

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

C.S., claiming as widower of K.S., Appellant	)	
	)	
and	)	<b>Docket No. 18-1733</b>
	)	<b>Issued: May 24, 2019</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>ATLANTA REGIONAL OFFICE, Decatur, GA,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 14, 2018 appellant filed a timely appeal from a May 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that the employee's suicide on November 21, 2014 occurred in the performance of duty.

## FACTUAL HISTORY

On December 9, 2014 appellant filed a claim for compensation by widower (Form CA-5) in his capacity as husband of the deceased employee, an attorney, who died on November 21, 2014, at the age of 53. In response to the history of employment-related disease, he related that the employee "felt stressed and overwhelmed by amount of work required of her although she was working part-time hours. She felt that her work was not adequate and feared repercussions." In response to direct cause of death, appellant indicated "trauma -- due to injuries sustained after jumping from a parking deck including dissection of the aorta." He noted that the contributory causes of death were that the employee had been treated for major depression and generalized anxiety disorder since 2008.

On the reverse side of the claim form, Dr. Carol A. Harpe, a Board-certified psychiatrist, completed an attending physicians report dated December 18, 2014. She checked the box marked "yes" indicating that the death of the employee was due to her employment-related stress/overwork. Dr. Harpe diagnosed major depressive disorder and recurrent generalized anxiety disorder. She indicated that "throughout [the employee's] treatment, the stress of her job was a significant factor in her feeling that it was difficult to cope and manage her life. [The employee] did not verbalize suicidal ideation or any suicidal plan at any time prior to her death. She felt pressure to work longer hours than she was contracted to work which created stress and anxiety. Due to working long hours [the employee] felt she was unable to take time for herself due to family demands."

In a development letter dated February 2, 2015, OWCP requested that appellant submit additional evidence in support of his claim for survivor benefits. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP also directed the employing establishment to provide all available assistance to appellant to obtain the supporting documentation necessary to facilitate the claim. It afforded both parties 30 days to respond.

In a February 27, 2015 treatment note, Dr. Harpe indicated that the employee was seen for major depressive disorder and generalized anxiety disorder from 2008 until she ended her life on November 21, 2014. She indicated that the employee was never hospitalized, but remained in ongoing outpatient psychotherapy with antidepressant medication to stabilize her mood, lower her symptoms of anxiety, and control feelings of low self-esteem and fears of not being able to meet the demands of her job.

By decision dated March 17, 2015, OWCP denied appellant's claim for survivor benefits on behalf of the employee. It found that the evidence of record was insufficient to establish a compensable employment factor with respect to the employee's suicide.

On March 15, 2016 appellant, through his representative, requested reconsideration and submitted new evidence. He argued that the employee's suicide was the result of stress at work. The representative explained that the employing establishment's Administrative Investigations Board (AIB) conducted an investigation following the employee's suicide which resulted in a July 6, 2015 report of investigation (AIB memorandum) and that, while the identities of the employee's coworkers and their statements were redacted, the evidence supported that pervasive abuse was suffered by the employee at work. He also noted that he was submitting new medical evidence from Dr. Harpe, supporting that the employee's work duties caused her suicide.

In a March 7, 2016 report, Dr. Harpe indicated that she treated the employee for major depression and generalized anxiety from 2008 until the employee's suicide on November 17, 2014, and opined that the "chronic abusive treatment of [the employee's supervisor] towards [the employee] was the dominant and primary cause of the escalation of [the employee's] mental disorder which led in a continuous sequence to her suicide. It is my opinion that the hostile work environment was a direct cause without which the suicide would not have occurred. Restated the suicide was a continuous sequence caused by work conditions unbroken by independent causes." She further opined that the employee "was not in full possession of her faculties at the time of her suicide. The hostile work environment directly caused the depression and anxiety which produced a compulsion to commit suicide and prevented her from exercising discretion or judgement so as to control that compulsion."

Dr. Harpe noted that the AIB memorandum revealed "chronic abusive hostility" from the employee's supervisor, P.H., and that the employee was required to work greater than 16 hours per week, without extra pay. She explained that this caused the employee "ongoing stress in caring for her family and often prevented her from being able to pursue stress reducing activities such as exercise or any form of relaxation." Dr. Harpe noted that she based her opinion upon the AIB memorandum and the testimony of the employee's coworkers who witnessed hostile, demeaning and abusive behavior by P.H. towards the employee. She noted that the actions of P.H. were chronic in nature and included that the employee was belittled, abused, and made to feel worthless and inadequate, and noted that one coworker described "feelings of hopelessness." Dr. Harpe opined that "[f]eelings of helplessness and hopelessness could directly lead to suicidal ideation which can occur impulsively under conditions of great emotional duress." She noted that the employee suffered from generalized anxiety disorder and opined that these "feelings were certainly exacerbated and aggravated by her work environment."

Dr. Harpe advised that the employee blamed herself and internalized the negativity and criticisms of her supervisor rather than becoming angry or complaining. She noted that the employee requested a transfer because she was negatively impacted by the work environment and that the transfer request caused more criticism from P.H. Dr. Harpe opined that the employee was overcome by the fear, anxiety and hopelessness that this abuse created in her to the point that she elected to end her life rather than seek a more rational reasonable outcome. She noted that the fact that the employing establishment did in fact grant transfers from this work environment to all staff attorneys who requested it after her death speaks to the degree of abuse that existed in her workplace.

Dr. Harpe indicated that she last saw the employee on November 17, 2014, four days before her death, and that at no time during her session did she voice suicidal feelings or ideation. She

noted that the employee was looking forward to time with her family for Thanksgiving. Dr. Harpe indicated that the employee had no history of previous suicide attempts and in the eight years that she was seen in weekly to bi-monthly psychotherapy, she never voiced suicidal ideation or the feeling that she could not go on.

OWCP received an investigatory memorandum dated July 6, 2015, from the AIB which related that the employee's suicide was the "catalyst to complaints from other current and former Region 5 staff attorneys that led to the convening of the Board." AIB found that the employee's supervisor, P.H., a regional counsel, "repeatedly bullied and belittled" the staff attorneys, threatened them with revocation of telework and other workplace flexibilities, commented negatively on individual staff members in the presence of their peers, and fostered a workplace environment characterized by fear and anxiety. It also found that testimony from multiple witnesses established that the heavy workload was greatly exacerbated by P.H.'s supervisory behavior that suppressed independent ideas and thoughts, and where employees did not feel comfortable approaching her for guidance or mentorship for fear of ridicule, punishment, or retribution. AIB determined that P.H. engaged in inappropriate conduct and created a hostile, abusive, intimidating, threatening, and psychologically unsafe environment for the employee. However, AIB's memorandum also noted that the Board was not charged with determining whether actions of management contributed to the employee's death and as a result, no findings were made in that regard.

By decision dated March 1, 2017, OWCP denied modification of the March 17, 2015 decision, finding that the evidence of record was insufficient to establish that the employee's suicide on November 21, 2014 was causally related to a factor of her federal employment. It noted receipt of the July 6, 2015 AIB memorandum, but found that appellant failed to provide any evidence, such as formal findings from grievances or EEO investigations, to establish that the employing establishment erred or acted abusively.

On January 19, 2018 appellant, through his then counsel, requested reconsideration and submitted additional evidence. He noted that the AIB memorandum revealed that P.H. was made to resign from her position due to an abuse of personnel authority, that P.H. inappropriately "down rated" the employee on October 15, 2013 and October 10, 2014 in her performance appraisals without appropriate documentation of deficiency, and that P.H. threatened to make her work longer hours for the same 16-hour part-time pay. Appellant argued that AIB's memorandum confirmed that six out of eight attorneys testified that they observed "hostile, demeaning, and/or abusive behavior" by P.H. towards the employee, that the other attorneys witnessed P.H. "constantly belittle [the employee] in front of other region 5 employees," that legal representation was sought to transfer from P.H., and that P.H. would criticize the employee if she communicated with outside attorneys which caused her to be fearful of retaliation. He also noted that, following the employee's death, two other attorneys requested to be reassigned as a reasonable accommodation for stress and anxiety.

OWCP received: "informant notes;" performance appraisals dated October 24, 2012, October 15, 2013, and October 10, 2014; letters pertaining to the employee's attempt to transfer dating from June to July 2014; a November 18, 2014 request from the employee for time off on November 28, 2014; a January 3, 2015 letter from former coworker M.S.; a copy of the March 1,

2013 letter from appellant to P.H. related to the increased hours the employee was required to work; copies of the July 6, 2015 AIB memorandum; and the March 7, 2016 report from Dr. Harpe.

OWCP also received a copy of a March 2, 2015 investigative interview of appellant and D.S., the sister of the employee, which was conducted in response to allegations of mismanagement of the subordinate staff by P.H. and S.P. It also received a letter dated March 1, 2013, from appellant to the employee's supervisor, P.H. Appellant indicated that he was a concerned husband writing on behalf of the employee, that over the last 12 to 18 months the employee's workload had increased greatly causing her to work an average of 30 to 32 hours a week, that the employee felt that she may need to work 40 hours a week, that the employee had considerable unused vacation time, that the employee had to rely on others yet felt "entirely accountable for all outcomes even when she has no influence over these individuals," that he was concerned about her health, and that the stress of work and caring for three young children "has become a near impossibility."

By decision dated May 3, 2018, OWCP denied modification of its prior decision, finding that appellant had not established a compensable employment factor under FECA and, therefore, had not established that the employee sustained an emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

A claimant for survivor benefits has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the employee's death was causally related to his or her employment.<sup>3</sup> To establish his or her claim that a deceased employee sustained stress in the performance of duty, which precipitated his or her death, a claimant must submit the following: (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 his or her death was due to or aggravated by an emotional reaction; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her death.<sup>4</sup>

Appellant has the burden of proof to establish by a preponderance of the reliable, probative, and substantial evidence the existence of causal relationship between the employee's death by suicide and factors of his or her federal employment.<sup>5</sup> The suicide itself must arise out of the employee's assigned duties to such an extent as to be regarded as arising out of and in the course of employment.<sup>6</sup> In determining whether an employee's suicide is causally related to factors of his or her federal employment, OWCP has adopted the chain of causation test.<sup>7</sup>

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<sup>3</sup> *L.B. (A.V.)*, Docket No. 17-1671 (issued November 6, 2018); *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>4</sup> *L.B., (A.V.), id.*; see also *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>5</sup> *Rosita Mahana (Wayne Mahana)*, 53 ECAB 503 (2002).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

OWCP's Federal (FECA) Procedure Manual provides unequivocal instructions relating to the development of the evidence and the adjudication of such a claim and further notes that all suicide claims are not precluded by 5 U.S.C. § 8102(a)(2)<sup>8</sup> providing, "[C]ompensation can be paid if the job-related injury (or disease) and its consequences directly resulted in the employee's domination by a disturbance of the mind and loss of normal judgment which, in an unbroken chain, resulted in suicide.<sup>9</sup> Under the chain of causation test, OWCP's Federal (FECA) Procedure Manual provides that, if the injury and its consequences directly resulted in a mental disturbance, or physical condition which produced a compulsion to commit suicide, and disabled the employee from exercising sound discretion or judgment so as to control that compulsion, then the test is satisfied and the suicide is compensable.<sup>10</sup> OWCP's Federal (FECA) Procedure Manual adds that, for the suicide to be compensable, the chain of causation from the injury to the suicide must be unbroken.<sup>11</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>12</sup> In the case of *Lillian Cutler*,<sup>13</sup> 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.<sup>14</sup> Where the claimed condition results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the condition comes within the coverage of FECA.<sup>15</sup> A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>16</sup>

In cases involving emotional or stress-related 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

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<sup>8</sup> Section 8102(a)(2) of FECA precludes payment of compensation for disability or death sustained in the performance of duty where the injury or death is caused by the employee's intention to bring about the injury or death of himself, herself, or another. *See* 5 U.S.C. § 8102(a)(2).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.15 (September 1995).

<sup>10</sup> *Id.* at Chapter 2.804.15b(2).

<sup>11</sup> *Id.* at Chapter 2.804.15b(3).

<sup>12</sup> *S.K.*, Docket No. 18-1648 (issued March 14 2019).

<sup>13</sup> 28 ECAB 125 (1976).

<sup>14</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *see also Robert W. Johns*, 51 ECAB 137 (1999).

<sup>15</sup> *A.C.*, Docket No. 18-0597 (issued November 26, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016).

<sup>16</sup> *See G.R.*, *supra* note 14; *see also Roger Williams*, 52 ECAB 468 (2001). For harassment to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. *James E. Norris*, 52 ECAB 93 (2000).

opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>17</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>18</sup>

### ANALYSIS

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

On December 9, 2014 appellant filed a claim for compensation in his capacity as the widower of the deceased employee. He alleged that the employee's November 21, 2014 death by suicide was due to an emotional condition caused by incidents and conditions related to her work as an attorney for the employing establishment. Appellant claimed that numerous employment factors caused the employee's suicide, including chronic harassment and abuse by her supervisor, stress due to the amount of work required of her, and pressure to work longer hours than she was contracted to work.

In developing the claim, appellant was sent a development letter on February 2, 2015 requesting that he supply factual and medical evidence which was necessary to establish the claim. He was instructed to respond to a development questionnaire. OWCP also sent a copy of the development letter to the employing establishment and instructed it "to provide all available assistance to the claimant to obtain supporting documentation necessary to facilitate the claim." Appellant was afforded 30 days to respond. No separate development letter was issued to the employing establishment.

OWCP's Federal (FECA) Procedure Manual provides guidance regarding claim development and adjudication by OWCP.<sup>19</sup> The Board finds that OWCP has not properly developed or adjudicated appellant's claim in accordance with its procedures. In developing a claim involving a suicide, the procedures require that the claims examiner obtain statements from the employee's family, supervisor, coworkers, and other associates who might have pertinent knowledge or information concerning the circumstances surrounding and leading to the employee's death, in addition to requesting all investigation reports from local authorities. OWCP is further required to obtain a rationalized medical opinion concerning the relationship between the suicide and the employment-related injury from either the employee's attending physician or a second opinion specialist. OWCP's decision as whether to accept or deny a suicide case must be made by the District Director or a higher authority.<sup>20</sup>

The Board finds that because OWCP failed to send a claim development letter to the employing establishment requesting the required information, nor did the claims examiner obtain

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<sup>17</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>18</sup> *Id.*

<sup>19</sup> *Supra* note 9.

<sup>20</sup> *Id.* at Chapter 2.804.15(c)(5).

a rationalized medical report from a qualified treating physician, the present claim has not been properly developed. Furthermore, the May 3, 2018 decision denying the claim was issued by a senior claims examiner, not a District Director or higher authority.

The Board therefore finds that the case must be remanded to OWCP for further development consistent with OWCP's procedures for developing and adjudicating claims relating to an employee suicide. After carrying out such further development, a District Director or higher authority shall issue a *de novo* decision, containing adequate findings of fact and a statement of reasons, with respect to appellant's claim for survivor benefits on behalf of the deceased employee.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 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: May 24, 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