

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

J.M., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
MIKE MONRONEY AERONAUTICAL
CENTER, Washington, DC, Employer**

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**Docket No. 19-0076
Issued: May 21, 2019**

Appearances:
Christopher L. Kannady, Esq., for the appellant¹
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 October 10, 2018 appellant, through counsel, filed a timely appeal from an August 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 his burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On March 20, 2017 appellant, then a 46-year-old business operation program manager, filed an occupational disease claim (Form CA-2) for gastroesophageal reflux disease (GERD), hiatal hernia, Barrett's esophagus, irritable bowel syndrome (IBS), sleep apnea, insomnia, and profound fatigue which were significantly aggravated by a hostile work environment he endured during his employment at the Department of Veterans Affairs (VA). He claimed that his disability resulting from these conditions had never improved and that it continued to deteriorate his quality of life. Appellant noted that he first became aware of his conditions on February 6, 1988 and first realized their relationship to his federal employment on June 1, 2014. He explained that the delay in filing his claim was because he did not know his rights concerning a workers' compensation claim until he researched medical retirement.

Appellant provided a separate undated statement indicating that he worked as a full-time employee at the VA, Consolidated Patient Account Center, Business Operations Management, in Asheville, North Carolina from August 11, 2013 through August 23, 2014. He noted that he was diagnosed as having GERD, ulcers, hiatal hernia, gastritis, IBS, Barrett's esophagus, sleep apnea, and post-traumatic stress disorder (PTSD) in 1998 while on active duty with the U.S. Air Force. Appellant described the medical treatment he received for his preexisting conditions. He attributed the aggravation of these conditions to a hostile work environment created by D.B., a VA lead program analyst. Appellant contended that D.B. was overly-critical of his work, utilizing intimidation, ridicule, mockery, insults, and put-downs. She also interfered with his work performance by taking over a meeting or project. D.B. berated appellant in private and in front of his peers, and threatened to fire him. He claimed that her actions caused him emotional distress and outbreaks. Appellant noted that he accepted a significantly lower position with another Federal Government agency to avoid harassment rather than seek help from the VA. He was seeking permanent and total disability status due to an aggravation of his existing conditions. Appellant maintained that, although he was in a new position, his disability had not improved. He indicated that his disability had significantly worsened.

In support of his claim, appellant submitted a job analysis tool for a business operation program manager position and a letter dated March 6, 2017 from the VA which indicated that he had a combined 100 percent service-connected total permanent disability. An undated VA benefits form indicated that appellant had service-connected disability for GERD with ulcer to include IBS, gastritis, and Barrett's esophagus of 60 percent, hemorrhoids of 10 percent, vertigo with headaches of 30 percent, PTSD with alcohol use disorder (also claimed as anxiety and depression) of 70 percent, sleep apnea with bronchitis of 50 percent, and bilateral feet gout of 20 percent.

Appellant also submitted medical reports dated beginning February 6, 1998, including a March 16, 2017 letter from Dr. Kristin C. Lewis, a Board-certified internist. Dr. Lewis opined that appellant's service-connected diagnoses of hiatal hernia, GERD, esophagitis, gastritis, duodenal ulcers, PTDS, depression, and anxiety, and secondary conditions of IBS, hemorrhoids, tooth

enamel erosion from GERD, and Barrett's esophagus more likely than not caused, contributed to, and aggravated his total disability.

By development letter dated April 3, 2017, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence, including his responses to a development questionnaire. By separate development letter of the same date, it requested that the current employing establishment provide additional factual information concerning appellant's alleged injury, to include comments from a knowledgeable supervisor on the accuracy of his statements. OWCP afforded both parties 30 days to submit the requested evidence.

In a letter dated May 1, 2017, the employing establishment responded to OWCP's development letter, contending that appellant failed to establish fact of injury as his claimed stressors occurred during his employment at the VA. It maintained that he had not identified specific dates, events, or incidents that constituted stressors occurring during his employment at its agency. In addition, the employing establishment noted that, while appellant's claim indicated that he first realized that he had a condition caused or aggravated by his employment on June 1, 2014, he had not begun working at its agency until August 24, 2014.

Dr. Lewis, in a report dated May 30, 2017, reiterated her physical and emotional diagnoses. She also addressed appellant's work capacity and restrictions.

On October 31, 2017 QTC Medical Services, OWCP's scheduler, referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Shabbir A. Chaudhry, a Board-certified internist, for a second opinion to address specific questions, including whether appellant had a current condition or preexisting condition caused or aggravated by factors of his federal employment.

In a report dated November 16, 2017, Dr. Chaudhry noted appellant's past medical history which included diagnoses of gastritis, GERD, esophagitis, and hiatal hernia on February 6, 1998 and undergoing a biopsy that was negative for any dysplasia (any cancer). He also noted his current occupation as a business operations program manager. Dr. Chaudhry related that appellant attributed an aggravation of his conditions to being subjected to an extraordinarily hostile work environment at the VA, including intimidation, ridicule, mockery, insults, and put-downs by his peers and threats of being fired on multiple occasions. He provided a systemic review and discussed findings on physical examination. Dr. Chaudhry provided impressions of GERD, gastritis, esophagitis, and hiatal hernia. He also provided an impression of sleep apnea for which appellant used a continuous positive airway pressure machine. Dr. Chaudhry opined that his condition was not caused by factors of his present employment. He concluded that appellant was not permanently disabled from all employment.

OWCP, by development letter dated December 15, 2017, requested that the VA provide factual information concerning appellant's alleged injury, to include comments from a knowledgeable supervisor on the accuracy of his statements and a copy of his position description. It afforded the VA 30 days to submit the requested evidence. No response was received.

By decision dated January 22, 2018, OWCP denied appellant's occupational disease claim, finding that the opinion of Dr. Chaudhry constituted the weight of the medical evidence and established that his diagnosed medical conditions were not causally related to the accepted work event(s). It noted that when appellant filed his claim for GERD, he filed it when he was working for his current employer. Appellant's claim, however, was due to aggravation of GERD when working at the VA.

OWCP subsequently received an April 10, 2018 letter by Dr. Aaron M. McGuire, an orthopedic surgeon. Dr. McGuire noted that appellant related a history that his preexisting service-connected physical and emotional conditions were aggravated by a hostile work environment created by D.B. He claimed that the team leader constantly belittled and criticized him, and changed his work structure in a very demanding fashion. Appellant also claimed that her actions caused significant stress and flashbacks from his service in the U.S. Air Force, which included a flare-up of his previous PTSD diagnosis. Dr. McGuire reviewed his medical records, provided a review of systems, and discussed findings on physical examination. He diagnosed worsening GERD, Barrett's esophagus, esophagitis, and duodenal ulcers. Dr. McGuire opined that appellant suffered a physical aggravation of his preexisting conditions of GERD, Barrett's esophagus, esophagitis, duodenal ulcers, PTSD, and depression directly related to the hostile work environment at the VA.

On May 30, 2018 appellant, through counsel, requested reconsideration of OWCP's January 22, 2018 decision. Counsel contended that Dr. Lewis' March 16, 2017 letter and Dr. McGuire's April 10, 2018 letter were sufficient to establish appellant's claim.

By decision dated August 28, 2018, OWCP modified its prior decision to reflect that appellant's claim was denied based on fact of injury, rather than causal relationship. It found that he had not submitted sufficient evidence to establish a hostile work environment at the VA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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

³ *Id.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Irene St. John*, 50 ECAB 521 (1999).

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.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability 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 disability comes within the coverage of FECA.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁹ When 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

In his occupational disease claim form and undated narrative statement, appellant alleged that his physical and emotional conditions were aggravated by the hostile work environment he endured during his employment at the VA. The Board has held, however, that perceptions of harassment or discrimination are not compensable under FECA. A claimant must establish a factual basis for his or her factual allegations with probative and reliable evidence.¹¹

OWCP explained to appellant, in an April 3, 2017 development letter, the necessity of providing additional information about the work exposure or contact claimed to have contributed to his claimed conditions. Appellant did not, however, respond to OWCP's request for additional factual evidence. The record before OWCP at the time of its August 27, 2018 decision does not

⁶ See *M.C.*, Docket No. 18-1354 (issued April 2, 2019); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Supra* note 2; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁰ *M.C.* Docket No. 18-1354 (issued April 2, 2019); *Kim Nguyen*, 53 ECAB 127 (2001).

¹¹ *G.G.*, Docket No. 18-0432 (issued February 12, 2019); *G.M.*, Docket No. 17-1469 (issued April 2, 2018).

otherwise have any evidence confirming a hostile work environment at the VA. The reports of Dr. Lewis and Dr. McGuire merely noted a history of injury as related to them by appellant. The need for an explanation by appellant is particularly important in this case since the VA did not respond to OWCP's development letter dated December 15, 2017 requesting factual information concerning his alleged injury. In addition, the current employing establishment controverted his claim and contended that the claimed stressors occurred during his employment at the VA and not at its agency. As part of his burden of proof, appellant must provide a detailed description of the employment factors or conditions that he believes caused or adversely affected the condition or conditions for which compensation is claimed.¹² It is important that appellant provide that factual statement identifying the factors alleged to have caused the diagnosed conditions so that the medical evidence can be evaluated to determine whether the employment factors identified by the claimant were the proximate cause of the alleged condition.¹³ As he failed to provide this information, appellant has failed to meet his burden of proof.¹⁴

On appeal counsel contends that the opinions of Dr. Lewis and Dr. McGuire are sufficient to establish causal relationship between appellant's diagnosis and federal employment. Although the issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician,¹⁵ appellant must first establish the employment factors which he alleges caused or contributed to his claimed condition.¹⁶ As he has not established the employment factors alleged to have caused an injury, appellant failed to meet his burden of proof.¹⁷

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

¹² *C.C.*, Docket No. 14-0939 (issued July 6, 2015); *Penelope C. Owens*, 54 ECAB 684 (2003).

¹³ *Irene St. John*, *supra* note 5.

¹⁴ *C.L.*, Docket No. 17-1137 (issued September 14, 2017); *A.S.*, Docket No. 16-0944 (issued November 2, 2016).

¹⁵ *B.B.*, Docket No. 17-0919 (issued June 28, 2017).

¹⁶ *T.B.*, Docket No. 17-0444 (issued May 5, 2017).

¹⁷ *C.L.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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