

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

R.R., Appellant)	
)	
and)	Docket No. 20-0954
)	Issued: December 8, 2022
DEPARTMENT OF LABOR, OFFICE OF)	
WORKERS' COMPENSATION PROGRAMS,)	
Jacksonville, FL, Employer)	
)	

Appearances:
Victor A. Walker, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 25, 2020 appellant, through her representative, filed a timely appeal from a January 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 an 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 The Board notes that following the January 9, 2020 decision, OWCP received additional evidence. 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.*

Pursuant to the Federal Employees' Compensation Act³ (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 an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On September 22, 2017 appellant, then a 54-year-old administrative officer, filed an occupational disease claim (Form CA-2) alleging that she developed emotional conditions, including anxiety, due to factors of her federal employment. She noted that she first became aware of her condition on November 23, 2015 and realized its relation to her federal employment on October 5, 2016. Appellant did not stop work. On the reverse side of the claim form, the employing establishment controverted the claim, asserting that she had been involved in numerous nonwork-related motor vehicle accidents (MVAs) and was working full time with reasonable accommodations.

Appellant submitted documentation indicating that she was promoted from a GS-9 administrative officer to a GS-11 administrative officer on December 18, 2012. On October 29, 2015 she received an exemplary performance appraisal.

In an undated statement received on September 22, 2017, appellant alleged that B.S., a GS-12 management analyst, had retired on November 20, 2015 and that appellant was then assigned to perform the additional workload and duties of the GS-12 management analyst position. She asserted that the additional workload and responsibilities prevented her from successfully performing the duties associated with her GS-11 position and caused her to have an emotional reaction including anxiety and panic attacks. Appellant noted that the employing establishment did not fill the vacant GS-12 management analyst position. She alleged that she became overwhelmed and was overworked as of November 23, 2015. Appellant requested leave on August 1, 2016 and continued in a temporary disability status until she returned to part-time work on November 7, 2016 with accommodations. She requested reassignment to a position that she could perform, but was not allowed to perform any aspect of her regular position and was instead assigned training courses, filing duties, spreadsheet creation duties, and storing duties.

On November 30, 2016 appellant received a minimally successful performance appraisal, which noted that she needed improvement on the budget and accounting element of her performance standards with regard to invoice timeliness, contract quality, and accuracy. Her supervisor noted that eight of nine purchase orders were processed erroneously, funds for the prior year were erroneously entered, and budget/accounting spreadsheets had to be corrected.

OWCP received a copy of appellant's GS-11 position description, which included providing administrative and project management support to the regional director, as well as personnel, budget, and property management support. Appellant was to serve as back-up to the

³ 5 U.S.C. § 8101 *et seq.*

regional management analyst and assume those duties and responsibilities in his or her absence as well as to serve as the primary liaison to the regional personnel office for all matters pertaining to human resources. Her position involved both financial and human resources aspects, as she was responsible for analyzing, administering, and ensuring accountability for administrative and management functions including staffing and recruitment, financial and personnel management, budget analysis, employee and labor relations, procurement, property and space management, office travel and training, contract administration, employee benefits, staffing, safety and health, workers' compensation, and reports management. Appellant was to participate in all phases of the program budget, including formulations, execution, auditing, and projections, and advise on the requirements for the preparation, documentation, and submission of budget requests, allocation of funds, check obligations and expenditures and provide guidance concerning the legal and regulatory aspect of acquisition and use of funds. She was required to ensure compliance with time and attendance requirements and records, process requests for travel authorization, government credit cards, and travel vouchers. Appellant was required to serve as the liaison on all announcements, selections, and personnel actions related to staffing and hiring. Her duties included administering a property management program for nonexpendable equipment; preparing purchase orders for conventional office equipment, supplies, and materials; and serving as district contact for questions about records management and the retention and disposal of records. Appellant worked under the general direction of the Regional Director.

In an August 22, 2017 note, Dr. Shariq Refai, a psychiatrist, diagnosed generalized anxiety disorder and depression. He related that, when a coworker retired in November 2015, appellant could not keep up with her work, that she had an increased workload, and that she developed panic attacks, anxiety, and depression.

In a September 27, 2017 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In an October 26, 2017 response to the development questionnaire, appellant asserted that she became responsible for the processing of miscellaneous obligations requests, preparing Federal Records Center (FRC) shipments, FECA division property destruction, FECA division inventory, processing of personnel action requests (PARs) for bonus recognition, promotions, new hires and separations as well as processing of job vacancy announcements, travel assistance, procurement requests, claimant call-in line, and requests from the National Office, after the GS-12 management analyst retired in November 2015. She further asserted that this increase in her duties reached an unmanageable level. Appellant alleged that she was tasked to assume three management analyst contracts and respond to e-mail requests from all four programs.

On October 26, 2017 appellant provided a list of bills and asserted that payment of telephone bills and printing for the region's four programs were part of the GS-12 management analyst duties. She also provided a list of job announcements and PARs for promotions, separations, and new hires. Appellant provided a series of e-mails regarding travel, purchase orders, procurement, FRC boxes, job announcements, the call line, excess personal property destruction, and monthly operating reports.

Dr. Gregory Miller, an osteopath and a Board-certified family practitioner, completed a series of notes dated October 5 through December 19, 2016, wherein he diagnosed post-traumatic brain syndrome, adjustment disorder with work problems, and generalized anxiety disorder. He reported that appellant was in an MVA in March 2015, resulting in C5-6 disc herniation and a concussion. Appellant alleged that the MVA affected her memory and her ability to concentrate. Dr. Miller noted that she had four MVAs during the period 2002 to 2004, resulting in back injuries.

In November 3, 2016 and February 20, 2017 notes, Dr. Mark K. Emas, a Board-certified neurologist, reported that appellant had sustained injuries from two MVAs since March 2015. He diagnosed post-traumatic stress disorder, post-traumatic concussive syndrome with fatigue and headaches, adjustment disorder with anxiety, somatic symptom disorder and multiple physical injuries including a concussion and structural damage to her cervical and lumbosacral areas of her spine resulting in nerve damage to her arms and legs.

In a December 19, 2016 letter, appellant requested a reasonable accommodation, noting that she was in an MVA on March 13, 2015 and sustained a traumatic brain injury/concussion with C5 and C6 injuries. She was involved in an additional MVA on June 1, 2016 and sustained additional injuries. Appellant provided a list of requested accommodations, including transfer to a vacant position, limited work duties, use of a digital recorder, removal of the claimant call-line duties, and additional breaks. She also requested a reduction in program responsibility as the GS-12 management analyst position had not been filled and she had been required to fulfill several of the GS-12 management analyst responsibilities as well as her own job duties. On February 23, 2017 appellant again requested transfer to another federal agency.

On April 14, 2017 the employing establishment denied appellant's request for a reasonable accommodation. In an August 4, 2017 memoranda, it found that it had acted in good faith by engaging in the interactive process and twice attempted to find a vacant position for her. The employing establishment finalized the April 14, 2017 decision on August 4, 2017, and provided appellant with appeal rights to the Equal Employment Opportunity Commission (EEOC).

In August 9, 10, and 14, 2017 reports, Dr. Walter E. Afield, a Board-certified psychiatrist, diagnosed major depression, generalized anxiety, post-traumatic stress disorder (PTSD), and cognitive problems with neurogenic work findings and memory either from depression or brain dysfunction.

On September 26, 2017 the employing establishment proposed to remove appellant from her GS-11 administrative officer position, within 30 days. On October 25, 2017 it removed her from her position, effective October 28, 2017.

On October 30, 2017 appellant's supervisor, M.F., responded to OWCP's development letter and asserted that she was performing her duties, not those of another position. She noted that the GS-12 management analyst position was a supervisory position. M.F. asserted that some of the administrative duties of the management analyst position were reassigned to another management analyst and other administrative staff, while the supervisory duties were abolished. She reported that appellant did not perform supervisory duties and was not the only administrative officer providing support to the region, as there were four other administrative employees and three other purchase credit cards. M.F. also reported that she had back-up support with the

claimant call-line. She asserted that appellant continued to complain about work that had always been in her position description and performance standards as well as duties that she had performed in the past. M.F. noted that the management analyst was required to perform some of appellant's duties prior to her retirement due to appellant's post-concussion syndrome and residuals from her MVAs.

By decision dated November 3, 2017, OWCP denied appellant's emotional condition claim, finding that she failed to substantiate a compensable factor of employment. It noted that she had not submitted factual evidence substantiating that she was overworked.

On November 2, 2018 appellant, through her representative, requested reconsideration. She provided an additional narrative statement with supporting e-mails and specifically alleged the additional duties she was assigned after the retirement of the GS-12 management analyst. Appellant asserted that she was required to provide quarterly safety reports for the Black Lung, Longshore, and FECA programs on April 6, 2016. She alleged that she previously shared responsibility with B.S. for the FECA program only and that Black Lung and Longshore programs were the sole responsibility of B.S. Appellant listed the duties that were reassigned to her from the GS-12 position including: completing the FECA program property inventory in July 2016; destroying the FECA program's equipment; performing budgeting forecasts, reviews, and updates; processing job announcements; processing student extensions for the Black Lung program; documenting the staffing patterns for FECA; investigating and processing outstanding charge-backs; and preparing spreadsheets of bills for all four programs. She contended that she was not professionally trained in budget forecasting. Appellant asserted that she was expected to be the sole administrator for the claimant-line after the retirement of the GS-12 management analyst. She alleged that prior to the retirement of the GS-12 management analyst, she did not attend meetings with M.F., that she did not have training to excess property, that she was not solely responsible for preparing purchase orders supplied for three programs, and that she was not trained to prepare drafts for job announcements for all three programs.

In a November 7, 2017 report, Dr. Afield reviewed appellant's position description. On December 6, 2017 he disagreed with the November 3, 2017 decision. In January 4 through August 17, 2018 treatment notes, Dr. Afield repeated his diagnoses of major depressive disorder, generalized anxiety disorder, PTSD and cognitive problems with neurogenic word finding and memory problems.

In a November 20, 2018 statement, M.F. asserted that appellant had processed personnel actions since 2013. She further opined that all the duties that she had alleged were outside of her position were included in her position description and performance plan. M.F. noted that some of the duties previously performed by the GS-12 management analyst were assigned to another management analyst, other administrative staff, or to herself. She noted that it was appellant's responsibility to conduct the annual inventory, but that she had always had help.

By decision dated January 9, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim,⁵ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. 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.⁹ However, disability is not compensable when it results from factors such 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

ANALYSIS

The Board finds that appellant has established overwork as a compensable factor of her federal employment.

⁴ *Id.*

⁵ *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *E.G., id.; S.S., id.; G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ 20 C.F.R. § 10.115; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See P.B.*, Docket No. 19-1252 (issued March 22, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ *See S.O.*, Docket No. 20-1271 (issued March 9, 2021); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹⁰ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001); *Lillian Cutler, id.*

Appellant has attributed her emotional condition to *Cutler*¹¹ factors. She alleged that her colleague, B.S., a GS-12 management analyst, retired and that, rather than filling the management analyst position, the employing establishment redistributed those duties to her. Appellant's duties that were reassigned to her from the GS-12 position included: preparing FRC shipments; processing PARs; providing travel assistance; processing procurement requests; managing the claimant call-in line; completing the FECA program property inventory in July 2016; performing budgeting forecasts, reviews, and updates; processing job announcements; documenting the staffing patterns for FECA; investigating and processing outstanding charge-backs; and preparing spreadsheets of bills for all four programs. She contended that she was not professionally trained in budget forecasting. Appellant asserted that she was expected to be the sole administrator for the claimant-line after the retirement of the GS-12 management analyst. She alleged that prior to the retirement of the GS-12 management analyst, she did not attend meetings with M.F., she did not have training to excess property, she was not solely responsible for preparing purchase orders, and she was not trained to prepare drafts for job announcements. Appellant further asserted that this increase in her duties reached an unmanageable level and, as a result, she was overworked and unable to perform her regularly-assigned duties. The Board has held that overwork may constitute a compensable factor of employment.¹² In light of appellant's description of her increased duties and responsibilities, the Board finds that she has established a compensable employment factor with respect to her allegation of overwork.¹³

As appellant has established overwork as a compensable factor of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.¹⁴ Accordingly, the Board will set aside OWCP's January 9, 2020 decision and remand the case for further development of the evidence with regard to whether appellant has established an emotional condition causally related to the accepted compensable employment factor of overwork.¹⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established overwork as a compensable factor of her federal employment. The Board further finds that this case is not in posture for decision as to whether appellant sustained an emotional condition causally related to the accepted compensable employment factor of overwork.

¹¹ *Supra* note 9.

¹² *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

¹³ *See L.Y.*, Docket No. 20-1108 (issued November 24, 2021).

¹⁴ *L.Y., id.*; *S.S.*, Docket No. 21-0814 (issued July 14, 2021); *M.D.*, Docket No. 15-1796 (issued September 7, 2016).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 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: December 8, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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