

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

\_\_\_\_\_ )  
**J.T., Appellant** )

**and** )

**DEPARTMENT OF JUSTICE, BUREAU OF )  
PRISONS, FEDERAL CORRECTIONAL )  
INSTITUTION TEXARKANA, Texarkana, TX, )  
Employer** )  
\_\_\_\_\_ )

**Docket No. 19-1751  
Issued: April 6, 2020**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 19, 2019 appellant, through counsel, filed a timely appeal from a March 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 11, 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

## FACTUAL HISTORY

On September 6, 2018 appellant, then a 33-year-old cook foreman, filed an occupational disease claim (Form CA-2) alleging an emotional condition as a result of factors of his federal employment. He stated that his condition occurred due to his day to day interaction with inmates. Appellant noted that he watches inmates cook meals on a day-to-day basis and that he is on the defensive when he is around inmates in the kitchen. He reported that he first became aware of his condition and its relationship to his federal employment on September 2, 2018. Appellant stopped work on September 3, 2018.

On September 6, 2018 OWCP received an undated note from William Eldridge, a social worker, who recommended that appellant be placed on a six-week leave of absence due to stress. Mr. Eldridge recommended that appellant avoid being around inmates or stressful situations.

In a development letter dated September 20, 2018, OWCP informed appellant of the deficiencies of his claim and requested that he submit additional factual and medical evidence, including a detailed description of the implicated work factors which he alleged caused his emotional condition in addition to a well-rationalized report from his physician regarding the cause of his emotional condition. It requested that he respond to the questions in an attached questionnaire and return it to OWCP. On the same date, a development letter was sent to the employing establishment requesting a response to appellant's allegations. OWCP afforded both parties 30 days to respond.

OWCP received a September 19, 2018 note from Craig Mueller, a family nurse practitioner, who reiterated Mr. Eldridge's recommendation for a six-week leave of absence.

Further, OWCP received duplicate reports dated October 16, 2018 from Dr. Tom Wright, a licensed clinical psychologist. Dr. Wright indicated that he had treated appellant on and off from 2008 to 2010 for post-traumatic stress disorder (PTSD) "brought on by Middle East combat experiences including immediate visual proximity to sudden violent death, believing himself responsible for sudden violent death, being under personal threat and threat to companions of sudden violent death." He noted that appellant had numerous symptoms and that every available treatment modality had been tried, but that they were met with limited success. Dr. Wright noted that he was unable to recommend a line of work where it would be reasonable to anticipate a remission of symptoms.

On November 19, 2018 OWCP received another undated note from Mr. Eldridge, indicating that he saw appellant for six counseling sessions from September 4 to October 9, 2018. Mr. Eldridge determined that appellant should not be around inmates or stressful work situations until he was thoroughly assessed by his psychologist or psychiatrist. He noted that appellant reported an increase in psychological sensitivity over the last seven months due to work-related stress.

By decision dated December 12, 2018, OWCP denied appellant's claim for an employment-related emotional condition. It noted his allegation that watching inmates cook the meals and dealing with inmates on a daily basis contributed to his condition, but denied his claim on the factual component of the third basic element because he had not responded to the questionnaire. OWCP found that the evidence of record failed to support that appellant actually experienced the employment incident(s) alleged to have occurred. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 11, 2019 appellant requested reconsideration.

In an undated report, received on January 7, 2019, Dr. Wright noted that he had treated appellant since his return from Iraq and that he suffered from PTSD related to combat experiences while working as a civilian contractor. He noted that his last clinical contact was on January 3, 2019. Dr. Wright reported that appellant was subjected to constant harassment at the employing establishment by the employee whose position and or promotion appellant had been given because of his overseas service. He diagnosed PTSD and recommended continuation of medication, therapy, and monitoring for suicidal ideation.

By decision dated March 11, 2019, OWCP denied modification of the prior decision. It explained that appellant failed to submit a detailed statement as requested on September 20, 2018 and that without the detailed information it was unable to perform its adjudicatory function of determining the truth of his allegations and whether the factors claimed to have caused his condition to fall within the coverage of FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

---

<sup>4</sup> See *supra* note 2.

<sup>5</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); see *T.O.*, Docket No. 18-1012 (issued October 29, 2018); see *Michael E. Smith*, 50 ECAB 313 (1999).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

In cases involving emotional 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 which working conditions are not deemed factors of employment and may not be considered.<sup>10</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>11</sup>

### ANALYSIS

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

Appellant filed an occupational disease claim on September 6, 2018 alleging that his interaction with inmates on a daily basis, including watching inmates cook meals in the kitchen, resulted in the development of an emotional condition.

On September 20, 2018 OWCP asked appellant to complete a questionnaire and provide a detailed description of the work factors that caused his condition, including the dates of the alleged /incidents and the names of any involved parties. However, appellant has not responded and therefore has not provided OWCP with the information necessary to adjudicate his emotional condition claim. To meet his burden of proof a claimant must specifically identify the employment

---

<sup>7</sup> See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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

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

<sup>10</sup> *L.S.*, Docket No. 18-1471 (issued February 26, 2020); see *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>11</sup> *Id.*

factors or incidents alleged to have caused his condition and establish a factual basis for his allegations with probative and reliable evidence.<sup>12</sup>

The Board finds that appellant has not met his burden of proof to establish his claim as he has not adequately described to OWCP the work factors which he alleges caused him to sustain an emotional condition.<sup>13</sup>

As appellant has not established that a compensable factor of employment, it is unnecessary to address the medical evidence of record.<sup>14</sup>

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, as alleged.

---

<sup>12</sup> *Id.*

<sup>13</sup> The Board notes that appellant's medical records appear to support a severe psychiatric condition with his attending physician suggesting total disability. To the extent that appellant may not be mentally capable of compiling the necessary claim information, the employing establish may be requested to provide further information. *See* Federal (FECA) Procedure Manual, *Initial Development of Claims*, Chapter 2.800.4(b)(1-2) (June 2011).

<sup>14</sup> *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board