

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

M.C., Appellant

and

**PEACE CORPS, VOLUNTEER SERVICES,
Kingston, Jamaica, Employer**

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**Docket No. 19-0624
Issued: December 8, 2020**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2019 appellant, through counsel, filed a timely appeal from a November 30, 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a skin condition causally related to the accepted factors of her federal service; and (2) whether she has

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.*

met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal service.

FACTUAL HISTORY

On July 12, 2017 appellant, then a 57-year-old former Peace Corps literacy adviser, filed an occupational disease claim (Form CA-2) alleging that, during her service in Jamaica, she developed a traumatic stress disorder and an insect bite condition while in the performance of duty. She attributed the conditions to the failure of the employing establishment to provide sanitary and suitable accommodations, and to constant accusations and rumors spread by employing establishment staff and volunteers. Appellant noted that she first became aware of her conditions on March 11, 2015 and of their relationship to her federal service in July 2015. She stopped volunteering for the employing establishment in October 2015.

In correspondence dated July 7, 2017, S.A., an employing establishment nurse, related that appellant's first tour of duty as a Peace Corps volunteer was from August 24 through September 11, 1981, and that her second tour began on March 9, 2015 and ended early on October 15, 2015. She noted that appellant had several encounters with management in which she complained of termites and worsening rashes during September 2015, and that she chose to terminate early. S.A. forwarded additional evidence.

In a memorandum dated March 30, 2015, S.W., a program manager, noted that appellant had confronted her about her home placement. She indicated that appellant was unhappy with the location of her placement because she was not living in a home with artists and artisans, she did not have access to the internet, she was unable to smoke indoors, and at age 50 plus she should be able to do what she has been doing all her life. S.W. indicated that she had informed appellant that, in placing trainees in a home, she had no bias, preference or prejudice, noting that her job was to take all information she had from both the trainees and the host family into consideration, and that not all requests could be met when placing a trainee into a home. She specifically noted that host families requested that trainees smoke outside the home.³

The employing establishment health unit medical information included an unsigned problem list indicating that appellant reported a forearm rash and environmental concerns on September 13, 2015.

On September 10, 2015 Lyn Stinnett, an employing establishment nurse practitioner, noted that appellant had reported that her house had termites in the kitchen and that she was allergic to the dust and debris left by them in cabinets and drawers. She indicated that appellant was removed from the house for the weekend so that it could be sprayed, but only the kitchen was sprayed. Appellant was then removed for a second weekend so that the entire house could be sprayed. In a follow-up note dated September 14, 2015, Ms. Stinnett noted appellant's report of a bilateral forearm rash and that appellant was provided medication. On September 17, 2015 appellant reported to Dr. Deborah Newnham, an employing establishment medical officer, that the rash had

³ The evidence submitted also included: appellant's health history in which she reported that she has had intermittent asthma since 2009; her health plan; medical questionnaires; a health care responsibility list; a vaccine consent form; and her immunizations records.

spread to her neck and chest, and Dr. Newnham indicated that she assessed dermatitis after appellant showed her a photograph of the rash. On September 28, 2015 Ms. Stinnett reported that appellant had been seen at appellant's site the previous week and that she had a long string of complaints about her housing, unhappiness about living there, and the rash on her arms from grasses, dust, and mold. She noted that she had asked appellant's program manager about moving her to another house, but that locations were hard to find. Ms. Stinnett indicated that appellant called the medical office every Sunday to complain about a health problem and her housing issues. In an authorization for payment of medical/dental services dated October 9, 2015, she noted that appellant had terminated her service early and was authorized to have three mental health counseling sessions post service for readjustment support.

In a development letter dated August 30, 2017, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In correspondence dated October 20, 2017, Hensel Owen Ward, Jr., Ph.D., a clinical psychologist, noted that he had begun his assessment of appellant on November 12, 2015 and had seen appellant for 27 sessions of psychotherapy since that time, but noted that he did not see her between January and September 23, 2016 when he began treating her again. He diagnosed a single episode of moderately severe major depressive disorder and other trauma-related disorder. Dr. Ward reported that, when appellant first came to see him, she complained of depression with anxiety, and she asserted that her symptoms were the result of severe stress while she volunteered with the employing establishment in Jamaica. He described specific complaints that she had been placed in an empty house with insect infestation that was sprayed with pesticides, that she had been informed by people in the community that people had disappeared from this house or had been violently murdered, and that she had been followed by a strange man and woman. Appellant indicated that, due to these factors and to verbal abuse from the employing establishment's director, she was fearful for her life. She described symptoms of poor sleep, including regular nightmares replicating some of the abuse she felt she received in a hostile work environment and exhibited episodic withdrawal symptoms and disrupted sleeps with periods of hypersomnia. Appellant related that she felt guilty about what had happened to her, as though she had failed her mission, and felt dead and empty inside.

Dr. Ward noted that appellant's functioning had been very low for about a month after she returned stateside, and that her condition worsened before it began to improve. He advised that she suffered prominent self-abasing thoughts and intrusive memories of noxious stimuli in Jamaica and that, in general, she felt overwhelmed and traumatized by experiences during her service with the employing establishment, and resorted to self-medication for treatment of her emotional conditions after her return to the United States. Dr. Ward clarified that he did not diagnose post-traumatic stress disorder because it did not appear that the stressor involved an extreme level of threat. He advised that, although appellant feared that she would be abducted, there was no direct contact that involved such a present danger, but that she was still traumatized by the cumulative effect of events that she experienced in Jamaica, which resulted in a diagnosis of "other trauma-related disorder." Dr. Ward opined that her psychopathology was precipitated by her experience living in Jamaica, which were factors that contributed to the level of stress that produced her symptoms. He noted that, while appellant had a history of psychological treatment related to grief

in 1994, 1997, and 2004 when reacting to the death of a loved one, she had recovered without any further symptoms. Dr. Ward concluded that he continued to treat appellant.

On November 7, 2017 appellant submitted a series of e-mails dated June 30 to September 24, 2015 related to her problems with her housing in Jamaica.⁴ On June 30, 2015 she noted that, when she moved from her previous housing, the landlady had locked the kitchen so that she could not get the food and supplies that she had purchased, and that the landlady had broken her iron. On July 24, 2015 appellant indicated that she had not had running water for 48 hours, noting that she had to pay to have the water tank filled and then the water drained out. In August 2015 she described problems with her new housing, noting termite infestation through the entire apartment and that she had to go to a hotel while the kitchen was being sprayed. Appellant requested temporary housing until all problems including water and termites had been resolved, indicating that she could not be an effective volunteer with continued major housing health and safety issues. On September 2, 2015 she reported that the house was still untenable. Although she was authorized to find new housing, appellant reported that she could not find furnished accommodation, and noted that she had been placed in housing without water on two occasions and had received no assistance from the employing establishment. On August 24, 2015 J.W., the employing establishment country director, wrote appellant and recounted a confrontational meeting with her regarding her housing issues, including termite infestation. She noted that appellant had been moved from her previous host family, that she needed to find a solution to the hostility, and she needed to find a way to solve problems in a mutually respectful way. J.W. continued that appellant had three coaching sessions over the last five months, and that she had witnessed appellant's volatility firsthand in their otherwise standard conversation about housing. She further noted that appellant was not meeting appellant's core expectation of living and respectfully integrating herself into her host community. This e-mail also indicated that appellant was on a performance improvement plan.

Appellant resigned from volunteer service under duress on October 9, 2015. She wrote that the employing establishment provided only limited support to her.

Appellant also forwarded responses to OWCP's development questionnaire. She described her training and housing problems in Jamaica, and also indicated that she had been harassed by J.W. who told her that she was not employing establishment material. Appellant also asserted that she had been exposed to fraud, abuse, and disregard of personal safety issues. She indicated that her emotional condition had improved, but she still had trouble concentrating. Appellant wrote that, due to her emotional condition, she had lost hair and experienced swollen lymph nodes, excessive bumps on her scalp, and hypersensitivity to insect bites. She further noted that she had been under the care of Dr. Ward since November 2015.

By decision dated December 27, 2017, OWCP denied appellant's emotional condition claim. It found that she had established an insect infestation with subsequent fumigation and problems with the water supply in her housing as accepted factors of employment. OWCP, however, denied the claim because finding that appellant had not provided medical evidence

⁴ The record also contains scanned copies of photographs that are difficult to discern.

substantiating that her claimed emotional condition was caused or aggravated by compensable work factors.

In a second December 27, 2017 decision, OWCP denied appellant's claim for a skin condition. It found that she had not submitted any medical evidence containing a diagnosis in connection with her alleged skin conditions. OWCP concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

On January 9, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

During the June 15, 2018 hearing, the hearing representative indicated that both the emotional condition and skin condition issues would be addressed. Appellant testified regarding her housing in Jamaica, asserting that it contributed to her condition. She described water problems and insect infestation, stating that she had been bitten many times and her rash had persisted upon her return to the United States. Appellant indicated that she had been treated for insect bites and residuals since October 2015, and also began to lose her hair after her return. She noted that she had not undergone any psychiatric or psychological treatment while in Jamaica, and also asserted that she had been harassed by the country director and subordinates. Appellant testified that, upon her return, she began to see Dr. Ward and had not worked since that time. The hearing representative held the case record open for 30 days. No additional evidence was received.

By decision dated July 20, 2018, the hearing representative affirmed OWCP's December 27, 2017 decisions. She found that appellant had established that her housing conditions with insect infestation and problems with the water supply was an accepted factor of employment. The hearing representative, however, denied the claim, finding that appellant had not provided sufficient evidence to establish that either her claimed emotional condition or a skin condition was causally related to this compensable work factor.

On September 4, 2018 appellant, through counsel, requested reconsideration. In an attached June 29, 2018 letter, Dr. Ward opined that, in his October 20, 2017 report, he had identified housing conditions as a primary cause of appellant's emotional condition and disability. He noted that in that report he had also listed other features of her employing establishment service in Jamaica that had contributed to traumatic stress and depressive disorders.

By decision dated November 30, 2018, OWCP denied modification of the prior decisions. It found that the medical evidence of record was insufficient to establish either an emotional condition or residuals of insect bites.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that an injury or illness sustained by a Peace Corps volunteer when he or she is outside the United States shall be presumed to have been sustained while in the performance of duty and proximately caused by federal employment. This presumption may be rebutted by evidence demonstrating that the injury or illness: (1) was caused by the volunteer's willful misconduct or intent to bring about injury to self or another; (2) was proximately caused by the volunteer's intoxication by alcohol or illegal drugs; (3) preexisted the period of service abroad;

or (4) manifested symptoms of, or consequent to, a preexisting congenital defect or abnormality.⁵ If the presumption is rebutted by evidence showing that the injury or illness preexisted the period of service abroad or manifested symptoms of, or consequent to, a preexisting congenital defect or abnormality, the volunteer may still prove his or her claim and be entitled to compensation if he or she submits substantial, probative and rationalized evidence establishing that the injury or illness was proximately caused or materially aggravated, accelerated or precipitated by factors or conditions of Peace Corps service.⁶

While Peace Corps volunteers are normally entitled to the presumption that an injury or illness sustained while abroad is proximately related to federal employment, the presumption will not arise if no injury or illness is diagnosed. Without a firm medical diagnosis, it is not possible to ascertain whether the condition was preexisting or congenital.⁷

Pursuant to OWCP's procedures, no development of a claim is necessary when the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting, or animal bite).⁸ No medical report is required to establish a minor condition such as a laceration.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish a skin condition causally related to the compensable factor of her federal service.

As a Peace Corps volunteer, appellant is entitled to the presumption that her claimed condition occurred in the performance of duty and causally related to her employment duties. The question therefore becomes whether a medical condition has been established.¹⁰

OWCP accepted that there was an insect infestation with subsequent fumigation and problems with the water supply in appellant's housing in Jamaica. An employing establishment health record problem list indicated that she had a forearm rash from September 13 to 15, 2015 and an environmental concern during this period. In a September 14, 2015 report of telephone call, Ms. Stinnett, a nurse practitioner, noted that appellant indicated that she had a bilateral forearm rash. Ms. Stinnett noted that she provided medication. On September 17, 2015 appellant telephoned Dr. Newnham noting that appellant reported that the rash had spread to her neck and

⁵ 5 U.S.C. § 8142(c)(3); 20 C.F.R. § 10.730(a); *see also* S.C., Docket No. 14-0383 (issued May 28, 2014).

⁶ 20 C.F.R. § 10.730(b)(c).

⁷ S.C., *supra* note 5; *see* S.S., 59 ECAB 152 (2007).

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011). *See also* S.K., Docket No. 18-1411 (issued July 22, 2020).

⁹ *Id.*

¹⁰ *Supra* note 7.

chest. Dr. Newnham indicated that she assessed dermatitis after appellant showed her a photograph.

The contemporaneous medical records provided a consistent history of injury. Dr. Newnham reported that she observed a photograph showing the skin rash that resulted from insect infestation during appellant's volunteer service. As the evidence of record establishes that the accepted insect infestation resulted in a visible injury, the Board finds that appellant has met her burden of proof to establish a skin condition causally related to her volunteer service.¹¹

LEGAL PRECEDENT -- ISSUE 2

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.¹²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹³ 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.¹⁴ When disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability is deemed compensable.¹⁵

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.¹⁶ This includes matters involving the training of an employee.¹⁷ Where, however, 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.¹⁸

¹¹ *Id.* See *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

¹² *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹³ 28 ECAB 125 (1976).

¹⁴ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁵ *R.B.*, *supra* note 12; *Pamela D. Casey*, 57 ECAB 160 (2005); *Lillian Cutler*, *supra* note 13.

¹⁶ *D.T.*, Docket No. 19-1270 (issued February 4, 2020).

¹⁷ See *R.B.*, *supra* note 12; *L.R.*, Docket No. 1990 (issued January 27, 2015); *James E. Norris*, 52 ECAB 93 (2000).

¹⁸ *M.A.*, *supra* note 14.

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.²⁰ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.²¹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.²²

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard to whether appellant has met her burden of proof to establish an emotional condition causally related to the compensable factor of her federal service.

As to appellant's claim that she was harassed by the country director and other employing establishment personnel, to the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute an employment factor.²³ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²⁴ The Board finds that appellant has not submitted sufficient corroborative evidence in support of her allegations regarding harassment. Appellant did not submit witness statements or other documentary evidence demonstrating that the alleged harassment occurred as alleged. As she has not substantiated her allegations with probative evidence, she has not established a compensable employment factor under FECA with respect to the claimed harassment.²⁵

A careful reading of the August 24, 2015 e-mail from J.W., the country director, to appellant indicates that it contained counselling language, such that J.W. was performing an administrative function. The manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or

¹⁹ *C.R.*, Docket No. 19-1721 (issued June 17, 2020); *Kim Nguyen*, 53 ECAB 127 (2001).

²⁰ *T.H.*, Docket No. 19-0599 (issued January 28, 2020).

²¹ *K.C.*, Docket No. 18-0529 (issued January 21, 2020).

²² *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

²³ *F.W.*, Docket No. 19-0107 (issued June 10, 2020).

²⁴ *Id.*

²⁵ *See G.H.*, Docket No. 19-1633 (issued March 16, 2020).

dislike of a managerial action is not compensable.²⁶ There is no evidence that she erred or acted abusively in sending this e-mail to appellant. The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding J.W.'s e-mail.

OWCP has accepted as a compensable factor of employment that appellant lived in housing conditions with an insect infestation and problems with the water supply while serving as a volunteer for the employing establishment in Jamaica.

If an emotional condition is alleged by a Peace Corps volunteer after service is completed, a question is presented as to whether the Peace Corps service, or circumstances independent of Peace Corps service which relate to other preexisting or post service stressors were the cause of the emotional condition.²⁷

In support of her emotional condition claim, appellant submitted an October 20, 2017 report in which Dr. Ward noted that he had begun his assessment of appellant on November 12, 2015 and continued to treat her. Dr. Ward diagnosed a single episode of moderately severe major depressive disorder and other trauma-related disorder. He reported that appellant's symptoms were the result of severe stress while she was volunteering for the employing establishment in Jamaica. Dr. Ward described her complaints regarding her housing and her perceived harassment. He noted that appellant's functioning had been very low for about a month after she returned from Jamaica, and that her condition worsened before it began to improve. Dr. Ward advised that she suffered prominent self-abasing thoughts and intrusive memories of noxious stimuli in Jamaica and that, in general, she felt overwhelmed and traumatized by her experience during her employing establishment service. He indicated that appellant had concluded that this was precipitated by her experiences while living in Jamaica, which were factors that contributed to the level of stress that produced her symptoms. In correspondence dated June 29, 2018, Dr. Ward indicated that in his October 20, 2017 report, he had identified housing conditions as a primary cause of appellant's emotional condition and disability. He noted that in that report he had also listed other features of her employing establishment service in Jamaica that had contributed to traumatic stress and depressive disorders.

The Board finds that, although Dr. Ward's opinion was insufficiently rationalized to meet appellant's burden of proof to establish that she sustained an emotional condition due to the compensable employment factor, it is sufficient to require further development of the claim by OWCP.²⁸ Dr. Ward's reports contain a history of appellant's employing establishment service in Jamaica, including the accepted housing problems with the water supply and termite infestation that caused a skin condition, and he provided diagnoses of moderately severe major depressive disorder and other traumatic-induced disorder. He opined that these housing conditions caused her emotional condition and disability.

²⁶ See *M.M.*, Docket No. 19-1850 (issued May 5, 2020).

²⁷ *Shawn E. Green*, Docket No. 05-1337 (November 3, 2005).

²⁸ See *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.²⁹ It has the obligation to see that justice is done.³⁰ The Board will therefore remand the case to OWCP for further development of the medical evidence to obtain a rationalized medical opinion as to whether the compensable employment factor caused appellant's diagnosed emotional condition and whether this resulted in her claimed period of disability. On remand OWCP shall prepare a statement of accepted facts, which includes the compensable employment factor that appellant lived in housing conditions with an insect infestation and problems with the water supply while serving as a volunteer for the employing establishment in Jamaica. It shall then obtain a second opinion from a physician in the appropriate field of medicine as to whether this factor caused an emotional condition, and, if so, whether she had any disability due to that condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a skin condition causally related to her Peace Corps service. The Board further finds that this case is not in posture for decision with regard to whether has established an emotional condition causally related to the compensable factor of her federal service.

²⁹ *J.W.*, Docket No. 19-0627 (issued June 1, 2020).

³⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2018 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: December 8, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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