

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

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<b>T.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0153</b>
	)	<b>Issued: October 8, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Macon, GA, Employer</b>	)	
_____	)	

*Appearances:*  
Joanne Marie Wright, for the appellant<sup>1</sup>  
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 October 25, 2019 appellant, through her representative, filed a timely appeal from an October 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on March 28, 2016, as alleged.

## FACTUAL HISTORY

On April 8, 2016 appellant, then a 52-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2016 she sustained anxiety, insomnia, hypertension, and loss of appetite when she found two large knives in a parcel locker, which she opened with an arrow key while in the performance of duty. She stopped work on April 1, 2016. On the reverse side of the claim form T.B., appellant's supervisor, noted that appellant asserted that "seeing the knives frightened her." She indicated that appellant was not in the performance of duty when injured. T.B. controverted the claim noting that appellant was able to complete the delivery of her route on the date of incident.

In support of her claim, appellant submitted an April 1, 2016 work release note by Dr. Randal C. Sugeran, a general surgeon, who held appellant off work that day and returned her to full duty, effective April 2, 2016. In a note dated April 4, 2016, Dr. Alan D. Justice, a Board-certified internist, indicated that she was seen in his office on that date and that he advised her to remain off work until April 19, 2016. In an undated return-to-work note, he noted that appellant came under his care from April 18 through 25, 2016. Dr. Justice held her off from work until April 25, 2016.

In an April 18, 2016 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care. It noted that she suffered a nervous breakdown and checked a box indicating that there was doubt that her condition was caused by an injury sustained in the performance of duty.

In a letter dated April 19, 2016, the employing establishment again challenged appellant's claim, asserting that she had not submitted sufficient evidence to establish fact of injury, performance of duty, or causal relationship.

In a development letter dated May 19, 2016, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical evidence.

Dr. Justice, in a May 5, 2016 report, indicated that appellant had been under his care since October 2015. He noted that, prior to her April 4, 2016 visit, she had not been prescribed medications for hypertension or anxiety, but that she was currently taking prescription medication for both conditions. Dr. Justice provided a work release slip noting that appellant was under his care from May 9 through 22, 2016 and that she could return to work on May 23, 2016.

A May 31, 2016 duty status report (Form CA-17) by Dr. Dwight L. Bearden, a Board-certified psychiatrist, noted that appellant had "found knives in [a] parcel locker, affected blood pressure and anxiety and PTSD [post-traumatic stress disorder]." Dr. Bearden held appellant off from work from June 1 through 25, 2016 and returned her to work for four hours a day, effective June 26, 2016.

OWCP also received an April 7, 2016 audit report by the employing establishment's Office of the Inspector General regarding the handling of OWCP claim forms, a May 5, 2016 report by Sally Powell, a nurse practitioner, medical billing statements, and prescription information.

By decision dated June 27, 2016, OWCP accepted that the March 28, 2016 employment incident occurred as alleged, but denied the claim as there was no medical evidence diagnosing an injury or condition causally related to that incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 15, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 17, 2017. At the hearing, appellant explained that, after discovering two large chef knives in the parcel locker, she immediately closed the unit, returned to her delivery vehicle, and telephoned her supervisor. The supervisor instructed her to photograph the knives in place. Appellant did so, then continued on her route. She explained that she had originally assumed that a coworker placed the two knives in the parcel locker as it could be opened only with a postal arrow key that was signed in and out on a daily basis. Appellant later learned that some arrow keys had been missing since November 2015. She acknowledged that, while the culprit may not have been a coworker, the presence of the knives was a safety hazard, proof of criminal tampering, and that she felt "done dirty" by whoever placed the knives. Appellant noted that the employing establishment investigated the incident, found no blood on the knives, and so discarded them. Following the incident, she returned to work for four hours a day in July 2016, and to full-time duty in August 2016, but another employee serviced the parcel locker where the knives were found. Appellant submitted additional evidence.

In a May 18, 2016 report, Dr. Bearden noted that on March 28, 2016 appellant found two knives in a parcel box, which could only be accessed by fellow postal workers with a key. Since then, appellant felt overwhelmed, fearful, and experienced panic attacks. Dr. Bearden provided periodic reports through June 8, 2016, noting appellant's positive response to medication and group therapy. He diagnosed PTSD, generalized anxiety disorder, and hypertension.<sup>3</sup>

Dr. Dan E. Phillips, a Board-certified psychiatrist, noted in a June 15, 2016 report that appellant had recently opened "a mailbox that no one is supposed to have a key to except other mail carriers" and there were two knives inside. Appellant interpreted this as a threat against her because of her sexual orientation, as the knives appeared the same day the governor "vetoed a religious freedom bill." Dr. Phillips diagnosed panic disorder, PTSD, and depression. He provided periodic reports through February 1, 2017 diagnosing panic disorder, PTSD, and rule/out delusional disorder.<sup>4</sup>

By decision dated April 28, 2017, the hearing representative affirmed the June 27, 2016 decision as appellant failed to establish her allegations of harassment due to sexual orientation.

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<sup>3</sup> In a June 7, 2016 report, Dr. Muhammad Rehan, an internist, diagnosed hypertension requiring medical management, anxiety neurosis, and depression.

<sup>4</sup> Appellant also submitted reports from Ms. Powell and a family therapist.

On April 27, 2018 appellant, through her representative, requested reconsideration. She asserted that the evidence of record established that the accepted March 28, 2016 employment incident occurred in the performance of duty and caused an emotional condition with consequential hypertension. Appellant submitted additional evidence.

In an April 1, 2016 report, Dr. Sugerman noted appellant's one-day history of headache, nausea, and elevated blood pressure. He diagnosed hypertension and prescribed medication.

In a May 7, 2018 report, Dr. Bearden opined that appellant's discovery of the knives on March 28, 2016 caused emotional stress and a possible aggravation of preexisting PTSD.

By decision dated July 20, 2018, OWCP denied modification of the prior decision as appellant had not established that the knives were intended as a specific threat to her. It, therefore, found that she had not established a compensable factor of employment.

On July 5, 2019 appellant, through her representative, requested reconsideration. She contended that she had met her burden of proof to establish her claim as the accepted March 28, 2016 incident occurred in the performance of duty, and her physicians attributed PTSD and hypertension to this incident.

By decision dated October 3, 2019, OWCP denied modification of the prior decision as appellant did not establish that the knives were intended as harassment. Appellant's perception of harassment was therefore self-generated and noncompensable.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>9</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>10</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.<sup>11</sup> 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.<sup>12</sup> Then 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.<sup>13</sup>

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>14</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>15</sup>

### ANALYSIS

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

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<sup>9</sup> *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>10</sup> 28 ECAB 125 (1976).

<sup>11</sup> 5 U.S.C. § 8101 *et seq.*

<sup>12</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>13</sup> *G.G.*, Docket No. 18-0432 (issued February 12, 2019).

<sup>14</sup> *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>15</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

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 incident and conditions of employment are covered employment factors under the terms of FECA.

Regarding appellant's allegation that she found two large knives in a parcel locker on March 28, 2018, the Board has recognized that instances when sufficiently detailed by the claimant and supported by evidence, may constitute compensable employment factors.<sup>16</sup>

Appellant consistently described that she opened the parcel locker with a proprietary arrow key while in the performance of duty, saw two large chef's knives, and experienced severe anxiety. She immediately telephoned her supervisor who instructed her to photograph the knives in place. Appellant indicated that "seeing the knives frightened her." At the time she saw the knives, she believed that only her coworkers had a key to access the parcel locker and that a coworker had "done her dirty" by placing the knives in the locker. Appellant interpreted this as a threat against her because of her sexual orientation.

The Board finds that given the circumstance of her encounter with the large chef's knives in a parcel locker, 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.<sup>17</sup> 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 his federal employment.

### CONCLUSION

The Board finds that the case is not in posture for decision.<sup>18</sup>

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<sup>16</sup> *J.Z.*, Docket No 19-1156 (issued July 28, 2020); *J.W.*, Docket No. 17-0999 (issued September 4, 2018).

<sup>17</sup> *K.A.*, Docket No. 14-0017 (issued August 4, 2014); *Robert Bartlett*, 51 ECAB 664 (2000).

<sup>18</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2019 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: October 8, 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