

casing mail C.C. came and stood behind him to observe him work which made him very uncomfortable, nervous, and stressed. C.C. then asked him again to go out and deliver mail on route 19. While appellant was on his lunch break, C.C. asked to speak to him after lunch, causing him to feel nervous and stressed that he had done something wrong. After lunch, he spoke with C.C. who informed him that he was emotionally unstable. Appellant became upset and angry and raised his voice to his supervisor, he then apologized to C.C. and explained that he did not know why this was happening, but he would try and control himself.²

In an August 2, 2017 narrative statement, Supervisor C.C. reported that on that morning, appellant was notified that he was making scanner and clock ring errors because he was using an old route number to input the data. He indicated that route 32, appellant's old assignment, had been eliminated a month before and that he was incorrectly using the old route number. C.C. reported that around 12:00 p.m., appellant returned to the employing establishment to take his lunch without completing his mail route delivery. At this time, C.C. spoke to appellant regarding the matter. He gave appellant directions to set up the scanner correctly and use the new route number, and also informed him that he should not come back to the facility to take his lunch when he still had mail to deliver. Rather, appellant was advised to take his lunch break on his mail route. He then became upset, raised his voice, and began crying. Appellant yelled that he wanted the same delivery route he was assigned the previous day. C.C. informed him that he was not given that assignment because he was not completing his route and brought back about half the assignment the day before. He informed appellant that it was not his decision to eliminate his prior route and that the decision was made between the employing establishment and the union.

In support of his claim, appellant submitted medical reports dated May 2, 2017 through January 11, 2018 from Dr. Michael Hebrard, Board-certified in physical medicine and rehabilitation.

In a March 7, 2018 narrative statement, C.C. continued to controvert the claim.

By decision dated March 27, 2018, OWCP denied appellant's claim for failing to establish fact of injury. It found that the evidence of record failed to establish that the August 2, 2017 incident occurred as alleged. OWCP also determined that there was insufficient medical evidence to establish a diagnosed condition causally related to the alleged incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 5, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A hearing was held on September 14, 2018, at which appellant testified.

By decision dated November 28, 2018, OWCP's hearing representative affirmed the March 27, 2018 decision finding that the evidence of record failed to establish that the August 2, 2017 employment incident occurred as alleged. The hearing representative noted that even if

² The record reflects that appellant also filed a separate occupational disease claim (Form CA-2) on August 17, 2017 for the same issue. That claim was then deleted by OWCP and combined with the instant claim. The record further reflects that appellant has filed an additional occupational disease claim (Form CA-2) on April 26, 2018 which was assigned OWCP File No. xxxxxx062. That claim is not presently before the Board on this appeal.

appellant were to establish that the events occurred as he described, he had not established that an incident rose to the level of error or abuse as he was describing supervisory or administrative issues at the discretion of his employer which would not be compensable.

The Board, having duly considered the matter, concludes that the case is not in posture for decision.³ FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.⁴ The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

OWCP's November 28, 2018 decision denied appellant's claim for failing to establish that the August 2, 2017 employment incident occurred as alleged. The Board finds that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his emotional condition claim.⁶ In its November 28, 2018 decision, OWCP did not make any factual findings regarding appellant's specific allegations regarding the events of August 2, 2017. OWCP's November 28, 2018 decision, recited legal principles, but failed to provide proper findings with respect to whether appellant established any compensable factors of employment.⁷

On remand OWCP shall make findings of fact regarding the employment events alleged by appellant.⁸ Following this and any other further development deemed necessary, OWCP shall issue a *de novo* merit decision.⁹

³ *N.M.*, Docket No. 17-0262 (issued July 3, 2017).

⁴ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.125.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). See also *G.S.*, Docket No. 14-1933 (issued November 7, 2014).

⁶ *J.S.*, Docket No. 18-0513 (issued March 1, 2019); *K.J.*, Docket No. 14-1874 (issued February 26, 2015); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

⁷ OWCP's procedures provide that, when denying an emotional condition claim, it must first determine whether the events actually occurred. It should then distinguish between those workplace activities and circumstances which are factors of employment and those which are outside the scope of employment for purposes of compensation by outlining work-related and non-work-related elements into three parts. 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011). *D.H.*, Docket No. 17-1529 (issued February 14, 2018).

⁸ *A.R.*, Docket No. 11-1949 (issued April 16, 2012).

⁹ *C.W.*, Docket No. 14-0693 (issued January 12, 2016).

IT IS HEREBY ORDERED THAT the November 28, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: January 6, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board