

ISSUE

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

FACTUAL HISTORY

On July 3, 2017 appellant, then a 63-year-old registered nurse and workers' compensation manager, filed a traumatic injury claim (Form CA-1) alleging that while she was in the performance of duty on June 28, 2017, D.B., an employee/veteran, threatened her.

In a July 6, 2017 attending physician's report (Form CA-20), Dr. Sandhya Gumaste, a Board-certified internist, advised that, due to anxiety, insomnia, and post-traumatic stress disorder (PTSD), appellant could not return to work. She checked a form box marked "yes," indicating that the diagnosed conditions were employment related.

In an 11:17 a.m. June 28, 2017 e-mail to her supervisor, appellant related that D.B. arrived at her office at 9:26 a.m. that day ahead of his 10:00 a.m. appointment. She was assisting another employee at that time and, when she asked D.B. to return at 10:00 a.m., he started screaming that if she could not see him, then he was going to human resources (HR). D.B. then said, "I will be back for you!" Appellant then called the employing establishment police and was advised to call again if he returned. She also called O.O., a program assistant in the employing establishment Director's office, who came to her office and waited with her for a short time, and R.J., D.B.'s supervisor, who also came to her office and told her that D.B. was very aggressive. D.B. did not return, but O.O. informed her that D.B. was very angry and threatened to "blow her head up" and then "blow his own head up." O.O. told her he had reported the threat to the employing establishment police. Appellant related that the June 28, 2017 appointment was the first time she had been scheduled to see D.B. She concluded that she felt very unsafe, that it was not the first time she had been threatened. Appellant asked what steps the employing establishment would be taking to make sure that she was safe.

The employing establishment police conducted an investigation. In a report dated June 28, 2017 at 10:15 a.m., investigating officer J.O. noted that he responded to appellant's office regarding a complaint that D.B. was behaving in a loud and boisterous manner toward her. He reported that he encountered D.B. talking with another employee and requested that he allow J.O. to escort him from the floor. D.B. complied and expressed his dissatisfaction with appellant because she continued to cancel his appointments. He acknowledged that he verbally expressed his dissatisfaction in a loud and boisterous tone and told her he was going to HR to report poor services. Officer J.O. indicated that appellant told him that D.B. spoke in an aggressive manner when he knocked on her door at approximately 9:26 a.m., and told her he was going to HR. Appellant reported that she first called the employing establishment police and then O.O., who came to her office and waited for a short time. O.O. left and then returned and informed her that he had just encountered D.B. in HR where D.B. told him that he was "going to have to blow my head off or blow her head off. I have PTSD." As appellant reported, O.O. requested that she secure herself in her office and telephone employing establishment police if D.B. returned. Officer J.O. indicated that at 12:33 p.m. appellant telephoned the police requesting help and while responding, he encountered D.B., gave him a verbal warning regarding his behavior, and escorted

him off the floor without incident. A follow-up report dated July 13, 2017, completed by criminal investigator R.H., determined that on June 28, 2017 D.B. told O.O. that he would blow her head off and then blow his own head off and that O.O. then notified appellant of the threat. R.H. indicated that, on July 6, 2017, he attempted to get a statement from D.B., who refused and left the employing establishment premises. R.H. recommended that appropriate administrative actions be taken.

In a report of contact dated June 28, 2017, Officer R.T. indicated that, at approximately 9:30 a.m. that day, appellant called indicating that she needed a police officer to stand by her office because D.B. had just left and was “verbally loud.” R.T. advised appellant that if D.B. returned, she should notify the employing establishment police and an officer would respond.

In a report of contact dated June 28, 2017, O.O. indicated that appellant called him at approximately 10:00 a.m. that day to report that D.B. was being very aggressive. He then went to her office but D.B. had left, so he told her to close her door and to call employing establishment police if D.B. returned. O.O. related that on his way back to his office, he encountered D.B. and that D.B. then told him that he would have to “blow [his own] head off or blow her head off” and that he had PTSD. He indicated that he then called appellant and told her again not to open the door for D.B. and to call the employing establishment police if and when he returned.

In a report of contact dated June 28, 2017, employing establishment police Captain J.P. related that at approximately 9:30 a.m. he was informed that appellant had complained that D.B., had threatened her. Appellant expressed that she was frightened, knowing that D.B. had previously been in a fight at work. Captain J.P. advised appellant that he was unaware that D.B. was violent, but that if he returned she should call the police and consider having another person with her during her interactions with him. He concluded that at approximately 10:15 a.m. D.B. reportedly returned to appellant’s office and was being loud, boisterous, and threatening again. Two police officers responded and escorted him from the floor and away from appellant.³

In July 13, 2017 e-mail correspondence, L.A., an occupational health nurse practitioner, advised that on June 28, 2017 she saw O.O. near appellant’s office, and he told her that appellant asked him to be there for protection and that at she saw appellant at approximately 4:00 p.m. that day, and related that she saw appellant in consultation the next day.

In a development letter dated July 18, 2017, OWCP requested that appellant submit additional medical and factual evidence and complete a questionnaire describing the June 28, 2017 incident in detail. A separate development letter of even date was sent to the employing establishment asking for factual information related to the claim to include investigation notes and

³ In a July 6, 2017 report of contact, Officer R.T. noted that on July 6, 2017 at approximately 9:30 a.m., he, Inspector C.H., and Captain J.P. approached D.B. in the cafeteria so that they could interview him regarding the June 28, 2017 incident. D.B. refused, indicated that he felt threatened by the police, and left the building. In a July 6, 2017 report of contact, Captain J.P. confirmed this incident. He further noted that D.B. asked to call for union representation and made a call. D.B. was told that if he would not comply with their request for an interview, he would be asked to leave until he had an appointment scheduled with whomever he needed to speak with. He chose to leave the building and did not give a statement regarding the June 28, 2017 incident.

a position description. It afforded both appellant and the employing establishment 30 days to submit the requested information.

In a July 10, 2017 statement, appellant reiterated her e-mail interaction with D.B. on June 27, 2017, and their interaction in her office at 9:26 a.m. on June 28, 2017. She related that D.B. responded that if she would not see him immediately he was going to HR and would be back “to get” her. Appellant indicated that she went back into her office and called the employing establishment police and talked with Captain J.P. who told her he did not have the manpower to come at that time. She then called her supervisor and found that he was not available, but O.O. came to her office and informed her that he would remain in case D.B. returned and advised that she lock her door. R.J. also came to her office and waited approximately 30 minutes but, when D.B. did not return, both O.O. and R.J. left. Appellant indicated that she completed assisting the employee who was in her office at that time. At approximately 10:30 a.m., O.O. returned and informed appellant that he found D.B. in HR, who told him that he was very angry and told O.O. that he was going to blow appellant’s head off and then blow his own head off. O.O. told appellant that he was going to the employing establishment police and report the threat. He again reminded her to keep her door locked. Appellant noted that she then called the police three or four times, kept her door locked, and at approximately 12:30 p.m. a police officer came and asked for a report. She related that she wrote a short statement and gave it to the police and also sent it to her supervisor who instructed her to complete the Disruptive Behavior Report in her computer, which she did.

Appellant indicated: on June 29, 2017 she spoke with the chief of HR and informed her about the threats D.B. made; that on June 30, 2017 she was called by an HR specialist who requested a copy of the report she submitted to the police; on July 5, 2017 she called the employing establishment’s Office of Inspector General because the employing establishment police failed to respond to her call for assistance; on July 5, 2017 she received a call from Officer R.H. who told her he was working on her case and requested clarification as to the time of the incident; on July 5, 2017 she also spoke with Officer S.T. and informed him of the threats D.B. made on her life. She indicated that her first meeting with D.B. was on June 28, 2017, noting that he had filed a workers’ compensation claim after another employee punched him in the face during a fight. Appellant reported that D.B. was first seen by a part-time associate who was on extended leave and who warned her to not see D.B. alone because he could “act up.” She explained that her office was in the corner, and she could not see through her door which was the only way out. Appellant maintained that there was a clear and present danger at her workplace.

In a July 7, 2017 report, Dr. Charles E. McDermott, a Board-certified psychiatrist, indicated that appellant could not work because a client had threatened to blow her head off. He noted her symptoms of nightmares and anxiety, and advised that appellant could not resume work until she was placed in a reliably protected work area.

On an attending physician’s report (Form CA-20) dated July 21, 2017, Dr. Gumaste described appellant’s symptoms of anxiety, lack of sleep, fatigue, and inability to focus, caused by a threat at work. She checked a form box marked “yes,” indicating that these were aggravated by employment, noted that she had referred appellant to a psychiatrist, and advised that appellant needed a supportive, protective environment at work.

In a response received by OWCP on July 28, 2017, R.C., an acting associate director, disagreed with appellant's allegations, maintaining that, based on the police report, no direct threat was made to appellant. She indicated that appellant had a telework agreement and worked a compressed tour on site two days a week. R.C. claimed that there was no reason that appellant could not continue to work from the safety of her own home, and noted that she had a panic button on her office desk. She maintained that the employing establishment was not a dangerous or frightening place to work, and that it had a very robust security system in place. R.C. attached a copy of appellant's position description, her telework agreement, and a 2016 performance appraisal.

R.C. also forwarded a report of contact dated June 28, 2017. She indicated that at approximately 12:45 p.m. that day, D.B. requested an appointment to see her. R.C. met with D.B. and an associate. D.B. expressed his concern regarding the lack of support from appellant, complaining that his appointments kept getting rescheduled, and appellant always had an excuse not to see him. He noted his feelings of disappointment because no one addressed his concerns regarding his workers' compensation claim, and felt that his needs as a veteran were not being met. R.C. indicated that D.B. did not show any signs of violent behavior during this meeting. She related that she then called appellant to inquire about the status of D.B.'s claim, who told her that D.B. needed to submit a doctor's report. R.C. also noted that appellant told her that she did not want to interact with D.B. because she felt afraid.

A July 31, 2017 case closure report by an OWCP medical management nurse described the events of June 28, 2017 and indicated that appellant had not returned to work because she felt unsafe.

Dr. McDermott completed a psychiatric work capacity evaluation (Form OWCP-5a) on August 4, 2017. He indicated that appellant could not return to work because she was extremely anxious and felt she would be murdered at work, following threatening behavior by a veteran who also indicated he would blow her head off and then kill himself. Dr. McDermott advised that appellant was not emotionally able to return to work because she was exposed to unstable, dangerous, and threatening claimants. In an August 4, 2017 statement, Dr. McDermott reiterated that appellant could not return to work until she was in a reliably safe and better protected work area. On August 8, 2017 he noted appellant's description of the events of June 28, 2017. Dr. McDermott indicated that he had seen appellant on three occasions. He opined that due to the June 28, 2017 event she felt she would be murdered and that she had suffered several traumatizing experiences as she had been asked to repeat the circumstances of the traumatic event on several occasions and this reawakened her emotional turmoil. Dr. McDermott diagnosed acute PTSD with anxiety, depression, and sleep disorder.

In an August 9, 2017 statement, R.J., assistant director of facility management, noted that "on the day in question," appellant telephoned him, indicating that she was afraid D.B. would attack her and told him that O.O. had told her that D.B. was making threats against her. He indicated that he then went to appellant's office to make sure everything was okay, but that no one was there.

By decision dated August 18, 2017, OWCP denied appellant's claim, finding that appellant had not established a compensable factor of employment.

On September 13, 2017 appellant, through counsel, requested a hearing with OWCP's Branch of Hearings and Review.

During the hearing held on February 27, 2018, appellant described the duties of her position as a workers' compensation manager, and the events of June 28, 2017. She testified that later on June 28, 2017, D.B. was found on the sixth floor near her office. Appellant described her symptoms and indicated that she had returned to work in a new position, but continued to worry about D.B. Counsel argued that appellant established an employment factor.

By decision dated May 14, 2018, an OWCP hearing representative found that appellant had not established a compensable factor of employment and affirmed the August 18, 2017 decision.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁴

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*,⁵ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁶ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁷ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁸

ANALYSIS

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

⁴ *M.R.*, Docket No. 17-1803 (issued February 8, 2019).

⁵ 28 ECAB 125 (1976).

⁶ *Id.*

⁷ *M.C.*, Docket No. 18-1354 (issued April 2, 2019).

⁸ *M.R.*, *supra* note 4.

Appellant alleged that, on June 28, 2017, D.B. arrived at her office and started screaming that if she could not see him ahead of his scheduled 10:00 a.m. appointment, he was going to go to HR and then come back for her. She then called the employing establishment police and was advised to call again if he returned. D.B. did not return, but O.O. informed her that when he encountered D.B., D.B. was very angry and threatened to blow her head off and then blow his own head off. O.O. told her that he had reported the threat to the employing establishment police. Appellant concluded that she felt very unsafe and that it was not the first time she had been threatened.

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁹ The record in this case supports that D.B. acted in a boisterous threatening fashion in appellant's office which caused her to alert the police, and which would reasonably lead one to fear for his or her personal safety.¹⁰ The Board therefore finds that the evidence of record is sufficient to establish that appellant was in the performance of her regular duties as a nurse and workers' compensation manager.

As appellant has established a compensable factor of employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence.¹¹ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

⁹ *Supra* note 4.

¹⁰ *Id.*

¹¹ *See L.Y.*, Docket No. 18-1619 (issued April 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 10, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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