

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

J.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
McLouth, KS, Employer**

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**Docket No. 19-1047
Issued: November 13, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2019 appellant filed a timely appeal from an April 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on January 29, 2019 as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 2, 2019 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.*

FACTUAL HISTORY

On February 14, 2019 appellant, then a 50-year-old sales services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2019 she developed anxiety after receiving a telephone call regarding the return of a postmaster, who she alleged had assaulted a letter carrier. She stated that she was afraid to go to work as she would be required to work alone with this postmaster. A witness, K.K., indicated on the claim form that she had made the telephone call to appellant. Appellant stopped work on January 30, 2019. On the reverse side of the claim form, the employing establishment controverted the claim indicating that there was no proof that she sustained an injury as a result of a telephone call.

In a report dated January 29, 2019, Dr. Darin Elo, a Board-certified emergency room physician, related that appellant was seen that day for anxiety.

In a development letter dated March 4, 2019, OWCP advised appellant of the deficiencies in her claim and explained the type of factual and medical evidence needed to establish her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. In a January 29, 2019 narrative report, Dr. Elo diagnosed anxiety/nerves and sweats as the reason for appellant's visit. He noted that she had explained that she became afraid after learning that she had to work with another employee who had anger issues with fellow employees.

In a January 31, 2019 emergency room form, Kerry McClay, a licensed social worker, diagnosed adjustment disorder with anxiety. She related that appellant had explained that an employee she believed was dangerous had been assigned to work at her employing establishment. Ms. McClay related that this individual had previous volatile incidents including a recent incident during which he dislocated a fellow employee's shoulder. Appellant had related being fearful of this individual as he enjoyed talking about violence.

In an e-mail dated April 7, 2017, appellant informed her supervisor that she did not want to be left alone with R.H. because she was afraid of him. She related that K.K. had informed her of an incident during which R.H. appeared visibly upset. Appellant related that she was told by K.K. that R.H. had "gotten into it" with one of the letter carriers. She alleged that R.H. enjoyed harassing people and she indicated that she should not be required to work alone with R.H. as he was angry with her because "he can't have my job."

In a March 22, 2019 report, Ms. McClay diagnosed adjustment disorder with anxiety due to fears at being forced to work with a postmaster she considered abusive.

On March 22, 2019 appellant completed the questionnaire and noted that she had worked for R.H. before, and his behavior was unprofessional. She noted that he returned to work at the employing establishment on January 30, 2019. Appellant stated that she had been notified at approximately 2:30 p.m. on January 29, 2019 by K.K. that she would be working with R.H. on his return to the employing establishment.

In an April 1, 2019 statement, the employing establishment denied appellant's allegations that R.H. had assaulted an employee on August 9, 2018. It explained that two employees had complained to R.H. that more staff was needed to get the work done. The employing establishment denied that an assault had occurred. It explained that it had, by then, placed R.H. on a detail at another location. The employing establishment noted that at no time did appellant allege that he assaulted or threatened her.

By decision April 2, 2019, OWCP denied appellant's claim as she had failed to establish the factual element of fact of injury. It further found the medical evidence insufficient to meet the burden of proof. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁵

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁷ 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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *G.J.*, Docket No. 19-0801 (issued September 16, 2019); *see S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

employment, the disability comes within the coverage of FECA.⁸ On the other hand, the disability is not covered when 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on January 29, 2019 as alleged.

Appellant has not related her anxiety and disability to the performance of her regular work duties on January 29, 2019. She alleged that she learned by telephone call on January 29, 2019 that R.H. would be returning to her work location. Appellant explained that she was afraid of him because he had previously dislocated a coworker's shoulder. She has not asserted, and there is no evidence of record, that R.H. had threatened or caused her physical harm. Appellant's concern that she would be working with him, which she asserted would be a dangerous work environment, was based on her anticipation of danger after discovering that he would be returning to work. The Board has held that fear-of-future injury is not compensable.¹⁰ This is true even if the employee is found to be medically disqualified to continue employment because of the anticipated employment factors. The fear that one might sustain further injury is self-generated and is not compensable.¹¹

As appellant has not established that she was actually threatened by R.H., the Board finds that her fear-of-future injury does not constitute a compensable injury under FECA. Therefore, she has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty on January 29, 2019, as alleged. As appellant did not establish compensability, 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 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 her burden of proof to establish an emotional condition in the performance of duty on January 29, 2019.

⁸ *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ See *R.L.*, Docket No. 18-1462 (issued May 9, 2019); *R.H.*, Docket No. 13-1193 (issued May 29, 2014); *B.R.*, Docket No. 12-1943 (issued July 24, 2013).

¹¹ *R.H.*, *id.*; *Joseph G. Cutrufello*, 46 ECAB 285 (1994).

¹² See *D.A.*, Docket No. 18-1715 (issued May 24, 2019); *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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