition in the performance of duty.⁴

In an October 27, 2017 letter, the employing establishment indicated that appellant was terminated from employment, effective September 8, 2017. The termination was due to misconduct and administrative issues and not due to a work-related injury or physical inability to perform her duties.

On November 27, 2017 OWCP received appellant's November 15, 2017 request for an oral hearing before an OWCP hearing representative. The hearing was held on April 30, 2018. At the hearing appellant testified that, after she made a patient's bed, she was going to take a patient for his means test and then go on her break. She noted that she was getting a little anxious waiting for the patient to finish his breathing treatment and then finish going to the bathroom, when a nurse asked her to help her clean another patient. Appellant indicated that the second patient had MRSA and bedbugs and they had to put on protective garments. While she was putting on her protective garments she saw the first patient come out of the bathroom and she became anxious. Appellant indicated that the second patient was on his bed and she saw a bedbug on the patient. She also indicated that she looked down and saw a bedbug on her gown. Appellant indicated that her August 9, 2017 panic attack was triggered by seeing a bedbug on her gown. She also alleged that the employing establishment kept a paper trail so that they could fire her.

By decision dated May 31, 2018, an OWCP hearing representative affirmed the October 5, 2017 decision. He found that no compensable employment factors had been established. The

⁴ The decision was resent to appellant on November 7, 2017.

hearing representative also found that appellant had not established as fact that she encountered a bedbug on August 9, 2017 while in the performance of duty.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁶ 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.⁷

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*,⁸ 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 coverage under FECA.⁹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹⁰ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ When the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹³ However, an employee's statement alleging that an injury occurred at a given time

⁵ See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ See *R.P.*, Docket No. 18-1128 (issued December 17, 2018); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

⁸ 28 ECAB 125 (1976).

⁹ See *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁰ *Supra* note 8.

¹¹ See *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹² *M.D.*, 59 ECAB 211 (2007).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ When the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

Appellant's allegation pertaining to encountering a bedbug on August 9, 2017 while at work would have occurred in the performance of her regular or specially assigned duties under *Lillian Cutler*.¹⁷ The Board finds that because of the factual inconsistencies of record appellant has not established that she actually encountered a bedbug on August 9, 2017, as alleged. Although the second patient appellant attended to was in isolation for MRSA and bedbugs, the record is devoid of any corroborating evidence that a bedbug was seen that day on either appellant, the patient, or his bed. Additionally, appellant first reported seeing a bedbug on her gown when she filed her CA-1 form 13 days after the alleged incident. The earlier witness statements dated August 9, 2017 and the initial report from the employee health unit do not corroborate appellant's allegation regarding the presence of a bedbug. Her testimony regarding the bedbug was general in nature and had inconsistencies as to where the bedbug had been seen. As such, appellant has not established that on August 9, 2017 she observed a bedbug on her isolation gown as alleged.

Thus, appellant has not established a compensable employment factor under FECA and, therefore, has not met her burden of proof to establish that she sustained an emotional or stress-

¹⁴ See *D.G.*, Docket No. 06-1673 (issued September 11, 2007); see *Thelma Rogers*, 42 ECAB 866 (1991).

¹⁵ See *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁶ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ See *supra* note 8.

related condition in the performance of duty.¹⁸ As she has not established a compensable employment factor, the Board need not consider the medical evidence of record.¹⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁸ See *G.M.*, Docket No. 17-1469 (issued April 2, 2018).

¹⁹ *Katherine A. Berg*, 54 ECAB 262 (2002).