

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

_____)
Y.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Bessemer, AL, Employer)
_____)

Docket No. 19-1877
Issued: April 30, 2020

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 10, 2019 appellant filed a timely appeal from a July 29, 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 a diagnosed medical condition causally related to the accepted May 16, 2019 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 29, 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 June 13, 2019 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2019 she experienced panic and anxiety attacks while in the performance of duty. She explained that she was involved in an altercation with a coworker, in which the coworker threatened her and attempted to physically harm her. Appellant asserted that she sustained an emotional condition caused by the fear that she would be attacked again, that the incident had triggered panic and anxiety attacks due to her post-traumatic stress disorder (PTSD), and that she had to be placed in a psychiatric facility as a result. She stopped work on May 20, 2019.³

In a June 10, 2019 medical note, Dr. Karen Callahan, Board-certified in psychiatry and neurology, indicated that appellant was admitted for care at a medical facility from June 6 to 10, 2019.

In a June 15, 2019 witness statement, T.J., a coworker, reported that she overheard an unpleasant and unprofessional verbal altercation between appellant and R.T., a fellow coworker. A few seconds later, T.J. saw appellant exit through a door in tears and several other coworkers restraining R.T.

In a development letter dated June 25, 2019, OWCP advised appellant of the deficiencies of her claim and instructed her as to the type of factual and medical evidence necessary to establish her claim. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. Additionally, OWCP asked appellant to complete a questionnaire and provide further details regarding the circumstances of the claimed May 16, 2019 employment injury. It afforded her 30 days to submit the necessary evidence.

OWCP continued to receive evidence. In a Family and Medical Leave Act (FMLA) form dated May 29, 2019, Dr. Callahan explained that appellant suffered from PTSD and that the May 16, 2019 verbal threat appellant suffered at work exacerbated her anxiety and depression symptoms.

In a June 24, 2019 grievance form, appellant challenged the way in which the employing establishment handled the May 16, 2019 incident. She also included a June 6, 2019 grievance for a seven-day suspension she believes that she received in retaliation for filing her May 16, 2019 grievance.

In response to OWCP's questionnaire, appellant submitted a June 29, 2019 statement in which she noted that she had no sources of stress outside her federal employment. She explained that she had previously received psychological care for PTSD and anxiety and that since the May 16, 2019 incident, she had experienced worsening shaking, crying, and nervousness as a result.

³ Appellant also submitted an occupational disease claim (Form CA-2) dated June 13, 2019 summarizing the same facts and circumstances included in her June 13, 2019 traumatic injury claim (Form CA-1).

In a July 5, 2019 medical note, Monique Johnson, a licensed professional counselor, reported that appellant had been participating in weekly counseling sessions since June 6, 2019. She confirmed that appellant was experiencing symptoms of PTSD, which were triggered by the attempted physical attack from a male coworker. Ms. Johnson also discussed appellant's treatment for her symptoms.

In an undated statement, appellant again described the May 16, 2019 employment incident and explained that her anxiety began to flare to the point that she needed to leave work early. She indicated that, due to her diagnosed PTSD and anxiety conditions, she was unable to continue working with a colleague she described as violent and asserted that this was not the first time that R.T. displayed that type of behavior.

In an undated witness statement, J.S., a coworker, indicated that he saw appellant sitting outside of the employing establishment on May 16, 2019. When he inquired if she was "ok," she replied that she was involved in the incident that took place on the workroom floor with R.T. J.S. indicated that following the incident appellant advised management that she did not feel comfortable after the incident, as her concerns had not been addressed.

Appellant also submitted an undated witness statement with an illegible signature describing a June 20, 2018 incident in which R.T. had a separate altercation with multiple coworkers and supervisors.

In a report of contact dated July 8, 2019, OWCP asked appellant to clarify whether she was claiming a traumatic injury or an occupational disease. Appellant responded that her injury occurred during a single shift on May 16, 2019 and not over a period of time, and therefore she was claiming a traumatic injury. She explained that she initially submitted both traumatic injury and occupational disease claim forms because she was unsure of which form to submit.

By decision dated July 29, 2019, OWCP found that the factual evidence was sufficient to establish that the May 16, 2019 employment incident occurred as alleged, but it denied the claim finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the employment incident. Thus, it found that appellant had not established the medical component of fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 1.

employment injury.⁵ 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.⁶

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.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ 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.⁹ 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.¹⁰

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 are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.¹¹ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹² If a compensable factor

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

⁶ 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).

⁷ *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).

⁸ *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁹ *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁰ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹¹ *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹² *Charles E. McAndrews*, 55 ECAB 711 (2004).

of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.¹³

ANALYSIS

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

In support of her claim, appellant provided several reports from Dr. Callahan. In her initial May 29, 2019 FMLA form, Dr. Callahan explained that appellant suffered from PTSD and that the May 16, 2019 verbal threat she suffered at work exacerbated her anxiety and depression symptoms. Subsequently, on June 10, 2019, she noted that she had verified that appellant was admitted to a facility, however, made no reference as to a diagnosis. The Board finds that the notation of PTSD on the FMLA form under the heading of relevant medical facts constitute evidence from Dr. Callahan which establishes a medical diagnosis in association with the claimed employment incident.

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met her burden of proof to establish that her diagnosed condition is causally related to the accepted May 16, 2019 employment incident.¹⁴

CONCLUSION

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

¹³ *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁴ *E.C.*, Docket No. 19-0854 (issued October 17, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 30, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board