United States Department of Labor
Employees' Compensation Appeals Board

F.B., Appellant	)	
and	)	**Docket No. 18-1462**
	)	**Issued: May 9, 2019**
DEPARTMENT OF THE ARMY, McALESTER ARMY AMMUNITION PLANT, McAlester, OK, Employer	)	

Appearances:
Jessica Rogers, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 23, 2018 appellant, through counsel, filed a timely appeal from a January 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on March 4, 2016, as alleged.

FACTUAL HISTORY

On March 24, 2016 appellant, then a 44-year-old explosives operator work inspector, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2016 she developed post-traumatic stress disorder (PTSD) as a result of a traumatic event of "near death of personal explosion" while in the performance of duty. She did not stop work.

In a March 16, 2016 letter, Keith Keplinger, a licensed professional counselor and behavioral health clinician, indicated that appellant underwent an initial intake on August 3, 2015 and was diagnosed with depressive disorder. He noted that appellant was currently being evaluated to see if she met the criteria for PTSD as a result of a work event.

By development letter dated April 6, 2016, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary information.

In an April 19, 2016 follow-up examination report, Quinton Bohannon, a physician assistant, indicated that appellant was treated for anxious and fearful thoughts, excessive worry, fatigue, difficulty sleeping, and feelings of guilt and restlessness. He provided examination findings and diagnosed recurrent major depressive disorder.

On May 2, 2016 appellant stopped work.

In a narrative statement, appellant related that on March 4, 2016 at 10:30 a.m. she was returning to the bunker to get L.B. when the pits loaded with cap grenades exploded injuring several coworkers. Another coworker ran out of the bunker and instructed appellant to call 911. Appellant did so and asked someone to open the gate for the emergency medical technicians upon their arrival. After the incident, she recounted that she went into the breakroom and cried. Shortly thereafter, appellant was instructed to return to her work duties. She explained that she did not feel like going to work because of the accident and still gets upset when she thinks about the work event. Appellant indicated that she had sought counseling since August 3, 2015 for a preexisting depressive disorder condition and described the medical treatment she received.

By decision dated May 6, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the medical component of fact of injury. It accepted that the March 4, 2016 incident occurred as alleged, but denied her claim because the medical evidence of record failed to provide a medical diagnosis causally related to the accepted employment incident.

On June 3, 2016 appellant requested reconsideration.

OWCP received psychiatric examination reports and notes dated March 8 to May 26, 2016. The reports indicate that appellant was treated for depression and traumatic stress following "an

explosion at the ammunition plant." Appellant was diagnosed with recurrent major depressive disorder and PTSD.

In work status notes dated June 2 to August 15, 2016, Dr. Christopher Puls, a Board-certified psychiatrist, reported diagnoses of PTSD and major depressive disorder. He related that appellant should remain off work until after September 13, 2016 due to her current symptoms.

In an August 18, 2016 letter, J.H., a safety director at the employing establishment, controverted appellant's claim. He alleged that on March 4, 2016, when two demolition pits detonated at Demolition Area #2, the only employees directly exposed to the overpressure, thermal flux, and/or fragment hazards were C.T. and A.R. The safety director indicated that all other team members were safely inside the bunker, performing road guard tasks, or working at Demolition Area #1. He asserted that the other employees were outside the danger areas by distance or were in the bunker, which was structurally certified to protect employees from injury.

In an e-mail dated August 17, 2016, C.B., a human resources specialist at the employing establishment, contended that appellant was not actually involved in the March 4, 2016 incident. She noted that appellant was not working at the demolition range where the explosion occurred.

By decision dated August 29, 2016, OWCP affirmed the denial of appellant's claim with modification. It found that the evidence of record was insufficient to establish that appellant actually experienced the March 4, 2016 incident, as alleged, and; accordingly, she had failed to establish the factual component of fact of injury. OWCP noted that, while the March 4, 2016 incident occurred, the evidence of record demonstrated that appellant was not in the demolition area where the explosion occurred.

On September 5, 2017 appellant, through counsel, requested reconsideration. She indicated that appellant was submitting an updated statement, which demonstrated that she was not in the safety of the bunker at the time of the explosion, but was instead within close proximity to and witnessed the explosion on March 4, 2016. Counsel alleged that appellant's statement should be given great probative value over the employing establishment's assertion that all the employees were in the safety of the bunker.

In a narrative statement, appellant explained that she was working at the burning grounds near where capping pits are filled with grenades. She reiterated that she was on the way to the bunker when there was a power surge and two of the pits unexpectedly exploded. Appellant noted that she saw big clouds of smoke and debris. She reported that she knew there were two people down there and that they were probably dead. Appellant asserted that she was in shock and felt sick to her stomach. She clarified that she was not in the bunker, but was outside on the grounds, approximately 20 feet from the bunker. Appellant explained that she was in the van approximately 200 yards from the explosion. She related that, after the March 4, 2016 explosion, her depression symptoms have worsened. Appellant noted that she has flashbacks about the explosion, has been depressed and anxious, and has started to feel panicked and overwhelmed.

In psychological evaluation reports dated June 21 and August 25, 2017, Dr. Michael Stephen, a licensed clinical psychologist, noted that appellant was working as an explosive operator work inspector for the employing establishment. He described that on March 4, 2016 she

was working on the grounds where obsolete munitions are exploded and burned. Dr. Stephen indicated that as appellant was heading to a bunker there was a power surge, which unexpectedly detonated one of the pits. He explained that she became significantly frightened for the lives of herself and her coworkers, and was fearful of being near the burning grounds and pits in case there might be another accidental detonation. Dr. Stephen discussed appellant's history of depression and conducted a mental status evaluation. He diagnosed persistent depressive disorder and PTSD.

OWCP received additional medical reports dated June 2 to July 19, 2016. The reports related that appellant was present for an explosion at an ammunition plant and had experienced flashbacks, intrusive thoughts throughout the day and evening, and general change in her mood/ anxiety level. Appellant was diagnosed with PTSD and major depressive disorder.

In a December 14, 2017 letter, J.H., the safety director at the employing establishment, explained that on March 4, 2016 at approximately 10:45 a.m. he was notified of an accidental detonation at Demolition Area #2. He related that R.O., an internal auditor, interviewed the crew listed as working that day and was informed that appellant was inside a work truck with two other employees parked outside the command bunker at the time of the accidental detonation. The safety director indicated that appellant's account was corroborated by the statement given by Mr. C. that he told appellant to call 911. He explained that exposed sites at distances greater than the Inhabited Building Distance (IBD) are considered safe from the effects of accidental detonation. The safety director reported that the IBD for the 510-pound explosives of the accidental detonation was 1,250 feet and that the safety bunker was over 1,800 feet from the accidental detonation site.

In a December 19, 2017 letter, the employing establishment contended that, according to a statement from J.H., appellant was in a van near a bunker at the time of the incident. It noted that this information was consistent with appellant's account of the incident in her July 20, 2017 statement. The employing establishment further indicated that appellant had described seeing big clouds of smoke and debris. It explained that these things could be seen when driving down the highway near the base. The employing establishment noted that appellant did not suffer from any physical effects of the blast and, therefore, was a safe distance from the accidental detonation.

By decision dated January 22, 2018, OWCP denied modification of the August 29, 2016 decision. It found that the evidence submitted was insufficient to overcome the discrepancy of the facts regarding whether appellant was exposed to the explosion incident on March 4, 2016, as alleged. Accordingly, OWCP found that appellant had failed to meet the requirements to establish that she sustained an injury as defined by FECA.

LEGAL PRECEDENT

To establish that an employee sustained an emotional condition causally related to factors of his or her federal employment, appellant 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 that he or she has an emotional condition

or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factors.[3]

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.[4] 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 to hold a particular position.[5]

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.[6] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.[7] However, to the extent 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.[8]

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.[9] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.[10]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a compensable employment factor. However, the case is not in posture for decision with regard to causal relationship.

Appellant alleged that on March 4, 2016 she was working as an explosives operator worker inspector and was on her way to the safety bunker on the burning grounds when two of the pits

[3] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[4] *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[5] *Lillian Cutler*, *id.*

[6] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

[7] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

[8] *Id.*

[9] *Kathleen D. Walker*, *supra* note 3.

[10] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

filled with grenades unexpectedly exploded. She indicated that she was in a vehicle and approximately 200 yards from the explosion. Appellant noted that she saw a big cloud of smoke and debris flying. She reported that she knew that two people were down in the pits and probably dead. Another coworker ran out of the bunker and instructed appellant to call 911. Appellant did so and asked someone to open the gate for the emergency medical technicians upon their arrival. She related that she felt sick to her stomach following the explosion. Appellant indicated that she has flashbacks about the explosion, has been depressed and anxious, and has started to feel panicked and overwhelmed.

In an August 18, 2018 letter, J.H. related that, with the exception of the two crew members in the detonation pit, all other team members were inside the bunker, performing road guard tasks, or working at Demolition Area #1. In a December 14, 2017 letter, he further confirmed that appellant was inside a vehicle with two other employees outside the command bunker at the time of the accidental detonation on March 4, 2016.

The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable under *Cutler*.[11] Where a claimed disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of FECA.[12]

The Board finds that in this case appellant has attributed her reaction to her specific employment duties. The fact that appellant was in a work truck in close proximity to two demolition pits that accidently exploded and witnessed big clouds of smoke and debris constitutes a compensable employment factor. The Board finds, therefore, that appellant was on duty performing her specific employment duties as an explosives operator at the time that the March 4, 2016 accidental explosion occurred, which she alleges caused an emotional reaction.

As appellant was performing her regular duties as an explosives operator when the accidental detonation occurred on March 4, 2016, the Board finds that she has established a compensable work factor under *Cutler*.[13] The case will therefore be remanded to OWCP for proper consideration of the medical evidence. After such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a compensable factor of employment. However, the case is not in posture for decision with regard to causal relationship.

[11] *See Lillian Cutler, supra* note 4.

[12] *Jack M. Terrell*, Docket No. 00-1276 (issued September 18, 2001); *Robert Bartlett*, 51 ECAB 664 (2004); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[13] *See W.F.*, Docket No. 17-0640 (issued December 7, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2018 decision of the Office of Workers' Compensation Programs is modified in part, and the case is remanded for further action consistent with this decision.

Issued: May 9, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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