

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

C.F., Appellant	)	
	)	
and	)	<b>Docket No. 18-1607</b>
	)	<b>Issued: March 12, 2019</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>NORTH FLORIDA/SOUTH GEORGIA</b>	)	
<b>VETERANS HEALTH SYSTEM, VETERANS</b>	)	
<b>AFFAIRS OUTPATIENT CLINIC,</b>	)	
<b>The Villages, FL, Employer</b>	)	
	)	

*Appearances:*  
Capp P. Taylor, Esq., for the appellant<sup>1</sup>  
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 August 20, 2018 appellant, through counsel, filed a timely appeal from an April 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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<sup>1</sup> 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.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

### **ISSUE**

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

### **FACTUAL HISTORY**

On August 23, 2017 appellant, then a 56-year-old supervisory audiologist, filed an occupational disease claim (Form CA-2) alleging that on December 13, 2016 there was an active shooter in the employing establishment and she immediately began having difficulty sleeping, concentrating, and remembering.<sup>4</sup> She also reported experiencing constant negative thoughts and indicated that she did not want to leave her house. Appellant noted an episode of tactile hypersensitivity and facial numbness in January 2017 and, after she sought care on January 8, 2017, she was diagnosed with post-traumatic stress disorder (PTSD). She first attributed her condition to her federal employment on August 15, 2017.

In an August 29, 2017 development letter, OWCP requested that the employing establishment address the accuracy of appellant's statements, whether it agreed with her allegations, and any points of disagreement. In a separate development letter of the same date, it also requested additional factual and medical evidence from appellant regarding her emotional condition claim. OWCP afforded both appellant and the employing establishment 30 days to respond.

On September 6, 2017 the employing establishment noted that, as a supervisor, appellant had more stress than a regular employee, that she notified it of her condition on August 15, 2017, and that she performed her duties competently.

Appellant provided a September 5, 2017 duty status report (Form CA-17) from Keith Hester, a physician assistant, which noted that she had developed a post-traumatic stress condition following an active shooter incident.

By decision dated October 3, 2017, OWCP denied appellant's occupational disease claim, finding that she had not submitted medical evidence establishing causal relationship between her PTSD and the "accepted work event."

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the April 27, 2018 decision OWCP received additional evidence. 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 additional evidence for the first time on appeal. *Id.*

<sup>4</sup> On October 1, 2017 appellant, through counsel, also filed a traumatic injury claim (Form CA-1) for the events of December 13, 2016.

On October 16, 2017 appellant provided a narrative statement indicating that, in the morning on December 13, 2016, there was an active shooter at the outpatient clinic. Shots were fired, but the police apprehended the shooter before anyone was injured. Appellant was at work at the time and could not hear the initial announcement in her office. She moved to the front of the audiology section and was able to hear the second announcement. Appellant ensured that the door to the audiology section was closed and locked. She explained that the shooting took place in the mental health clinic area where she taught a weekly class. Approximately one hour after the shooter was caught, police instructed employees to leave the building, so that they could check the employing establishment for explosive devices.

On January 29, 2018 appellant requested reconsideration of the October 3, 2017 decision. She provided a January 11, 2018 report from Dr. Joseph Risko, an osteopath. Dr. Risko noted that appellant was present during the December 13, 2016 shooting at the employing establishment. He opined that the shooting at work aggravated appellant's underlying mild depression and anxiety to the point of causing major depressive disorder with anxiety, PTSD, and insomnia.

By decision dated April 27, 2018, OWCP modified the October 3, 2017 decision to reflect that the December 13, 2016 active shooter event was not a compensable employment factor and that appellant's alleged injury had not occurred in the performance of duty. It found that appellant had no direct contact with the active shooter nor did the incident occur in her work area on December 13, 2016.

### **LEGAL PRECEDENT**

To establish an emotional condition causally related to factors of his or her federal employment, the claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>6</sup> However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or hold a particular position.<sup>7</sup>

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<sup>5</sup> *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>6</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>7</sup> *Lillian Cutler, id.*

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.<sup>8</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>9</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>10</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>11</sup> Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner.<sup>12</sup>

### ANALYSIS

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

OWCP has not fully developed appellant's emotional condition claim. Appellant attributed her condition to the events surrounding an armed assailant who fired shots in the employing establishment on December 13, 2016, as well as the investigation of possible bombs. OWCP's August 29, 2017 development letter requested that the employing establishment address the accuracy of appellant's statements, whether it agreed with her allegations, and any points of disagreement. The employing establishment responded on September 6, 2017 and noted that, as a supervisor, appellant had more stress than a regular employee, that she provided notification of her condition on August 15, 2017 and that she performed her duties competently.

Although it is appellant's burden to establish her claim, OWCP is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>13</sup> The employing establishment's response did not provide the necessary details of the events of December 13, 2016, confirm the location and number of shots fired at the employing establishment, explain the procedures taken to ensure employees' safety, provide the

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<sup>8</sup> *K.S.*, Docket No. 18-0845 (issued October 26, 2018); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> *K.S.*, *supra* note 8; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> 20 C.F.R. § 10.121.

<sup>12</sup> *L.B.*, Docket No. 15-0905 (issued September 19, 2016).

<sup>13</sup> *D.M.*, Docket No. 14-0460 (issued February 11, 2016); *C.S.*, Docket No. 14-1994 (issued January 21, 2015).

findings of any police investigation or action, or provide other evidence regarding appellant's involvement in the claimed incident.<sup>14</sup>

For these reasons, the case will be remanded to OWCP to obtain additional information from the employing establishment regarding the alleged work-related incident that occurred on December 13, 2016.<sup>15</sup> After carrying out such further development, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 27, 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: March 12, 2019  
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

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<sup>14</sup> The Board further notes that, in sending the August 29, 2017 development letter to the employing establishment, OWCP failed to follow its procedures in emotional condition claims which require waiting until it received appellant's statement before sending a development letter to the employing establishment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.0800.5(c) (June 2011).

<sup>15</sup> *L.B.*, Docket No. 17-1671 (issued November 6, 2018).