United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 19-1252**
	)	**Issued: March 22, 2021**
DEPARTMENT OF VETERANS AFFAIRS, CENTRAL ARKANSAS HEALTHCARE SYSTEM, Little Rock, AK, Employer	)	

Appearances:
Sara Kincaid, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 7, 2019 appellant, through counsel, filed a timely appeal from a November 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from November 15, 2018, the date of OWCP's last decision, was May 14, 2019. Because using May 14, 2019, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 7, 2019, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Federal Employees' Compensation Act[3] (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 stress-related conditions in the performance of duty, as alleged.

FACTUAL HISTORY

On March 6, 2018 appellant, then a 39-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained physical and emotional conditions as a result of performing her federal employment. She noted that she first became aware of her conditions and their relationship to her federal employment on April 20, 2016. On the reverse side of the claim form, S.P., appellant's supervisor, noted that, appellant was detailed to the Central Business Office in North Little Rock, Arkansas beginning on October 26, 2015 and tasked with performing the duties of that department. On June 17, 2016 her detail location was changed to the North Little Rock Nursing Service Office, where she was assigned tasks to complete such as audits and electronic medical record surveillance. S.P. related that appellant was terminated by the employing establishment on February 17, 2017.

In an accompanying undated statement, appellant indicated that on October 27, 2016 she was detailed to the central business office's fee department. On April 20, 2016 an access team of 18 employees, including herself, was created to assist with closing a backlog of accounts. Appellant contended that on the first day at work she was assigned over 900 medical consults to review and close. The consults contained about 27,000 to 28,000 pages of medical records. Appellant further contended that a nurse manager in her unit gave appellant part of her workload and also instructed other staff members to pass off some of their workload to her. She maintained that she was assigned more work than the other team members combined. Appellant related that her coworkers were only required to close up to 5 consults per day while she closed 936 consults in 40 days. She also maintained that she was not given clear expectations or guidelines regarding a timeline for the completion of her excessive workload. Appellant was simply told to document everything she completed and provide a written status update to her supervisors at the end of each day. None of her coworkers were required to report their daily work production. Appellant claimed that, without clear work expectations, she experienced overwhelming stress, which took a significant toll on her physical and emotional health and well-being. She had anxiety about going to work, difficulty sleeping, and worsening medical conditions that were aggravated by the stress. Appellant suffered from frequent headaches and migraines, chest pain, mood swings and agitation, physical and emotional fatigue, restlessness, and withdrawal from family and friends. The stress significantly exacerbated her preexisting plaque psoriasis, irritable bowel syndrome, and endometriosis. Appellant also developed guttate psoriasis, psoriatic arthritis, a potential gastrointestinal bleed, major depressive disorder, anxiety disorder, panic attacks, and insomnia.

[3] 5 U.S.C. § 8101 *et seq.*

An employing establishment memorandum dated October 26, 2015 indicated that appellant was indefinitely detailed to the North Little Rock Central Business Office effective October 27, 2015 to provide assistance in addressing a backlog of open consults/encounters.

An employing establishment incident report dated February 14, 2018 noted that on April 20, 2016 appellant reported an excessive workload was placed upon her, which exacerbated her previous medical issues.

In a March 15, 2018 e-mail, C.R., an employee, informed P.H. that appellant did not report any work-related illness to the employee health unit during the period April 20, 2016 through February 17, 2017.

In a March 23, 2018 letter, P.H., a human resources specialist, controverted appellant's claim.

In an April 5, 2018 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to the attached questionnaire in order to substantiate the factual elements of her claim and provide medical evidence to establish that she sustained a diagnosed condition caused or aggravated by her federal employment. OWCP afforded appellant 30 days to submit the necessary evidence.

In an undated statement, appellant responded to OWCP's development questionnaire. She asserted that D.P., a supervisory case manager, assigned her own consults to her and instructed other nurses in the fee department to also give some of their consults to her for review. Appellant reiterated that she was required to review several 100 medical records without clear expectations for completion of this excessive workload. She contended that she was informed by D.P. that she was solely responsible for reviewing all the medical records related to the 900 consults. Appellant was also informed by two case managers that they were instructed not to assist her with her workload and to give some of their consults to her. She asserted that she was required to send a daily e-mail to S.D. and R.E., group practice managers, regarding the number of consults she reviewed for closure. Appellant noted that neither individual responded to her requests for clarification about how many consults she was required to complete per day. She related that she closed 936 consults during the period April 21 to June 20, 2016. A few nurse case managers in the fee department told appellant that they were required to close zero to five consults per day and they did not have to report their daily activity to the chief of staff's office. Appellant filed an Equal Employment Opportunity (EEO) complaint related to her claim, which had been investigated, but no decision had been issued. She described her hobbies and noted her private industry employment since being terminated from the employing establishment on February 17, 2017. Appellant further noted that she had never been diagnosed with a psychiatric condition or been hospitalized for such a condition. She listed the medications for her stress-related conditions, and noted that she had no stressors outside her federal employment.

Appellant submitted several statements and e-mails dated March 26, 2016, and March 27 and 30, 2017 from M.J., a coworker; B.M., an investigative analyst; P.A. and S.T., registered nurses; B.W., a coworker; and K.E., a program support assistant, who indicated that D.P. assigned numerous boxes of medical records to appellant for review to close consults while no other employees were instructed or required to do the same amount of work without assistance from

fellow staff and/or team members. P.A. also indicated that she was instructed by D.P. to pass off some of her workload to appellant. K.E. related that he had worked in the fee unit for two years and had never seen anybody assigned the type of workload assigned to appellant.

Appellant submitted an additional statement dated May 23, 2016 from P.A., and statements of even date from V.C., S.F., and A.M., registered nurses, who indicated that they were required to close five consults per day and did not have to directly report their daily activity to the chief of staff's office.

Appellant also submitted medical evidence.

OWCP, in a development letter dated May 7, 2018, requested that the employing establishment respond to appellant's allegations and provide additional information regarding the duties and physical requirements of her position and her EEO complaint.

Appellant, through counsel, submitted additional statements that were signed by registered nurses, L.N., S.T., and R.J. on May 23, 2016 and indicated that they were required to close only five consults per day. The nurses also indicated that they were not required to report their daily activity to the chief of staff's office.

In a June 6, 2018 letter, P.H. responded to OWCP's May 7, 2018 development letter. She noted that appellant last worked at the employing establishment on February 17, 2017. P.H. also noted that no final decisions had been issued regarding appellant's grievance and/or EEO complaint pertaining to her claim. She related that the employing establishment was not aware of any investigative report related to her claim. P.H. submitted various statements, correspondence, and a position description and memorandum for appellant's detail position at North Little Rock Nursing Service Office.

In a June 1, 2018 statement, D.P. explained that it was imperative to retrieve medical records from the Arkansas Department of Health (ADH) as soon as possible as it was closing in the summer of 2016. She noted that team access, which was under the office of chief of staff, placed attention on the records from ADH. All expectations were directed by R.E. and S.D. D.P. related that the medical records were simply placed at appellant's desk because there was no other place to put them. She stated that it was most important that these records were promptly received, not completed within a certain time period. Regarding a clinical case manager's responsibility to complete five consults, D.P. related that full-time clinical case managers were challenged with multiple tasks including, scheduling appointments, coordinating care in the community, speaking with veterans on a daily basis and employing establishment providers and staff, and providers and staff in the community. She noted that a list of 900 consults was given to appellant, but the list indicated the number of consults that were ready for completion and not what had to be completed in one day. D.P. explained that clinical case managers gave appellant some of their workload because in addition to completing consults they had to perform many other duties while appellant's only responsibility was to complete consults. Regarding appellant's contention that she reviewed and took appropriate action on 936 consults in 40 days, she noted that this represented 23.4 consults per day or 2.9 hour per hour. Overtime and compensation time was offered to all clinical case managers to complete consults. D.P. indicated that case managers were required to review and complete a minimum of seven consults per hour and that appellant's accomplishment of 2.9

consults per hour fell below the current minimum requirement. She told appellant to do the best she could to satisfy the task requirements. D.P. denied monitoring her work performance, and setting deadlines, daily requirements or expectations. She related that appellant was given autonomy in the organization of her daily tasks. D.P. further related that her accomplishments were to be reported to R.E. and S.D. as they were required to report progress to the chief of staff's office on a daily basis. She maintained that appellant was allowed to come and go at will and at no time was she restricted to her desk or the office. Breaks and lunches were taken as often and for as long as she wished. At no time did D.P. monitor or track the time appellant was at her desk or in the office. Her annual and sick leave requests were approved and accommodated without restriction. Appellant was allowed to work overtime during the first few months of her arrival to the department. She was also allowed to work on a holiday. D.P. noted that appellant wore appropriate work attire and never presented with a look of grief or despair. She also did not exhibit episodes of distress or being uncomfortable in her presence when they traveled on the same cruise ship in August 2016. D.P. further noted that D.J. assisted appellant with the completion of consults.

D.P., in a June 16, 2016 statement, explained the urgent need for team access to assist the fee department to complete a backlog of nonskilled home health aide consults. She met with appellant to discuss this situation and appellant agreed that she would redirect her focus and solely concentrate on the consults. D.P. also informed her that, since the chief of staff office had directed completion of the consults, it was necessary to e-mail the number of reviewed and completed consults and record requests to S.D. and R.E. who were highly involved in nonskilled completion project, at the end of each day. She noted that, a few days following the meeting, appellant told her that there were too many records coming in for her to complete on her own. D.P. responded that she should do her best which would be sufficient. She indicated that team access was aware that one registered nurse was responsible for completing the consults and was performing as best as possible. D.P. again maintained that she never required appellant to complete a certain number of consults on a daily basis. She received an April 21, 2016 e-mail in which appellant reported her work performance on that day. D.P. indicated that she never communicated with appellant regarding her performance, time, and leave use, or behavior in a manner that qualified as harassment or retaliation, or created a hostile work environment.

In a June 1, 2018 e-mail, K.E. responded to P.H.'s inquiry about appellant. He indicated that he knew that D.P had some people bring a number of boxes filled with medical records to appellant's desk and that D.P. told appellant to review each record. K.E. indicated, however, that he did not know why she had to review the records. He did not recall ever saying that there were hundreds or thousands of medical records as he had no way of knowing how many records existed. K.E. related that, all he knew, there were a lot of boxes filled with medical records and yes there was undoubtedly hundreds, or maybe thousands of them.

R.E., in a June 5, 2018 e-mail to P.H. and J.A., deputy chief of staff, and copied to S.D., indicated that appellant was not required or asked to share her workload, but that sometimes he and S.D. received an e-mail from her wherein she shared her daily progress.

R.E.'s June 5, 2018 e-mail included a statement from J.A. who indicated that R.E. and S.D. monitored the number of open consults for the entire facility, but had never set any workload requirements.

E-mails dated November 14, 2015 and April 22 and 25 and June 13, 2016 showed that appellant reported her work hours, reviewed consults, and requested a current list of consults, and that D.P. instructed her to report the number of consults she reviewed and completed, and records she requested at the end of the day to S.D. and R.E.

In a July 12, 2018 statement, appellant responded to the employing establishment's June 6, 2018 letter and submitted e-mails she sent to R.E. and S.D. regarding heavy workload. She contended that, in the May 3 and 11, 2016 e-mails sent to R.E. and S.D., she voiced her concerns about being assigned an excessive workload, missing information needed to complete her assigned tasks, and being uncertain about the timeframe in which to complete these tasks. Appellant claimed that 18 access team members generated work that was completed only by her. She contended that, in a May 11, 2016 e-mail, she again expressed her concern regarding the identification of a timeframe for the completion of her review of records and the thousands of pages of medical records she had to review to R.E. and S.D. Appellant was aware of the physical presence of 5½ boxes containing 27,000 to 28,000 medical records that were assigned to her by P.D. for review, and duties and responsibilities of fee case management nurses and support staff. She noted that his statements were made in response to her March 25, 2017 e-mail to him. Contrary to D.P.'s statement that the records were placed on her desk because there was no other place to put them, appellant contended that there were several large tables and available space on the floor and in file cabinets within the work unit. She further contended that besides completing consults, she was tasked with answering telephone calls, drafting facsimile cover sheets for requests for medical records, speaking with Central Arkansas Veterans Healthcare Providers/staff, and reviewing information. Appellant also contended that D.P. confirmed that she assigned 900 consults to appellant and instructed all other staff to add their work to her overwhelming number of consults on her desk. She claimed that D.P. contradicted her statement that accomplishments did not have to be reported to R.E. and S.D. Appellant noted that she related that accomplishments had to be reported to R.E. and S.D. because they were required to report progress to the chief of staff's office on a daily basis. Regarding D.P.'s comment about appellant's request to work overtime, appellant maintained that she did not want to work overtime, but requested it to complete her assigned large workload.

OWCP, by decision dated November 15, 2018, denied appellant's claim, finding that she had not established a compensable factor of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

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.[4]

[4] *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

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] 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.[7]

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] 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.[10]

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.[11] 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.[12]

ANALYSIS

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

Appellant has attributed her emotional condition in part to *Cutler*[13] factors. She has alleged that she was overworked during a detail assignment. Appellant contended that on the first day at

[5] 28 ECAB 125 (1976).

[6] *See G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

[7] *Supra* note 5.

[8] *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

[9] *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

[10] *See A.C.*, *supra* note 8.

[11] *C.V.*, *supra* note 4.

[12] *Id.*

[13] *Supra* note 5.

work she was assigned over 900 medical consults to review and close. She contended that the consults contained "about 27,000 to 28,000 pages of medical records." Appellant further contended that a nurse manager in her unit gave her part of her workload and also instructed other staff members to pass off some of their workload to her. She maintained that she was assigned more work than the other team members combined. Appellant related that her coworkers were only required to close up to 5 consults per day while she closed 936 consults in 40 days. She also maintained that she was not given clear expectations or guidelines regarding a timeline for the completion of her excessive workload. Appellant was simply told to document everything she completed and provide a written status update to her supervisors at the end of each day. None of her coworkers were required to report their daily work production. The Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.[14] Witness statements from M.J., B.M., P.A., S.T., B.W., and K.E. indicated that appellant was given a numerous amount of records to review and that her coworkers were not assigned that number of records to review or type of workload.

A statement from D.P., a supervisory case manager, indicates that appellant's detail assignment required her to complete an unidentified number of consults that, were contained in many boxes, she discussed with appellant the urgent need to obtain medical records from ADH to perform the consults, clinical case managers gave appellant a portion of their workload because they had other work duties to perform while she was only assigned to complete consults, and she told appellant to do the best that she could do to accomplish her work duties. Additionally, J.A., deputy chief of staff, indicated that R.E. and S.D., group practice managers, never set any workload requirements, rather they monitored the number of open consults for the entire facility.

Although it is a claimant's burden of proof to establish her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment.[15] It shares responsibility to see that justice is done.[16] In a case where it "proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner."[17]

The case shall therefore be remanded for further development.[18] On remand OWCP shall request that the employing establishment provide additional evidence regarding the specific nature and extent of appellant's detail assignment to the Central Business Office in North Little Rock, Arkansas, including the terms of the detail assignment, a detailed description of her job duties, and information regarding the employing establishment's expectations of her performance while on

[14] *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *J.E.*, Docket No. 17-1799 (issued March 7, 2018); *Bobbie D. Daly*, 53 ECAB 691 (2002).

[15] *T.S.*, Docket No. 19-0164 (issued November 13, 2019); *T.B.*, Docket No. 19-0323 (issued August 23, 2019); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

[16] *M.T.*, Docket No. 19-0373 (issued August 22, 2019).

[17] *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

[18] *See D.I.*, Docket No. 19-0534 (issued November 7, 2019); *N.S.*, Docket No. 16-0914 (issued April 10, 2018).

the detail assignment. After this and other such further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2018 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: March 22, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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