

FACTUAL HISTORY

On June 27, 2018 appellant, then a 38-year old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 2018 she experienced an anxiety attack while delivering mail to a liquor store while in the performance of duty. She explained that a person put his hand on her forehead like he had a gun. J.V., a supervisor and manager of customer service at the employing establishment, controverted the claim and indicated on the claim form that after viewing video from store surveillance, the story does not match.

In support of her claim appellant provided an undated statement. She explained that she was delivering mail to a liquor store and “a man put his hand on my forehead like he had a gun and said pow like he shot me.” Appellant alleged that when she asked him why he did that, he replied, “I don’t care, I don’t believe in God.” She noted that she ran inside the liquor store and asked if they saw what happened. Appellant indicated that the “store man said he saw what happened and told me the man was acting a fool before I came in.” She alleged that she immediately called her manager. Appellant confirmed that the store had cameras and that her manager and coworker arrived to view the video and to see the man who confronted her.

In a June 26, 2018 letter, N.S., an Employee Assistance Program (EAP) consultant, noted that appellant experienced a traumatic incident at work on Monday, June 25, 2018. She explained that they met to discuss appellant’s needs and recommended that she not go on the street for three days, or until she was able to do so.

In a July 3, 2018 letter, P.R., a health and resource management specialist, controverted the claim. She noted that Supervisor J.V. obtained video security footage of the incident from the liquor store which revealed appellant having a dialogue with a man upon entering the business. However, it did not show any sort of actions as described.

In a development letter dated July 10, 2018, OWCP informed appellant of the deficiencies in her claim and explained the type of factual and medical evidence needed to establish her claim. It asked appellant to complete a questionnaire describing the events surrounding her injury and the nature of her relationship, if any, with the assailant. OWCP afforded her 30 days to submit the necessary evidence. Appellant did not respond to the questionnaire.

OWCP received a June 29, 2018 return to work report from Dr. Geetha Ganesan, a Board-certified internist. Dr. Ganasan diagnosed anxiety and panic attacks and indicated that appellant experienced a work-related injury on June 25, 2018. She released appellant to work without restrictions on July 9, 2018.

In a letter dated July 11, 2018, J.V. controverted the claim. He explained that the video surveillance of the alleged incident showed that what appellant claimed had not happened.

In a July 20, 2018 Statement of Hospitalization/Treatment and Return to Work note Dr. Rina A. Patel, a Board-certified psychiatrist, indicated that appellant was incapacitated for the

period July 5 to 18, 2018. She recommended that appellant work inside for her first week of work and then return to her route.

In a July 27, 2018 report Mary Pellman, a licensed professional counselor (LPC), noted that appellant received treatment for the period July 20 to August 15, 2018. OWCP also received a duplicate copy of the June 26, 2018 letter from N.S., the EAP consultant.

By decision dated August 14, 2018, OWCP denied appellant's claim. It found that she had not met her burden of proof to establish an injury in the performance of duty. OWCP explained that the evidence of record did not establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. It advised that the reason for this finding was that appellant had not responded to the questionnaire and it was unclear if there was a personal relationship away from work between appellant and the alleged assailant.

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.³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁴ 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.⁵

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*,⁶ 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.⁷ 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 her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁵ *Id.*

⁶ 28 ECAB 125 (1976).

⁷ See *Robert W. Johns*, 51 ECAB 137 (1999).

of the work.⁸ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁹

Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work. Assaults for private reasons do not arise out of the employment unless, by facilitating an assault that would not otherwise be made, the employment becomes a contributing factor.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on June 25, 2018.

Appellant's claim pertains to an alleged event that occurred on June 25, 2018, while she was delivering mail. She has claimed that a person put his hand on her forehead like he had a gun and said "pow." OWCP accepted that appellant had a dialogue with the alleged assailant on June 25, 2018, outside the liquor store, but that she had not established that the incident of June 25, 2018, occurred in the performance of duty. J.V., appellant's supervisor, controverted the claim and explained that the video of the incident showed that what appellant claimed had not happened.

In a July 10, 2018 development letter, OWCP requested further information regarding the incident and the nature of appellant's relationship with the assailant. However, appellant did not respond.¹¹ Her failure to respond to the development letter prevented OWCP from determining whether the incident arose from her employment or for a private reason.

For the foregoing reasons, the Board finds that appellant has not met her burden of proof to establish that the claimed incident occurred as alleged. Therefore, appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty. As she did not establish a compensable employment factor, the Board need not consider the medical evidence of record.¹²

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

⁸ *Lillian Cutler*, *supra* note 6.

⁹ *J.F.*, 59 ECAB 331 (2008).

¹⁰ *See R.A.*, 59 ECAB 581 (2008).

¹¹ *See David S. Lee*, 56 ECAB 602 (2005).

¹² *See Katherine A. Berg*, 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on June 25, 2018.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 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