

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

S.S., Appellant)	
)	
and)	Docket No. 21-0184
)	Issued: July 14, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
BROCKTON VA MEDICAL CENTER,)	
Brockton, MA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 19, 2020 appellant filed a timely appeal from a July 13, 2020 merit decision and an August 20, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 13, 2020 appellant, then a 58-year-old advanced medical support assistant, filed an occupational disease claim (Form CA-2) alleging that she developed stress and anxiety due to factors of her federal employment. She explained that answering telephone calls and e-mails, retrieving messages off of the telephone, making charts, answering the door and questions from worried employees, and assisting nurses and nurse practitioners overwhelmed her to the point of crying. Appellant indicated that she first became aware of her condition and realized it was caused or aggravated by factors of her federal employment on March 23, 2020. On the reverse side of the claim form, the employing establishment noted that she stopped work on April 8, 2020 and returned to another duty station on April 13, 2020.

In an April 20, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 8, 2020 letter, Dr. Landis Mitchner, a psychiatrist, noted that he had seen appellant on that day and diagnosed an acute adjustment disorder with mixed disturbances of mood and anxiety, secondary to overwhelming occupational stressors at the employing establishment in the context of the COVID-19 pandemic. He excused appellant from work from April 8 through 13, 2020. In a progress report of even date, Dr. Sucheta J. Doshi, a family practice specialist, noted that appellant reported that she was overwhelmed by work and her personal life. She indicated that appellant had been covering the employing establishment's occupational health clinic for the past two weeks. Dr. Doshi diagnosed severe anxiety regarding COVID-19 pandemic work overload. In separate report of even date, Nancy Gendreau, a nurse practitioner, recommended appellant remain off work for the next five days.

In an April 30, 2020 response to OWCP's development questionnaire, appellant asserted that she was asked to cover the occupational health clinic by herself on March 23, 2020 when her coworker was on leave. She noted that she worked there until April 8, 2020. Appellant contended that the clinic was busy due to the COVID-19 pandemic. She alleged that she became very overwhelmed and started crying and shaking uncontrollably due to the carrying out of her work duties. Appellant explained that she was required to handle a high volume of telephone calls from employees who were either sick with symptoms or wanted results from COVID-19 testing, as well as high volumes of e-mails, faxing, and scanning. She detailed her other duties including triaging telephone calls to nurses, scheduling telephone visits, making charts for new employees, and entering schedules on the computer. Appellant asserted that she thought she was having a nervous breakdown and that her work responsibilities were too overwhelming by herself. She also indicated that she was worried for her family during the COVID-19 pandemic.

In a May 13, 2020 e-mail, C.M., appellant's supervisor, noted that appellant was hired for her position because of her experience with the occupational health clinic and that she served as a backup to her coworker, who was made to quarantine at home, temporarily making appellant the main clerk. He indicated that everyone in general was under a great deal of stress at work, more than usual, due to the COVID-19 pandemic. C.M. noted that he was unaware of appellant working overtime.

On May 19, 2020 the employing establishment controverted appellant's claim.

OWCP subsequently received a position description for a medical support assistant.

In a May 26, 2020 development letter, OWCP requested a response from the employing establishment regarding appellant's allegations. It afforded the employing establishment 30 days to provide the requested information.

In a May 26, 2020 attending physician's report (Form CA-20), Dr. Marcin Sprycha, Board-certified in family practice, indicated that appellant sustained severe anxiety and depression as a result of work environment. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity.

On May 29, 2020 appellant filed another Form CA-2 alleging that she developed severe anxiety and depression due to factors of her federal employment.

In an undated statement, appellant reiterated that she felt overwhelmed from carrying out her work duties, which included dealing with a high volume of telephone calls, answering e-mails, faxing, scanning, triaging telephone calls to the nurses, scheduling telephone visits, making charts for the new employees, and entering all their information into the computer. She contended that she had a breakdown on April 8, 2020 at 8:00 a.m., when she felt overwhelmed and started crying and shaking uncontrollably. Appellant asserted that she was again asked to cover the occupational health clinic on May 15, 2020. She explained that this request caused her to be nervous. Appellant contended that she did not like working at the clinic as it made her sad and depressed. She alleged that she had not been sleeping or eating well in fear of having to go back to the clinic.

In a June 24, 2020 response to OWCP's development questionnaire, the employing establishment acknowledged that appellant became visibly upset and was crying when her supervisor asked her to temporarily cover the occupational health clinic. It noted that while there was a particularly large volume of telephone calls, there were no deadlines or quotas that needed to be met, and that there were additional staffing resource added to handle the high volume. The employing establishment indicated that appellant had no reported conflict with her coworkers or supervisor. It contended that no extra demands were placed on appellant, who performed her required duties and met expectations.

In a June 3, 2020 follow-up statement, C.M., contended that although appellant had no deadlines or quotas to meet, the volume of telephone calls significantly increased a lot because the occupational health clinic was appointed as the point of contact for COVID-19-related issues. He noted that appellant had no conflict with her coworkers and that there were no issues with her performance. C.M. indicated his belief that "the work situation was overwhelming for [appellant]."

In a June 3, 2020 e-mail, an unidentified coworker noted that appellant's job was to cover the program support when the regular clerk was absent. The coworker explained that appellant's work duties included answering the telephone, taking messages and giving them to providers, and scanning and faxing documents. The coworker contended that appellant always disliked working in the occupational health clinic and became visibly angry as she was performing her duties at the clinic. The coworker asserted that on April 8, 2020 appellant started shaking and crying. The coworker explained that the clinic was busy, but that everyone was just as busy, and their tasks were divided as much as possible. The coworker alleged that no one placed extra pressure on appellant, but certain tasks were given with a timeframe for when they needed to be completed. The coworker contended that appellant could have asked for help from the labor pool, but did not. The coworker noted that appellant was again asked to cover the clinic about a week prior, which she initially refused as she stated that she did not feel comfortable working at the clinic.

In a June 4, 2020 follow-up statement, the unidentified coworker again noted that they had a labor pool that helped with the calls and filled in when appellant was out of the office or needed help. The coworker also contended that several suggestions were made to appellant to make things easier for her, but she had refused them. The coworker reported that appellant still got along with everyone.

In a June 4, 2020 e-mail, another unidentified coworker noted that the workload and volume did increase as a result of the COVID-19 pandemic. The coworker asserted that due to the increase of workload, the employing establishment was given additional staff from the labor pool to help with overflow. The coworker contended that there were no deadlines or quotas that needed to be met by appellant. The coworker explained that the volume of telephone calls increased while face-to-face visits were stopped. The coworker noted that appellant had a clerical backup at the other sites and had the ability to forward the telephone lines to other campuses if she felt overwhelmed.

In a June 4, 2020 e-mail, another unidentified coworker described appellant's work duties and noted that there was a significant increase in the number of telephone calls to be triaged, but significantly fewer in-person visits in the clinic as face-to-face visits were being reserved for work-related injuries only. The coworker contended that there was a particularly large volume of telephone calls, where messages were constantly being taken, which could be perceived as stressful for appellant.

In a June 8, 2020 e-mail, another unidentified coworker contended that everyone's roles at the employing establishment were adjusted to manage the impact of the COVID-19 pandemic. The coworker explained that the pandemic generally decreased most of the duties because all services were shut down and many employees were teleworking. The coworker indicated that appellant's workload decreased in most areas with the exception of answering the telephone, taking messages, or scanning documents. The coworker noted that there were many calls initially, but that eventually more employees were assigned to the clinic to assist in the same tasks as appellant, which distributed the workload quite fairly. The coworker asserted that other than the normal stress that the country was feeling regarding the COVID-19 pandemic, the work environment felt quite manageable. The coworker alleged that several suggestions were made for appellant to handle the telephone, including putting the posted messages on the table and letting providers get their own and working as well as working on her pace. The coworker indicated that

she previously got along with everyone at work. The coworker noted that on April 8, 2020 appellant was visibly upset and crying, with her voice getting louder.

By decision dated July 13, 2020, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that she failed to provide documenting evidence, such as witness statements, to establish the alleged incidents. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 14, 2020 appellant requested reconsideration and resubmitted the May 26, 2020 Form CA-20 and her position description.

By decision dated August 20, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁶

To establish an emotional condition in the performance of duty, appellant 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.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

coverage under FECA.⁹ 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.¹⁰ However, disability is not compensable when it results from factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.¹¹

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹³ Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁶

ANALYSIS -- ISSUE 1

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

⁹ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976). In the case of *Lillian Cutler*, the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. 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. 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, unhappiness with doing work, or frustration in not given the work desired, or to 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 *Lillian Cutler*, *id.*

¹² *A.R.*, Docket No. 18-0930 (issued June 5, 2020); *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

¹³ *L.S.*, *id.*; *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁴ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *see also A.C.*, *supra* note 12.

¹⁵ *C.V.*, *supra* note 7.

¹⁶ *Id.*

Appellant attributed her emotional condition in part to *Cutler*¹⁷ factors. She alleged that she felt overwhelmed by her work duties when she was assigned to cover the employing establishment's occupational health clinic for a coworker who was on leave. Appellant asserted that her duties included answering and triaging an increased volume of telephone calls, as well as answering e-mails, faxing, scanning, scheduling telephone visits, making charts for the new employees, entering information into the computer, and assisting nurses and nurse practitioners. She contended that the clinic was busy with a high volume of telephone calls due to the COVID-19 pandemic. Appellant alleged that she ultimately experienced an emotional breakdown on April 8, 2020 at work.

The Board finds that, as to appellant's allegation that she sustained an emotional condition due to overwork based upon her regular and specially assigned job duties, appellant has established a compensable work factor under *Cutler*.¹⁸ The case record contains evidence, particularly the statements of appellant's immediate supervisor, C.M., which demonstrate that, since the COVID-19 pandemic, although appellant had no deadlines or quotas to meet, the volume of telephone calls significantly increased and, in C.M.'s own words, "the situation was overwhelming for her." She further indicated that there were no issues with her performance, stating that "to her it felt that she was riding in the back of an airplane, its wing catches fire the [pilot] passes out and she is now expected to land the plane safely." In a June 4, 2020 statement, an unidentified coworker contended that there was a particularly large volume of telephone calls, where messages were constantly being taken, which could be perceived as stressful for appellant. It is further established, through statements from appellant's unidentified coworkers, that, given her workload, additional staffing resources were added to handle the high volume due to the COVID-19 pandemic.

The Board further finds that the case record contains evidence showing that the workload and volume of telephone calls, as well as faxing and scanning documents, did increase as a result of the COVID-19 pandemic while face-to-face visits were stopped or decreased. It is also established that after working at the clinic for approximately two weeks, appellant ultimately became visibly upset on April 8, 2020 at work, crying and shaking uncontrollably. The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her positions requirements are compensable.¹⁹ Further, the Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.²⁰ As appellant attributed her emotional condition, in part, to the stress of trying to meet the duties of her position, including answering and triaging the increased volume of telephone calls due to the COVID-19 pandemic, the Board, thus, finds that appellant has established a compensable employment factor of overwork. On remand OWCP shall consider the medical evidence with regard to whether she has established a diagnosed emotional condition casually related to this accepted employment factor of overwork.

¹⁷ *Supra* note 6.

¹⁸ *Id.*

¹⁹ *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *K.J.*, Docket No. 17-1851 (issued September 25, 2019); *P.W.*, Docket No. 08-0315 (issued August 22, 2008); *Jeral R. Gray*, 57 ECAB 611 (2006).

²⁰ *W.F.*, *supra* note 7; *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

Appellant has also alleged stress and anxiety due to actions by her supervisor and other management officials. In this regard, she contended that she was assigned to cover the occupational health clinic by herself initially on March 23, 2020 and then again on May 15, 2020 despite her initial refusal. Mere disagreement or dislike of actions taken by a supervisor will not be compensable absent evidence establishing error or abuse.²¹ Further, 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.²² 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 this allegation.²³

As noted above, the Board finds that appellant has established a compensable employment factor with regard to her claim of overwork based upon her regular and specially assigned job duties, appellant has established a compensable work factor under *Cutler*. 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, be remanded to OWCP. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.²⁴

CONCLUSION

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

²¹ *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *D.J.*, Docket No. 16-1540 (issued August 21, 2018); *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

²² *Id.*; see also *Alfred Arts*, 45 ECAB 530 (1994).

²³ *Id.* See also *B.G.*, Docket No. 18-0491 (issued March 25, 2020).

²⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 20 and July 13, 2020 decisions of the Office of Workers' Compensation Programs are reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 14, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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