

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

---

**C.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Indianapolis, IN, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 20-1493  
Issued: March 29, 2021**

*Appearances:*  
*Appellant, pro se*  
*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 6, 2020 appellant filed a timely appeal from a March 11, 2020 merit decision and an April 7, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition due to factors of her federal employment, as alleged; and (2) whether OWCP properly

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the April 7, 2020 decision, 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.

denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On May 18, 2019 appellant, then a 27-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic stress disorder (PTSD) and anxiety due to factors of her federal employment. She noted that she first became aware of her condition on September 11, 2018 and first realized its relation to factors of her federal employment on August 11, 2018. Appellant explained that she had two previous incidents that were investigated by postal inspectors and that the surrounding area on route 741 looked very similar to the location of her first incident and triggered her condition. She stopped work on September 11, 2018.

In medical notes dated from October 26 to November 19, 2018, Constance McFarland, a physician assistant, and Easter Watson, a licensed clinical social worker, found that appellant was able to return to work and suggested that she not be exposed to a work environment that exacerbates her symptomatology.

In a November 29, 2018 medical note, Dr. Senora Nelson, Board-certified in family medicine, recommended that appellant return to work on December 3, 2018 and advised that appellant not work in an environment that would trigger her symptoms. In a subsequent December 26, 2018 medical note, she recommended that appellant work indoors.

In duty status reports (Form CA-17) dated from January 9 to May 2, 2019, Dr. Nelson diagnosed PTSD and provided work restrictions.

In a development letter dated June 7, 2019, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her of the factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 8, 2019, OWCP denied appellant's occupational disease claim, finding that she failed to provide a detailed description of the employment incidents she alleged to have caused or aggravated a PTSD or anxiety condition. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional evidence. In a November 29, 2018 medical report, Dr. Nelson saw appellant for a follow-up visit relating to her reports of distressing events at work. She diagnosed depression with anxiety, PTSD and psychosocial stressors and prescribed medication.

Appellant submitted CA-17 forms dated from February 21 to June 7, 2019 in which Dr. Nelson again diagnosed PTSD and provided work restrictions.

In a June 7, 2019 medical report, Dr. Nelson noted appellant's medical history of anxiety, depression, PTSD, and hyperlipidemia. She diagnosed stress at work, hyperlipidemia, PTSD, and depression with anxiety.

In a September 30, 2019 statement, Lauren Burns, a registered nurse, recounted the dates appellant was evaluated in relation to her diagnosis of PTSD following two employment incidents. She described symptoms including nightmares, flashbacks, panic attacks, and generalized anxiety as a result of the employment incidents. Ms. Burns explained that appellant did not have PTSD prior to the incidents and opined that appellant's employment aggravated her symptoms on a daily basis. She found that appellant was unable to work in a postal long-life vehicle (LLV) and recommended that appellant work in a building at all times.

Appellant, in an October 1, 2019 statement, described a 2016 employment incident where she was given an unmarked vehicle in order to deliver mail in Gary, IN. She explained that it was dark outside when she made it to a block and exited her vehicle to deliver the mail. Appellant recounted that she could barely see the houses because it was so dark when she heard a voice asking her what she was doing. She stated that she was scared and attempted to explain to a man standing behind his gate that she worked for the employing establishment. The man had his hand behind his back and questioned why her vehicle was unmarked. Appellant displayed her postal hat to show she was a postal worker and the man replied "I was about to shoot you. [Y]ou just do n[o]t know," stating that her vehicle looked suspicious. She then took her mail, went back to her vehicle and called her union president. Appellant then described a second incident in March 2018 where she was put on a different route that had a house that looked familiar to the home where the 2016 employment incident occurred. As a result of the house looking similar to the house where the initial incident occurred in 2016, she immediately started to panic and replayed the events of the 2016 incident. Appellant was unable to deliver the mail, returned to the employing establishment and asked a supervisor if it was the same route where the previous incident occurred. In a third incident she described being approached multiple times by a man carrying what appeared to be a dirty white painter's mask. Appellant attempted to walk in the street to put distance between them when the man tried to speak to her and entered into her personal space.

On October 4, 2019 appellant requested reconsideration of OWCP's July 8, 2019 decision.<sup>3</sup>

In a March 5, 2018 e-mail, A.V., appellant's supervisor, photocopied a statement where appellant described an incident where she was out delivering mail and a man made a threat of sexual assault against her. Appellant asserted that the man attempted to point her to a private area and proceeded to follow her after she attempted to move away from him. She eventually went to her LLV and called for assistance.

In a December 5, 2018 medical note, Dr. Nelson explained that appellant was unable to carry mail because she must be in a safer work environment to avoid triggering a post-traumatic stress situation.

In a December 20, 2018 offer of modified assignment (limited duty), the employing establishment offered appellant a modified assignment consisting of administrative duties, collecting mail, parcel delivery and mail delivery.

---

<sup>3</sup> Appellant also submitted an October 18, 2019 appeal form in which she requested reconsideration of an August 8, 2019 decision. However, the Board notes that the record contains no decision issued on that date.

In CA-17 forms dated from June 7 to September 12, 2019, Dr. Nelson diagnosed PTSD and provided work restrictions.

In medical reports dated from August 29, 2019 to January 6, 2020, appellant complained to various medical providers of an incident in which she was delivering mail in an unmarked vehicle and a man threatened to shoot her. She also described the second incident where a man attempted to sexually assault her. On evaluation, Dr. Pradeep Thapar, a Board-certified general adult psychiatrist, noted that appellant experienced symptoms when she was reminded of the incidents and diagnosed PTSD, generalized anxiety disorder and major depressive disorder.

In a January 16, 2020 letter, OWCP requested comments from the employing establishment with regard to the factual evidence submitted by appellant. It provided the employing establishment 20 days to respond. No response was received within the allotted time.

By decision dated March 11, 2020, OWCP denied modification of its July 8, 2019 decision.

On March 18, 2020 appellant requested reconsideration. She attached copies of her October 1, 2019 statement and October 2, 2019 request for reconsideration previously considered by OWCP.

By decision dated April 7, 2020, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was repetitious and consisted of copies of documentation that were previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

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 identified compensable employment factors are causally related to the emotional condition.<sup>4</sup>

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*,<sup>5</sup> 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.<sup>6</sup> 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

---

<sup>4</sup> *George H. Clark*, 56 ECAB 162 (2004).

<sup>5</sup> 28 ECAB 125 (1976).

<sup>6</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

employing establishment or by the nature of the work.<sup>7</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>8</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>12</sup> A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. The issue is whether the claimant has submitted sufficient evidence under FECA to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>13</sup> The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by OWCP and the Board.<sup>14</sup>

### ANALYSIS

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

Appellant alleged that she was harassed at an unspecified time in 2016 as well as sexually harassed in March 2018. In support of these allegations, she submitted a statement describing the incidents, a March 5, 2018 e-mail in which A.V., her supervisor, forwarded a photocopied image of an additional statement, and multiple medical reports where her physicians made note of the alleged incidents. In her May 18, 2019 Form CA-2, appellant also indicated that the two incidents

---

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>9</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>10</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>11</sup> *See C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

<sup>12</sup> *See Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>13</sup> *See James E. Norris*, 52 ECAB 93 (2000).

<sup>14</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

were investigated by postal inspectors. OWCP denied her claim, finding that she did not provide any evidence to corroborate her personal statement.

The Board notes that on January 16, 2020 OWCP had allotted time for the employing establishment to respond to appellant's allegations. However, no response was received. Nevertheless, OWCP found that appellant had not established any compensable factors of employment.

OWCP's procedures provide:

"If an employing [establishment] fails to respond to a request for comments on the claimant's allegations, the [claims examiner] may usually accept the claimant's statements as factual. However, acceptance of the claimant's statements as factual is not automatic in the absence of a reply from the [employing establishment], especially in instances where performance of duty is questionable. The Board has consistently held that allegations unsupported by probative evidence are not established. *James E. Norris*, 52 ECAB 93 (1999); *Michael Ewanichak*, 48 ECAB 364 (1997). The [claims examiner] should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination."<sup>15</sup>

Based on appellant's May 18, 2019 Form CA-2 and the March 5, 2018 e-mail from A.V., the Board concludes that the employing establishment conducted an investigation into appellant's allegations. The Board finds that it is unable to make an informed decision in this case as the employing establishment did not respond to the request for comment made by OWCP in the January 16, 2020 letter.

Although it is a claimant's burden of proof to establish his or 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 or other government source.<sup>16</sup> Since appellant's allegations indicate that the employing establishment would have in its possession evidence relevant to her harassment and sexual harassment allegations, (*i.e.*, findings of the Postal Inspection Service's investigation) OWCP should obtain a response from the employing establishment to the allegations of harassment and sexual harassment and any relevant evidence or argument.<sup>17</sup>

---

<sup>15</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011).

<sup>16</sup> See *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *K.W.*, Docket No 15-1535 (issued September 23, 2016) (remanding the case for further development by OWCP when the employing establishment did not provide an investigative memorandum in an emotional condition claim based on sexual harassment).

<sup>17</sup> *Id.*; see 20 C.F.R. § 10.117(a), which provides, the employing establishment who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

The case will, accordingly, be remanded to OWCP for further development of the evidence regarding appellant's allegations. It shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding her allegations. Following this and any necessary further development, OWCP shall issue a *de novo* decision regarding whether appellant has established any compensable factors of employment regarding harassment or sexual harassment and, consequently, sustained an injury in the performance of duty.<sup>18</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 7 and March 11, 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: March 29, 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

---

<sup>18</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.