

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 17, 2019 appellant, then a 64-year-old Director of Workers' Compensation, filed an occupational disease claim (Form CA-2) alleging that his major depression, post-traumatic stress disorder, and anxiety were caused and/or aggravated by factors of his employment. He alleged that K.C., his manager, created a toxic, hostile work environment, and arbitrarily demoted him on February 5, 2019. Appellant noted that he first became aware of his condition on February 6, 2019 and first realized its relation to his federal employment on March 27, 2019. He worked intermittently from March 12, 2019 forward.

In March 10 and May 13, 2019 employee disclosure forms and in June 5 and July 15, 2019 letters, appellant indicated that he was filing a Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) reprisal action against K.C. He indicated that K.C. had retaliated against him since February 5, 2019, when he was tangentially named as a potential witness against K.C. in a No FEAR Act case brought by B.S., a coworker. Appellant explained that the No FEAR Act complaints brought by B.S. were cited as evidence in her OWCP claim. He alleged that K.C. had wrongly, and without due process, demoted him and removed his supervisory authority and title, which he had held for over 10 years. Appellant alleged that this had a chilling effect on his ability to provide testimony and information for the Office of Special Counsel (OSC) and OWCP claims brought by B.S. He indicated that D.F., K.C.'s supervisor, stated that he was still a supervisor over the workers' compensation office and that K.C. had overstepped his authority. During this time, appellant noted that his father was in hospice care and since passed away. He alleged that on March 8, 2019 at 3:47 p.m. he was subjected to an additional act of retaliation and intimidation when K.C. told him that he would no longer be in a supervisory position. Appellant indicated that he was shocked and alleged that this was an adverse action associated with his whistleblower-protected cooperation. He indicated that he sought urgent medical care after this matter. Appellant indicated that the retaliation and intimidation continued with no intervention and that he was afraid to talk to the OSC or anyone else related to this matter. He further alleged, in his June 5 and July 15, 2019 letters, that T.B., Acting Executive Director of the Office of Human Capital Management (OHCM), and her staff, further perpetuated the cover up of his demotion by stonewalling his numerous efforts to informally resolve the matter and failing to investigate and make a ruling on the matter. Appellant alleged that T.B. rewrote the OHCM Organizational Chart to demote him and thereafter ignored, circumvented, and pigeon-holed him. He also alleged that collusion by K.C. and P.A. resulted in his removal as a supervisor and humiliation in front of his peers. Appellant further alleged that K.C. and P.A. deliberately committed Health Insurance Portability and Accountability Act and Privacy Act violations by broadcasting his protected disability to his staff and had participated in the falsification/destruction of official federal records.

OWCP received: one page of a position description which listed appellant as Director of Workers' Compensation; a March 1, 2019 Fellow Recertification Approval; a May 10, 2019 letter from A.B., Medical Center Director; a May 2019 certificate of appreciation; copies of appellant's

WebTA timesheet from February 5, 2019; a September 12, 2017 organizational flow chart of Office of the Chief Human Capital Officer; material from B.S.' whistleblower case along with a comment from B.S. that appellant had been assisting her with her case and had become a target and subjected to retaliation; a copy of a news article; and a copy of appellant's Equal Employment Opportunity (EEO) complaints against K.C.

A March 27, 2019 letter from Ophelia Opoku-Acheampong, LGSW, a licensed graduate social worker, indicated that appellant had been receiving treatment from a hospital intensive outpatient program (IOP) since March 22, 2019 and was scheduled to attend treatment nine hours a week for four weeks.

In a May 20, 2019 letter, Dr. Richard Mullin, a Board-certified psychiatrist, indicated that appellant has been his patient since March 2019. He noted that appellant reported that he had been dealing with a lot of stress at work which he described as a hostile work environment. Dr. Mullin diagnosed major depressive disorder, recurrent, and moderate, since at least 1997. He noted that appellant received treatment through the IOP program from March 21 through April 18, 2019.

In an August 13, 2019 development letter, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It requested that he submit additional factual and medical evidence in support of his claim. OWCP provided a questionnaire for appellant to complete. It also noted that the medical evidence did not substantiate that the diagnosis of major depressive disorder was caused or aggravated by employment factors and requested a narrative medical report from an attending psychiatrist or clinical psychologist. Appellant was afforded 30 days to provide the requested information. By separate development letter of even date, OWCP also requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's statement relative to this claim. The employing establishment was also afforded 30 days to respond.

On August 27, 2019 appellant responded to OWCP's questionnaire. He submitted: performance appraisals of other individuals; a December 15, 2017 recruitment request form; a job analysis worksheet for tasks of a workers' compensation program analyst; position description of program analyst; job analysis worksheet for competencies; an obituary notice of his father, an August 26, 2019 letter from Dr. Mullin, a stress/diathesis model of depression, an October 1, 2018 letter from the employing establishment's Associate Deputy Assistant Secretary for Budget; a June 4, 2019 letter from appellant's EEO counselor, a list of role and responsibilities of the EEO counselor, appellant's notice of rights and responsibilities for EEO claim signed June 4, 2019; EEO settlement goals; a copy of appellant's claim dated July 9, 2019; appellant's June 7, 2019 complaint of possible prohibited personnel practice or other prohibited activity; copies of appellant's time and attendance and leave requests forms; an alternative dispute resolution list of goals for settlement; an August 1, 2019 witness statement from B.S.; appellant's notes from a role clarity meeting with B.W. on February 11, 2016; August 2019 e-mails regarding appellant's position description; job analysis worksheet for tasks; requests for personnel action; and a September 4, 2019 letter from the employing establishment.

By decision dated December 13, 2019, OWCP found that appellant had established that he was a federal civilian employee who filed a timely claim and that "the evidence supports that an incident [appellant] claimed occurred as described." It denied his emotional condition claim,

however, finding that the medical component of fact of injury had not been met as there was no medical evidence from a psychiatrist or licensed psychologist diagnosing an emotional condition. OWCP further found that, even if medical documentation containing a diagnosis was submitted, there were no accepted event(s) that were factors of employment. It noted that accepted events that were not factors of employment were: appellant's allegation K.C. created a toxic work environment on February 5, 2019 when he was demoted, and K.C. has retaliated against appellant since he was tangentially named as a witness against K.C. in B.S.' whistleblower case.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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.⁴

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.⁵

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*,⁶ 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.⁷

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.⁸ This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely

³ *Supra* note 1.

⁴ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁶ 28 ECAB 125 (1976).

⁷ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Robert W. Johns*, 51 ECAB 137 (1999).

⁸ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁹

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.¹⁰

ANALYSIS

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

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹¹ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹² Additionally, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome the defect.¹³

In its December 13, 2019 decision, OWCP did not sufficiently explain whether any accepted factors of employment were factually established or whether they constituted compensable factors of employment. It summarily denied appellant's emotional condition claim and did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining its disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his emotional condition claim.¹⁴ OWCP should have explained whether the alleged employment events are factually established and whether they constitute compensable employment factors.¹⁵

The case must therefore be remanded to OWCP for OWCP to review the evidence of record and make findings of fact and provide a statement of reasons for its decision, pursuant to the

⁹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁰ *See O.R.*, Docket No. 20-0743 (issued January 28, 2021); *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ 5 U.S.C. § 8124(a).

¹² 20 C.F.R. § 10.126.

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁴ *See C.A.*, Docket No. 20-1297 (issued March 18, 2021); *J.S.*, Docket No. 18-0513 (issued March 1, 2019); *K.J.*, Docket No. 14-1874 (issued February 26, 2015). *See also J.J.*, Docket No. 11-1958 (issued June 27, 2012).

¹⁵ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons." *See A.R.*, Docket No. 11-1949 (issued April 16, 2012).

standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After any further development as OWCP deems necessary, it 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 December 13, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: May 7, 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