United States Department of Labor
Employees' Compensation Appeals Board

B.G., Appellant	)	
and	)	**Docket No. 18-0491**
	)	**Issued: March 25, 2020**
DEPARTMENT OF HOMELAND SECURITY, U.S. SECRET SERVICE, COMMUNICATION CENTER, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 9, 2018 appellant filed a timely appeal from a December 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 hypertensive condition in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that OWCP received additional evidence following the December 14, 2017 decision. 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 August 20, 2017 appellant, then a 50-year-old lieutenant, filed an occupational disease claim (Form CA-2) alleging that she developed a hypertensive condition due to factors of her federal employment. She alleged that on that date she experienced a slight headache while at work. An emergency medical technician then took appellant's blood pressure which measured 220. Appellant stopped work on August 20, 2017.

The employing establishment issued appellant an authorization for examination and/or treatment (Form CA-16) on August 20, 2017 for medical treatment at Sibley Memorial Hospital in Washington, DC.

OWCP received August 20, 2017 emergency room treatment notes prepared by Dr. Ritu Saluja-Sharma, Board-certified in emergency medicine. The notes indicated that appellant presented with complaints of hypertension that began one week prior and had not improved. A clinical impression of essential hypertension was provided.

In an August 21, 2017 attending physician's report (Part B of the Form CA-16), Dr. Ramin Oskoui, Board-certified in internal medicine and cardiovascular disease, noted that appellant had a history of refractory hypertension. He also checked a box marked "yes" indicating that the condition was caused or aggravated by stress at work. Dr. Oskoui noted that appellant could resume regular work on August 23, 2017. In a hospital discharge summary dated August 21, 2017, he noted that she had received treatment for a hypertensive crisis.

OWCP also received an August 23, 2017 clinical summary from Dr. Girish Rao, a Board-certified internist. Dr. Rao noted that appellant was evaluated again after hospitalization for hypertensive urgency. He indicated that her blood pressure was better controlled and her headache had resolved. Dr. Rao completed work restriction forms on August 23 and 30, 2017, noting appellant's physical restrictions.[3]

On August 27, 2017 appellant completed an injury report in which she explained that she had experienced a headache due to a hypertensive crisis on August 20, 2017. In a narrative report dated September 1, 2017, she further explained that, while at work on August 20, 2017, she began to experience a headache which worsened with time. An emergency medical technician checked her blood pressure, which was elevated, and appellant was transported to a hospital emergency room. She noted that the previous week had been very busy, she had worked long irregular and overtime hours (1:00 a.m. to 1:00 p.m. and 5:00 a.m. to 5:00 p.m. shifts). Appellant also explained that she was going through the final stages of the promotional process to the rank of Captain, which involved written and oral tests. During this time period she was also required to prepare performance appraisals and promotional evaluations. Appellant indicated that her belief that all of those events, as well as a lack of sleep, took a toll on her. She explained that she was diagnosed with a hypertensive crisis and it was due to work-related stress. Appellant noted that she was a supervisor that worked at the White House, and that she was constantly busy and had to be very vigilant at all times, with no allowance for errors or mistakes.

[3] A return to work form dated August 29, 2017, indicated that appellant was restricted to desk duty due to her medical condition. The signature on the form is illegible.

In a September 1, 2017 report, Dr. Oskoui noted that he placed appellant on limited-duty status/desk duty as he adjusted her blood pressure medications for malignant hypertension. He explained that she was hospitalized from August 20 to 21, 2017, for malignant symptomatic systemic hypertension. Thereafter, appellant went home and while attempts were made to adjust her medications by her outpatient physician, Dr. Rao, on August 23, 2017 she actually felt worse and not better. Dr. Oskoui noted that it would take time to adjust her medications, during which time, he believed that it would be unsafe for her to be on full active duty.

In a September 21, 2017 report, Dr. Rao diagnosed localized edema, essential (primary) hypertension, pure hyperglyceridemia, and impaired fasting glucose.

In a development letter dated September 26, 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 to complete. OWCP afforded appellant 30 days to submit the necessary evidence.

In a separate development letter, also dated September 26, 2017, OWCP requested that the employing establishment review appellant's allegations and provide comments from a knowledgeable supervisor regarding the accuracy of her statements.

On September 21, 2017 Dr. Rao reported that appellant was seen for follow up. He repeated his previous diagnoses.

In a narrative statement dated October 3, 2017, appellant explained that she had worked in federal law enforcement for 22 years and noted that it was "stressful within itself." She noted that she could not always discuss her work as a federal police supervisor, so at times she held her feelings in and stated nothing. Appellant also explained that, a few weeks prior, she received an evaluation which she believed was unfair. She noted that, since she had applied for a promotion, she became upset because she was overwhelmed with responsibility and lack of recognition for the years of work she had performed. Appellant further noted that these issues had occurred previously and had not been properly addressed. She indicated that she discussed her concerns with her supervisor at the time and he tried to rectify the issue, but he was over ruled. Appellant also indicated that she was required to prepare knowledge, skills, and abilities (KSA) profiles, however, her KSA's were not reviewed. She indicated that she discussed this with her immediate supervisor at the time as well as several of her colleagues and other supervisors to no avail. As a result, appellant internalized this issue, which caused her blood pressure to elevate to a dangerous level.

Appellant explained that an attrition issue was also present at the employing establishment, therefore, she was forced to work long hours including 12-hour shifts. Leave was restricted except for sick leave, therefore, it was virtually impossible to get time off. Appellant indicated that during the prior week she was forced to work four extra hours on Sunday, August 12, 2017 and from 1:00 a.m. through 1:00 p.m. on Tuesday, August 14, 2017. She noted that, during the week of August 13, 2017, she had taken a written examination for promotion and completed an oral interview. Appellant was also tasked with writing a performance review for an employee whom she had not supervised, in addition to her own employees, and she had to prepare three promotion evaluations. She advised that she had not realized that these events caused so much stress, so she kept going and ignored the signs of headaches, blurred vision, and being out of breath.

In an October 3, 2017 statement, A.W. certified that appellant's account of events was true.

By decision dated December 14, 2017, OWCP denied appellant's claim finding that she had not established an injury in the performance of duty. It noted that she only provided vague and general information regarding her claim without supporting evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[7] There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.[8] In the case of *Lillian Cutler*,[9] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. Where the injury or illness results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment or by the nature of the work, the injury or illness comes within the coverage of FECA.[10] On the other hand, when an injury or illness results from an employee's feelings of job insecurity per se, fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[11]

[4] *Supra* note 1.

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *See M.R.*, Docket No. 18-0305 (issued October 18, 2018); *George H. Clark*, 56 ECAB *162* (2004).

[7] *S.B.*, Docket No. 18-1113 (issued February 21, 2019); *see also Lillian Cutler*, 28 ECAB 125 (1976).

[8] *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *see Robert W. Johns*, 51 ECAB 137 (1999).

[9] *Cutler*, *supra* note 7; *see also D.J.*, Docket No. 16-1540 (issued August 21, 2018).

[10] *Id.*; *see also Trudy A. Scott*, 52 ECAB 309 (2001).

[11] *D.J.*, *supra* note 9; *William E. Seare*, 47 ECAB 663 (1996).

ANALYSIS

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

That Board finds that, as to appellant's allegation that she sustained an emotional reaction due to overwork based upon her regular and specially assigned job duties, appellant has established a compensable work factor under *Cutler*.[12]

Specifically, appellant asserted that she felt overwhelmed during the week leading up to August 20, 2017 because she had to work several irregular, 12-hour shifts, due to attrition at the employing establishment. Furthermore, she explained that, during the prior week, in addition to her regular employment duties as a law enforcement officer at the White House, she had to complete final steps in a promotional process to become a Captain, which involved oral and written tests. Appellant also explained that she had to complete performance and promotion evaluations for staff members during that time period. She submitted an October 3, 2017 statement from A.W., who corroborated her allegations. While OWCP requested that the employing establishment review appellant's allegations, the employing establishment did not respond. Thus, the Board finds that appellant has attributed her emotional reaction to her regular or specially assigned work duties during the week preceding August 20, 2017 and has thus established overwork as a compensable factor of employment.[13]

Appellant has also alleged stress due to actions by her supervisor and other management officials. In this regard, she noted that a few weeks prior she had received an unfair performance evaluation. Appellant also noted that she was asked to prepare a knowledge and skills resume, but her resume was never reviewed by any employing establishment official. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.[14] Appellant also alleged that it was difficult to take time off from work because leave usage had been restricted. An employee's reaction to an administrative or personnel matter is not covered by FECA, unless there is evidence that the employing establishment acted unreasonably.[15] Because appellant has not presented sufficient evidence to establish that her supervisor acted unreasonably or that the employing establishment engaged in error or abuse in these personnel matters, she has failed to identify a compensable work factor relating to these allegations.[16]

As noted above, the Board finds that appellant has established a compensable employment factor with regard to her claim of overwork during the week prior to August 20, 2017. Accordingly, OWCP must analyze the medical evidence to determine whether she sustained an emotional condition as a result of this compensable employment factor. The case will therefore

[12] *Supra* note 9.

[13] *Id.*

[14] *D.J., supra* note 9; *Linda Edwards-Delgado,* 55 ECAB 401 (2004).

[15] *Id.*; *see also Alfred Arts,* 45 ECAB 530 (1994).

[16] *Id.*

be remanded to OWCP. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[17]

CONCLUSION

The Board finds this case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2017 decision of the Office of Workers' Compensation Programs set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[17] The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).