

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

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K.W., Appellant)	
)	
and)	Docket No. 20-1504
)	Issued: July 30, 2021
U.S. POSTAL SERVICE, LAUDERRIDGE)	
CARRIER ANNEX POST OFFICE,)	
Oakland Park, FL, Employer)	
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Appearances:
*Joanne Wright, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 12, 2020 appellant filed a timely appeal from a July 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees'

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 The Board notes that appellant submitted additional evidence on appeal. 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.*

Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on November 24, 2018, as alleged.

FACTUAL HISTORY

On November 27, 2018 appellant, then a 40-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she developed an emotional condition after she was approached by a customer on November 24, 2018 who threatened her life while she was in the performance of duty. In a narrative statement, she alleged that she was approached by a customer who accused her of taking his package and promised her that if he did not receive it he would kill her. Appellant noted that she was afraid and called the police. She asserted that thereafter, she began to experience nightmares, loss of concentration, and fear of going on the street. Appellant did not stop work.

In a December 11, 2018 development letter, 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.

Appellant, in a December 18, 2018 response to OWCP's development questionnaire, noted that her injury occurred on her postal route while she was sitting in her vehicle. She asserted that a male customer approached her and asked about a package that he believed he should have received. The male customer showed appellant the employing establishment website regarding the status of the package, which was showing as "out for delivery." Appellant informed him that she did not have the package. The man stated that, if he did not receive the package, he would shoot her. He then walked off. The man continued by threatening that he was going to kill appellant, or have her killed, if he did not receive his package. Appellant asked if that was a threat and he replied that it was a promise. She informed him that she was contacting the police and he cursed in response. Appellant called 911 and took a picture of the license plate of the car he was driving.

In a December 20, 2018 statement, C.E., reported that she was engaged in a telephone conversation with appellant on November 24, 2018 at around 6:00 p.m. She overheard a male customer threaten appellant. C.E. noted that the male customer asked appellant about a missing package, which, according to the employing establishment website, was "out for delivery." Appellant explained that she did not have the missing package. C.E. reported that the customer became vicious and threatening. The male customer informed appellant that if he did not receive the package he would shoot her, which C.E. understood as a street saying for shooting appellant. Appellant then notified the customer that she was calling the police. The male customer replied that he did not care. C.E. noted that the customer was cursing and that his voice was fading, such

³ 5 U.S.C. § 8101 *et seq.*

that she assumed that he had walked away. Appellant then ended the call to contact the police. C.E. telephoned appellant again and calmed her until the police arrived.

OWCP subsequently received medical evidence in support of the claim. On November 30, 2018 Dr. Benjamin F. Isom, a licensed clinical psychologist, completed a form report and related that appellant was threatened by a customer on her route and that she believed that her life was in danger. He diagnosed acute stress disorder and indicated by checking a box marked “Yes” that appellant’s condition was caused or aggravated by her employment activity. In a December 20, 2018 narrative report, Dr. Isom described the November 24, 2018 incident, indicating that a customer threatened to kill appellant. He noted that she presented with intense anxiety, seemed traumatized by the event, experienced recurrent involuntary distressing memories of the trauma, flashbacks of the incident, and marked physiological reaction. Dr. Isom diagnosed acute distress disorder.

In a January 7, 2019 report, Dr. Migdalia I. Figueredo, a licensed clinical psychologist, described the alleged employment incident and noted that appellant felt her life was threatened. She diagnosed post-traumatic stress disorder (PTSD) and anxiety disorder.

By decision dated January 17, 2019, OWCP denied appellant’s emotional condition claim, finding that she had not established that the incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 31, 2019 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

OWCP subsequently received additional evidence, including February 19 and March 11, 2019 reports from Dr. Figueredo.

A November 24, 2018 sheriff’s report documented a disturbance on that date wherein appellant alleged that a male customer threatened her. The male customer approached her truck and stated that, if he did not get his package, “she would see what he would do.” He also threatened that, “if the package is not here next time, he will send someone for her.”

An oral hearing was held on June 11, 2019. Appellant described the events of November 24, 2018, noting that as she sat in her work vehicle, a male customer approached her about a package. She denied that she had the package and he showed her the employing establishment website, indicating that the package was “out for delivery.” Appellant again denied that she had the package. The man threatened appellant and asserted that it was a promise. He stated that he would kill appellant. Appellant then called the police. She noted that the man threatened to shoot her. Appellant assumed that the package contained an illegal substance.

By decision dated August 19, 2019, OWCP’s hearing representative affirmed the January 17, 2019 decision finding, that the evidence of record was insufficient to establish that the claimed incident occurred at the time, place, and in the manner alleged.

On September 21, 2019 appellant, through her representative, requested reconsideration. She provided additional evidence and argument in support of appellant’s claim, including appellant’s telephone records and clock rings. The representative correlated appellant’s telephone

record with the police report, and the location of the incident with appellant's route. She asserted that the incident occurred at the time, place, and in the manner alleged.

By decision dated December 18, 2019, OWCP modified its prior decisions, finding that appellant had established that the November 24, 2018 incident occurred as alleged. However, it continued to deny appellant's emotional condition claim, finding that the November 24, 2018 verbal threat was not a compensable factor of employment.

On April 29, 2020 appellant, through her representative, requested reconsideration. She submitted additional new medical evidence and argued that appellant was performing her assigned duties, that she was engaged in an activity that was reasonably incidental to her employment, and that she had not deviated from her work assignment. The representative contended that appellant had established a compensable verbal threat.

By decision dated July 16, 2020, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, that an injury was sustained while 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁷

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable

⁴ *Id.*

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁸ 28 ECAB 125 (1976).

emotional condition arising under FECA.⁹ 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.¹⁰ 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.¹¹

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.¹² 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.

ANALYSIS

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

OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Regarding appellant's allegation that she was threatened by a customer on November 24, 2018, the Board has recognized that verbal threats when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.¹³ In the instant case, appellant provided a witness statement corroborating that the customer threatened to shoot appellant, and a police report documenting the incident.

The Board finds that the statements by the customer on November 24, 2018 rise to the level of a credible bodily threat directed at appellant.¹⁴ Appellant has established with corroborating evidence that specific verbal threats were made against her. The Board has recognized the compensability of threats, when the factual aspects of such claimed threats are established.¹⁵

⁹ *Supra* note 3.

¹⁰ *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *G.G.*, Docket No. 18-0432 (issued February 12, 2019).

¹² *J.Z.*, Docket No 19-1156 (issued July 28, 2020); *D.W.*, Docket No. 19-0449 (issued September 24, 2019).

¹³ *J.Z.*, *id.*; *J.W.*, Docket No. 17-0999 (issued September 4, 2018).

¹⁴ *See M.R.*, Docket No. 17-1803 (issued February 8, 2019) (finding that a statement made directly to the claimant that he would be "among the nonliving" was a credible bodily threat directed at the claimant).

¹⁵ *See Z.S.*, Docket No. 16-1783 (issued August 16, 2018).

For the foregoing reasons, the Board finds that appellant has established a compensable factor of employment under FECA. OWCP did not analyze or develop the medical evidence given its finding that there were no compensable employment factors. The case will therefore be remanded to OWCP for this purpose.¹⁶ After any further development as deemed necessary, it shall issue a *de novo* decision on the issue of whether appellant has an emotional condition due to the compensable factor of her federal employment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2020 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: July 30, 2021
Washington, DC

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

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

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

¹⁶ *K.A.*, Docket No. 14-0017 (issued August 4, 2014); *Robert Bartlett*, 51 ECAB 664 (2000).