

FACTUAL HISTORY

On October 15, 2019 appellant, then a 57-year-old carrier technician/letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed stress-related emotional and physical conditions, including hypertension and anxiety, due to factors of her federal employment. She explained that she was mandated to work overtime, often with no scheduled day off, and that her stress-related mental and physical reactions resulted in lengthy absences beginning November 2011. Appellant noted that she first became aware of her conditions on September 1, 2009 and realized its relation to her federal employment in November 4, 2016. She further noted that she worked with a reasonable accommodation in 2017 but stopped work in 2018 due to an alleged hostile work environment.

In an October 24, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It also specifically requested information as to whether there were staffing shortages which affected her workload or extra demands for any reason. OWCP afforded both parties 30 days to submit the necessary evidence.

In a December 4, 2019 response, appellant indicated that shortly after she began her postal career in 1995 as a part time flexible (PTF) carrier, management required her to work "horrendous" amounts of overtime. She described the duties of a PTF noting that her routes required her to walk and carry a heavy satchel for extended periods of time, which caused pain and fatigue to her body. Appellant alleged that she had signed the list for "no overtime" when she became a regular carrier but was "always forced to carry ... on a weekly basis." She noted that the check stubs from her years of working showed the excessive amounts of overtime worked. Appellant alleged that the employing establishment's practice of mandating her to work overtime caused a lot of stress and eventually led to on-the-job injuries, unscheduled absences, elevated hypertension and depression. She noted in 1997 her employment vehicle was hit from behind, but she alleged that the employing establishment never recognized that she had sustained a back injury and did not approve her Family and Medical Leave Act (FMLA) requests. Appellant indicated that she had requested permanent light duty for her chronic permanent conditions, but the employing establishment removed her for a year as she had less than five years of service. She noted that she got her job back with no back pay following an Equal Employment Opportunity (EEO) claim. Appellant knew that she worked under unfair, stressful and hostile work conditions, but she had no choice but to return to work because she had to support her family. She noted in 2007 she was placed off the job for three months but got her job back without back pay following an EEO claim. Appellant also noted going through counseling through the Employee Assistance Program (EAP) for work-related issues in 2005 and 2008. She alleged that she strained her back on several occasions while being mandated to work overtime despite not being on the overtime list. However, appellant was too afraid to identify her back injury given her removal for a year in 1999, having been disciplined for attendance issues in 2008 and 2009, and her EEO claims were resolved with findings that no discriminatory or disparate treatment had occurred. She indicated that she became anxious and depressed in 2002, 2005-2008, 2011, 2016, and 2018, and described several acute stress reactions she had in November 2011 and December 2016. Appellant noted that, in 2014, she stopped her

outside employment of preparing tax returns during tax season as she had to work her off days at the employing establishment. She also noted that work became so stressful that she resigned, but she later rescinded her letter of resignation and was reinstated a few months later with no back pay.

Appellant alleged that she continued to work excessive amounts of overtime due to the employing establishment's mandate. In 2000, she filed grievances for distribution of overtime and being mandated to work off days and carry splits on other routes. Appellant also began to suffer emotionally and physically as she could not rest and the exhaustion caused struggles in other areas of her life. In 2011, she alleged that, after working excessive amounts of overtime and missing work, she started to be harassed and retaliated against. Appellant noted having an acute stress reaction, elevated hypertension, and concerns of a heart attack. She indicated that the mandated overtime resumed after she returned to work from medical leave.

Medical documentation from several different providers dated 2011 through 2019 which diagnosed depression and anxiety attributed to workplace stress, essential hypertension, generalized anxiety disorder, acute stress reaction, unspecified anxiety disorder, and anxiety were received. Multiple office visit notes from 2006, 2011, 2014, 2016, 2017, 2018, and 2019 were also received along with a March 22, 2017 EAP note, psychotherapy notes dated August through November 2019; a February 21, 2008 return to work/school note from Dr. Torrance A. Walker, a Board-certified orthopedic surgeon, and August 1, 2014 and January 23, 2017 FMLA certification of health care provider.

OWCP also received: an August 21, 1997 letter from appellant's labor union; January 22, 1998 grievance denial regarding her February 4, 1997 work-related accident along with a copy of the February 4, 1997 police report;³ an April 21, 1998 notice of removal for failure to perform all the required duties of her position; a July 10, 1998 Arkansas Department of Labor Request for Wage and Separation Information; a July 22, 1999 Civil Action Memo; an August 18, 2000 memorandum dismissing appellant's civil action lawsuit; appellant's February 21, 2002 letter of resignation; a March 23, 2006 settlement agreement, which related that appellant may take one day of leave without pay or annual leave at her convenience; an August 31, 2007 statement by the employing establishment regarding appellant's allegations that they had erroneously contacted her physicians; an August 27, 2009 notice of removal for unsatisfactory attendance; a Step B Grievance Decision dated October 2, 2009; a November 7, 2011 request for leave eligibility packet under FLMA; copies of Step "A" Grievance Forms signed on October 23, 2007, March 13, 2008 and October 5, 2012; an Equal Employment Opportunity Commission (EEOC) decision granting the Agency's motion for decision without hearing as appellant failed to satisfy her burden of establishing that she was discriminated against under Title VII of the Americans with Disabilities Act (ADA); compliance with an Agency Final Action dated April 2015; an August 19, 2019 Arkansas Department of Workforce Services notice of Agency Determination regarding appellant's May 8, 2019 discharge from her job due to unprofessional conduct; and an August 29, 2019 pre-arbitration agreement which related that while management had just cause to discipline

³ There is no record that appellant filed an OWCP claim for the work-related accident.

appellant, due to mitigating circumstances, the discipline was reduced to a 14-day suspension with 7 days in non-paid status.

Also received were check stubs for pay periods 12, 13, 14, 15, 16, 17, and 18 for year 2007; pay periods 21, 21, 24 and 25, for year 2011; pay periods 7 and 20 for year 2012; pay periods 20 and 23 for year 2013; pay periods 2 and 3 for year 2014; pay periods 1 and 13 for year 2015; and pay period 16 for year 2018, all of which noted the amount of overtime worked. OWCP also received copies of appellant's W2 Forms from 1995, 1997, 1998, 1999, 2001, 2003, 2004, 2005, 2006, 2016, 2017 and 2018; a Form PS50 dated September 6, 2019; and copies of Form CA-7 claims for compensation and CA-7a time analysis forms, for disability from work.

In an undated note, the employing establishment advised appellant that she was "mandated to work your NS (nonscheduled) day Wednesday, November 22, 2017." In a note dated January 10, 2018, appellant was mandated to work her nonscheduled day on Friday, January 19, 2018. In a note dated February 13, 2018, appellant was mandated to work her nonscheduled day on Thursday, February 22, 2018.

In June 7, 2016 and December 6, 2017 letters, G.R., Branch President of appellant's labor union, indicated that review of appellant's June 3, 2016 and November 21, 2017 grievance statement and investigation, respectively, revealed that there was no violation by management on its selection of appellant to work overtime. G.R. indicated that there were no overtime desired personnel assigned to the employing establishment. In the December 6, 2017 letter, G.R. further noted that, per management's December 1, 2017 statement, appellant did not have any restrictions. He also noted that appellant's FMLA paperwork dealt with leave and that a modified assignment request and approval was needed.

By decision dated April 20, 2020, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that she was injured in the performance of duty. It accepted as factual that she was mandated to work overtime on one occasion, November 22, 2017, but found there was no evidence that overtime was mandatory and/or that an employee could not say no to overtime on some occasions or to working on scheduled days off. The remainder of her other allegations were denied as not factually substantiated. This included allegations that she was overworked and required to work seven days a week from sunrise to 7:00 p.m. while working as a PTF, that the mandated overtime work led to other on-the-job injuries and unscheduled absences, and that she was being harassed and retaliated against by the employing establishment.

On July 22, 2020 appellant requested reconsideration. She continued to allege that when she started work at the employing establishment, she was expected to work anytime management needed her, especially during the probationary period, which she did. After years of abuse and harassment of working mandated overtime, appellant developed hypertension, anxiety, and depression. She alleged that she had no control over the work schedules and that overtime was dictated by the collective bargaining agreement between the employing establishment and union officials. Appellant indicated that she attached a copy of an EEOC case to support her allegations concerning the mandating of overtime. She also attached a copy of the letter rescinding her 2002 resignation. Appellant noted that she has two current cases for harassment and retaliation/hostile work environment that are currently on appeal.

OWCP received: an undated copy of a statement; a May 18, 2002 request for addendum affidavit and Motion for Witness Approval before the EEOC; a copy of appellant's February 22, 2002 letter rescinding her 2002 resignation; a duplicate copy of a pay period 26, year 2016 pay statement; a document entitled "How To Read Your USPS Earnings Statement;" and a copy of an April 27 2017 letter noting that The Reasonable Accommodation Committee would conduct an interactive meeting with her on May 3, 2017 to discuss a referral for reasonable accommodation. Appellant also continued to submit CA-7 forms claiming compensation for disability from work.

By decision dated October 14, 2020, OWCP denied modification.

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 for 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, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has 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.⁸

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*,⁹ 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.¹⁰

⁴ *Supra* note 1.

⁵ *M.J.*, Docket No. 20-0953 (issued December 8, 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 *M.J., id.*; *O.G., 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); *Elaine Pendleton, id.*

⁸ *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ 28 ECAB 125 (1976).

¹⁰ *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

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.¹¹

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹³ 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.¹⁴

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.¹⁵ 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.¹⁶

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁷ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁸ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁹ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁰

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on

¹¹ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 9.

¹² *A.C.*, *id.*

¹³ *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁴ *A.C.*, *supra* note 11.

¹⁵ *C.V.*, *supra* note 8.

¹⁶ *Id.*

¹⁷ *O.G.*, *supra* note 5; *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁹ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 17.

²⁰ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.²¹ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.²²

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.²³ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.²⁴

ANALYSIS

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

Appellant alleged that she sustained stress-related physical and emotional conditions due to working excessive amounts of overtime, despite being on the "no overtime" list, as the employing establishment mandated the overtime. She also alleged harassment and discrimination. In an October 24, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. By separate letter of even date, OWCP requested that the employing establishment address the accuracy of appellant's allegations and claims, including whether there were staffing shortages which affected her workload or extra demands for any reason.

As discussed, OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.²⁵ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.²⁶ While appellant provided a detailed response to OWCP's development letter, along with supporting documentation, no response was received from the employing establishment. OWCP then denied

²¹ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²² *O.G.*, *supra* note 5; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

²³ 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

²⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

²⁵ *Supra* notes 23 and 24.

²⁶ *Id.*; *see also S.S.*, Docket No. 19-1021 (issued April 21, 2021); *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

her emotional condition claim, finding that she had not established a compensable employment factor.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²⁷ Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.²⁸

This case must therefore be remanded to OWCP for further development of the evidence regarding appellant's emotional condition claim.²⁹ OWCP shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding appellant's allegations. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding whether appellant has established an emotional condition in the performance of duty.

CONCLUSION

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

²⁷ *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

²⁸ *S.S., id.; R.A.*, Docket No. 17-1030 (issued April 16, 2018).

²⁹ *S.S., id.; V.H.*, Docket No. 18-0273 (issued July 27, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2020 decision of Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 25, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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