

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

_____)	
J.S., Appellant)	
)	
and)	Docket No. 18-0513
)	Issued: March 1, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On January 5, 2018¹ appellant filed a timely appeal from a July 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-0513.

On January 10, 2017 appellant, then a 40-year-old regular city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed post-traumatic stress disorder (PTSD) due to factors of his federal employment.

Appellant specifically alleged that his PTSD was caused by a work-related police incident on August 26, 2014, as well as ongoing bullying and harassment by management. He also reported filing a grievance on September 20, 2016 due to a September 7, 2016 notice of removal from the employing establishment.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days following the July 18, 2017 merit decision was January 14, 2018. Since using January 16, 2018, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 5, 2018, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1)

In a January 30, 2017 controversion letter, B.M., the employing establishment's postmaster, controverted the claim. He reported that appellant had numerous disciplinary actions due to his inability to be in regular attendance at work. B.M. also noted an incident from two years prior, when appellant created a hostile work environment on the workroom floor by threatening his immediate supervisor and was instructed to leave the premises. He reported that appellant was instructed to leave five times, after which the Mandeville Police Department was called to have him escorted off of the postal premises.

By decision dated July 18, 2017, OWCP denied appellant's claim, finding that he had not established a diagnosed medical condition in connection with the incidents described. It also found that there were no compensable factors of employment, also that the employee supported that the incident occurred as described. OWCP noted that the police incident in the employing establishment parking lot, the incidents pertaining to leave issues, and the disciplinary actions regarding failure to be in regular attendance were accepted events which occurred as alleged, but did not amount to compensable factors of employment.

The Board, having duly considered the matter, concludes that the case is not in posture for decision.² FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.³ The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁴

OWCP's July 18, 2017 decision denied appellant's claim for failing to establish a diagnosed medical condition causally related to the accepted factors of employment. However, the decision provided conflicting findings as it also found that the evidence failed to establish compensable factors of employment. The Board finds that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining its disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his emotional condition claim.⁵ OWCP's procedures provide that, when denying an emotional condition claim, the claims examiner must first determine whether the situations alleged actually existed or occurred.⁶ The claims examiner should then distinguish between those workplace activities and circumstances which are factors of employment and those which are outside the scope of employment for purposes of compensation by outlining work-related and nonwork-related elements into three parts.⁷ If a claimant does implicate a factor

² *N.M.*, Docket No. 17-0262 (issued July 3, 2017).

³ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

⁵ *K.J.*, Docket No. 14-1874 (issued February 26, 2015). *See also J.J.*, Docket No. 11-1958 (issued June 27, 2012).

⁶ *D.H.*, Docket No. 17-1529 (issued February 14, 2018).

⁷ These should be labeled as accepted events that are factors of employment, accepted events that are not factors of employment, and incidents alleged which OWCP finds did not occur. *Id.* *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800 (June 2011).

of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁸ 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.⁹ OWCP's July 18, 2017 decision, however, failed to provide a clear decision and proper findings with respect to whether appellant established compensable factors of employment.

On remand OWCP shall make findings of fact regarding whether the employment events alleged by appellant are considered compensable employment factors.¹⁰ Following this and any other further development deemed necessary, OWCP shall issue a *de novo* merit decision.¹¹

IT IS HEREBY ORDERED THAT the July 18, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: March 1, 2019
Washington, DC

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

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

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

⁸ *K.W.*, 59 ECAB 271 (2007); *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

⁹ *Robert Breeden*, 57 ECAB 622 (2006).

¹⁰ *A.R.*, Docket No. 11-1949 (issued April 16, 2012).

¹¹ *C.W.*, Docket No. 14-0693 (issued January 12, 2016).