United States Department of Labor
Employees' Compensation Appeals Board

O.R., Appellant	)	
and	)	**Docket No. 20-0743**
	)	**Issued: January 28, 2021**
U.S. POSTAL SERVICE, PASADENA MAIN POST OFFICE, Pasadena, CA, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2020 appellant filed a timely appeal from an October 15, 2019 merit decision and a December 26, 2019 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition causally related to the accepted May 22, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 4, 2019 appellant, then a 31-year-old sales service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2019 she developed severe anxiety, stress, and depression while in the performance of duty. She explained that the postmaster, station master, and carrier supervisor neglected to inform the will-call and window supervisor about a customer that threatened a letter carrier with a gun. Appellant asked the station manager to assist the customer because she did not feel safe. When the station manager refused to assist, appellant called the police and reported that the customer began verbally abusing and assaulting her and the station manager. She stopped work on May 29, 2019.

In a June 25, 2019 letter, the employing establishment controverted appellant's claim questioning why she waited 7 days to complain about the incident, and why she waited 13 days to seek medical attention.

In a development letter dated July 3, 2019, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a June 3, 2019 note, Dr. C. Carl Wilson, a physician of behavior health and licensed professional clinical counselor, requested that appellant's medical leave be extended until July 8, 2019 and noted that he would be seeing her weekly for intensive outpatient therapy.

Appellant submitted a July 3, 2019 medical note signed by Jean Woo, a nurse practitioner.

In a July 11, 2019 development letter, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of the alleged May 22, 2019 employment incident. It afforded the employing establishment 30 days to submit the necessary evidence.

Appellant submitted a May 22, 2019 crime report from the Pasadena Police Department in which she described the customer and alleged that the customer made threats against her and attempted to assault her.

In a May 23, 2019 personal statement, appellant described the May 22, 2019 employment incident in which she noticed an irritated customer kept asking appellant to get her mail. A supervisor and appellant asked the customer for her address in order to retrieve her mail, but the customer refused to provide the information and started yelling. Appellant then asked the customer for her identification so that she could verify that the name on the mail matched hers, but she refused to provide her identification. After receiving her identification and address, appellant informed the station manager that the customer was acting irrationally and that she needed his assistance. The station manager informed appellant that it was not his zone and instructed her to get assistance from someone else. Appellant eventually explained to the customer that her mail was being returned to the sender and alleged that the customer became belligerent and threatened the employing establishment's staff. She then called the police.

In a July 3, 2019 request to return-to-duty form, Dr. Wilson opined that appellant did not need restrictions to her work schedule and recommended that she return to work on July 29, 2019. In a work capacity report of even date, he diagnosed acute stress disorder and opined that she should continue her therapy. Dr. Wilson checked a box marked "Yes" to indicate his belief that appellant's condition was work related.

Dr. Wilson, in a July 10, 2019 report, noted his understanding of a history of an employment incident in which a hostile client harassed appellant. Appellant informed him that she feared for her safety at work and asserted that the employing establishment did not care as they still allowed the hostile client to enter the employing establishment even though she had a restraining order. She reported that she had experienced symptoms of depression and sleep loss due to work-related stress. Dr. Wilson provided notes of previous appointments dating from May 31 to July 10, 2019 and diagnosed an acute stress reaction. He reported that appellant's prognosis was good and recommended that she complete cognitive behavioral therapy and emotional regulation.

In response to OWCP's development questionnaire, appellant submitted a July 23, 2019 statement in which she explained that after the claimed May 22, 2019 employment incident she was embarrassed, frightened, stressed, and scared because she knew that the customer would return. She was upset that the station manager refused to help and that the employing establishment still allowed the customer into the building to harass other customers and employees. Appellant asserted that she was told that she was overreacting. In a separate statement of even date, she again described the claimed May 22, 2019 employment incident in detail and the actions she took during the time the customer began to verbally assault her and her coworkers. Appellant also explained that she had no source of stress outside of work.

In a July 31, 2019 statement, K.P., appellant's coworker, reported that appellant asked her and a supervisor to provide a witness statement concerning the claimed May 22, 2019 employment incident. According to the supervisor, the customer threatened to get her gun after a separate incident and the employing establishment stopped delivering her mail.

In an undated witness statement, J.W., appellant's coworker, described that on May 22, 2019 a customer was screaming at the top of her lungs at the will-call staff. He went over to assist and appellant informed him that the station manager refused to help and would not come to the front because he was familiar with the situation and knew that the woman was potentially dangerous. The customer eventually left after 15 minutes when she was informed that the police were called. The police informed the staff that the woman had earlier threatened the carrier with a gun. J.W. stated that the customer later made a YouTube video in which she stated that she had just been released from jail and that it was one of the supervisor's fault that she was arrested and not receiving her mail. Out of fear of the customer returning, he and the staff requested protective action from the employing establishment for at least a week. During a day when protection was not provided, the customer returned to the employing establishment and J.W. went to the back for assistance after she began getting louder and filming the interaction on camera. J.W. noted that he had not felt safe after a subsequent meeting in which the postmaster denied telling the staff to call the police and that the postmaster had not handled the situation properly.

OWCP continued to receive evidence. In a partially legible May 31, 2019 witness statement, R.D., a window supervisor, described the May 22, 2019 employment incident in which a very upset customer came to the employing establishment ringing a bell, using profanity, and requesting her mail. After informing her that her mail had been returned, the customer continued to yell at the post office staff until the police were eventually called. R.D. noted that she felt the station manager did not try to help and claimed that she had also experienced headaches and anxiety as a result of the incident.

By decision dated October 15, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted May 22, 2019 employment incident. It explained that Dr. Wilson's medical specialty was a physician of behavior health, which was not recognized as a treating physician under FECA. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On a request form postmarked November 26, 2019 and received by OWCP on December 6, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her request, appellant resubmitted a copy of Dr. Wilson's June 3, 2019 medical note, now cosigned by Dr. Shima Hadidichi, Board-certified in family medicine.

Appellant resubmitted a copy of Nurse Woo's July 3, 2019 medical note, which was now cosigned by Dr. Hadidichi, who advised that appellant rest from work due to anxiety. She noted that appellant would be able to return to work on July 29, 2019.

Appellant also resubmitted a copy of Dr. Wilson's July 10, 2019 medical report, now cosigned by Dr. Hadidichi.

An August 28, 2019 medical fact sheet by Dr. Hadidichi indicated that appellant was treated from August 28 to September 16, 2019 for her symptoms related to a May 22, 2019 "threat in the workplace." The form included diagnoses of stress, anxiety, depression, and chronic post-traumatic stress disorder (PTSD).

By decision dated December 26, 2019, OWCP's Branch of Hearings and Review denied appellant's hearing request finding that the request for hearing was untimely filed as it was postmarked November 26, 2019, more than 30 days after its October 15, 2019 merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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

[2] *Id*.

limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[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. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[6]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[7] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[9]

[3] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

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

[5] 28 ECAB 125 (1976).

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

[7] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

[8] *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

[9] *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted May 22, 2019 employment incident.

Appellant submitted a series of records dated from June 3 to July 10, 2019, from Dr. Wilson in which he provided treatment notes related to his diagnosis of an acute stress reaction and an acute stress disorder. However, the Board finds that the evidence from Dr. Wilson does not constitute competent medical evidence. Section 8101(2) of FECA defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law.[10] However, there is no evidence that Dr. Wilson, a physician of behavior health and licensed professional clinical counselor, is a licensed clinical psychologist, which would qualify him as a "physician" as defined by FECA.[11] For this reason, his medical evidence is of no probative value.

Similarly, appellant submitted a July 3, 2019 medical note in which Nurse Woo provided that appellant had been receiving treatment for symptoms related to anxiety. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[12] Consequently, Nurse Woo's medical note will not suffice for purposes of establishing entitlement to FECA benefits.[13]

As there is no medical evidence of record that establishes a medical diagnosis in connection with the accepted employment incident, appellant has not met her burden of proof to establish an emotional condition causally related to the accepted May 22, 2019 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance

[10] 5 U.S.C. § 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[11] *See L.H.*, Docket No. 18-1217 (issued May 3, 2019) (finding that licensed social workers and mental health counselors are not considered physicians as defined by FECA).

[12] *Id.*; *see also M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

[13] *See supra* note 10; *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

of the decision, to a hearing on his [or her] claim before a representative of the Secretary."[14] Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[15] A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.[16] Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that the request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought. Because appellant's hearing request was postmarked November 26, 2019, it post-dated OWCP's October 15, 2019 decision by more than 30 days and, therefore, is untimely. Appellant was, therefore, not entitled to an oral hearing as a matter of right.[17]

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.[18] The Board finds that, in the December 26, 2019 decision, OWCP's Branch of Hearings and Review properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence.

The Board has held that the only imitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[19] In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing. Accordingly, the Board finds that OWCP properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124(b).

[14] 5 U.S.C. § 8124(b)(1).

[15] 20 C.F.R. §§ 10.616, 10.617.

[16] *Id*. at § 10.616(a).

[17] *See P.C.*, Docket No. 19-1003 (issued December 4, 2019).

[18] *Id*.

[19] *Id*.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted May 22, 2019 employment incident. The Board further finds that OWCP properly denied her request for an oral hearing pursuant to 5 U.S.C. § 8124 as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the December 26 and October 15, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.[20]

Issued: January 28, 2021
Washington, DC

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

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

[20] Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.