

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

gastroesophageal reflux disease (GERD) due to factors of her federal employment. She attributed her conditions to retaliation from her supervisor for filing an Equal Employment Opportunity (EEO) complaint and being blindsided and attacked by the employing establishment's Office of Accountability and Whistleblower Protection (OAWP) during an October 9, 2018 interview under oath. Appellant also alleged that other stressful events occurred on October 9, 10, and 15, 2018, involving her supervisor, M.M. She noted that she first became aware of her conditions and their relation to her federal employment on October 9, 2018.<sup>2</sup>

Medical evidence from Dr. Azzam Almounajjed, a Board-certified internist, was received. In an October 15, 2018 report, Dr. Almounajjed noted that appellant reported stress for more than a week due to problems at work. He provided an assessment of social stress and elevated blood pressure. In an October 15, 2018 note, Dr. Almounajjed indicated that appellant should rest and that she could return to work October 22, 2018. In a November 5, 2018 report, Dr. Almounajjed noted that appellant recently quit work due to work-related stress issues. He provided an assessment of anxiety and social stress secondary to job difficulties, headaches, insomnia, and GERD secondary to stress.

Appellant was hospitalized from June 20 through 22, 2018. Dr. Christopher J. Pitcock, an osteopath specializing in hospital medicine, provided discharge diagnoses of precordial chest pain without definite ischemia on treadmill stress test, granulomatous lung disease, mediastinal/hilar adenopathy, and bilateral noncalcified pulmonary nodules. Hospital records and diagnostic testing from June 20 through 22, 2018 were also attached.

In a development letter dated December 27, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. OWCP afforded both parties 30 days to respond.

In a January 13, 2019 statement, appellant recounted that, on or about September 26, 2018, she began receiving emails from D.W., an investigator from OAWP, to schedule a fact-finding interview with regard to charges filed against appellant. She first read the charges against her on October 2, 2018 as she was on travel and unable to read encrypted email. Appellant alleged that, after repeated attempts to get specific information, she was given only one data point to prepare for, but had no notice on the other matters that were to be covered. She indicated that the October 9, 2018 interview was scheduled for 2 to 2.5 hours, but lasted 4.5 hours, and it involved the actions of her supervisor, M.M., the Medical Center Director, from late April 2018, when he delayed the hiring of nurses while pressing her to reduce the registered nurse (R.N.) turnover. Appellant explained that M.M. continually pressed her to maintain the status quo, and that he interrupted the hiring of additional nursing staff during a period of time when he required her to find HR materials to support the status quo. She further explained that there were three unfilled vacancies in her leadership staff, which required additional work by the remaining five staff members. Appellant also alleged that M.M. was retaliating against her for filing an EEO complaint

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<sup>2</sup> Appellant retired from the employing establishment on October 31, 2018.

against him by going to OAWP, which was known to focus on terminating employees. She related that, during the interview, D.W. and D.W.'s supervisor accused her of wrongdoing, and presented a prosecutorial interrogation as opposed to an interview. Appellant also alleged that she had no opportunity to prepare for the interview, as pertinent documents were not shared with her beforehand and she felt she was subjected to a trial by ambush. She indicated that the October 9, 2018 interview was extremely stressful and she became hypoglycemic and lightheaded. Appellant cancelled a nursing meeting later that afternoon as she was too stressed and exhausted from the OAWP interrogation.

Appellant indicated that in March 2018 M.M. had counseled her for matters which she alleged were because of her sex and age. M.M. also delayed nursing hiring actions, but held her accountable for overtime and compensatory time to cover vacancies, nurse satisfaction and R.N. turn over. Appellant indicated that it appeared that she was being set up for failure. On April 23, 2018 she indicated that she had filed an EEO complaint and named M.M. as a responsible management official. After she filed the EEO complaint, appellant alleged that M.M.'s behavior towards her became hostile. She alleged that on June 19, 2018 he told her that "due to recent events, I don't trust you anymore." That night appellant became ill. On June 20, 2018 the Employee Health nurse found her blood pressure higher than normal and she still had a headache. Appellant then had a stressful meeting with M.M., where she alleged that he refused to talk to her about important issues. After the meeting, she returned to the employing establishment nurse, who then took her to the emergency room. Appellant was then sent by ambulance to the hospital for a work-up for chest pain and discharged two days later.

Appellant alleged that M.M.'s actions undermined her efforts and further increased her stress in addition to her regular work.<sup>3</sup> She alleged that M.M. never mentioned his concerns during her performance evaluations and that he had retaliated against her by submitting the complaint to OAWP within days of a July 2018 EEO mediation, knowing that OAWP could fire her if they received a complaint subsequent to the July mediation meeting. Appellant indicated that she became stressed and anxious as she had been unjustifiably attacked and was certain her 28-year career was in jeopardy. She noted that there has been no final decision in her EEO case. Appellant alleged that on October 10, 2018 M.M. came into her office and spoke for 30 minutes to her loudly enough for others to hear. She indicated he was angry, shaking and agitated and talked about issues they previously resolved or had been brought up by OAWP. Appellant perceived that M.M. was asking her to violate peer-review confidentiality rules. She alleged the conversation was stressful and that the additional workload required to respond to OAWP's numerous requests and to re-address M.M.'s concerns made her day longer and more stressful. Appellant further alleged that the pressure of her job was compounded by the additional pressure to defend herself from repeated attacks from M.M. about issues that were within his discretion and which she had previously provided and/or offered her input.

Appellant alleged that on October 15, 2018 M.M. told her not to make a compliance officer mad, as they can make your life miserable, and that he knows because he was one. She alleged that his statement was an affirmation of the actions he had been taking out against her for months. Appellant indicated that she felt anxious and became too ill to work. She went to her doctor, who

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<sup>3</sup> Appellant noted that she had three vacancies and that nursing hiring had stopped in June and July 2018.

took her off work the rest of the week. Appellant noted that she continued to receive emails from OAWP staff during that time, which compounded her stress.

Appellant submitted a two-week notice of retirement on October 17, 2018. When she returned to work on October 22, 2018, she found working with M.M. and the Associate Director, stressful. She alleged that on October 26, 2018 the Associate Director, in front of others, threatened to disclose her All Employee Survey (AES) rating to M.M. Appellant alleged that it appeared that M.M. and the Associate Director were working together to continue to undermine her.

On her last day of work, October 31, 2018, appellant indicated that she received a fully successful annual rating of record. She alleged that M.M. had stated that the R.N. statistics prevented her from getting an exceptional or outstanding rating. Appellant indicated that it was M.M.'s lack of support which contributed to the R.N. turnover. She further alleged that M.M. tried to create a hostile work environment to force her out of her career to satisfy his need to retaliate against her for complaining about unlawful discriminatory action he previously took against her. Appellant also alleged that her stress continued as she had to submit to another interview by OAWP on November 30, 2018, after she retired. She indicated that the interview was again a trial by ambush, the tone was prosecutorial and the questioning lasted for approximately 2.5 hours. Appellant reiterated that all concerns discussed could have been brought to her attention by M.M. before she retired. She also submitted a January 23, 2019 statement of certification and a February 7, 2019 statement pertaining to the release of medical information for her stress claim.

In an October 22, 2018 statement, N.H., Executive Assistant to the Chief of Staff, indicated that staff was gathered in the Director's office for the usual morning meeting. During the meeting, M.M. made a comment to the group "never make a compliance officer mad, they will make your life miserable, I know I was one."

In a development letter dated May 20, 2019, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of all of appellant's statements. It explained that if there were points of disagreement, a full explanation should be provided with any supportive evidence. OWCP afforded the employing establishment 30 days to respond.

In a June 19, 2019 statement, M.M., confirmed that appellant was under investigation for potential unethical conduct by a senior leader during the time periods listed in her statement. He indicated that it was possible she was under stress due to the investigation. M.M. further indicated that it was the employing establishment's obligation to investigate the allegations of unethical behavior raised against appellant.

By decision dated October 23, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her medical conditions arose during the course of employment and within the scope of compensable work factors.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</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>7</sup>

To establish an emotional condition causally related to factors of his or her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her 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 his or her emotional condition is causally related to the identified compensable employment factors.<sup>8</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>9</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 under FECA.<sup>10</sup> 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.<sup>11</sup> However, disability is not compensable when it results from factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>12</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which establishes that the acts alleged or implicated by the employee did,

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<sup>4</sup> *Supra* note 2.

<sup>5</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>6</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>7</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).

<sup>8</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>9</sup> *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

<sup>10</sup> *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

<sup>11</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>12</sup> *Lillian Cutler, id.*

in fact, occur.<sup>13</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>14</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>15</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>16</sup>

### ANALYSIS

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

The Board finds that it is unable to make an informed decision in this case as the employing establishment did not adequately respond to the request for information and comment made by OWCP in the May 20, 2019 development letter. The only response received from the employing establishment was provided in M.M.'s June 19, 2019 comments, which were vague and insufficient.

OWCP's procedures recognize that in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.<sup>17</sup> Although it is appellant's burden to establish 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>18</sup>

The case must, therefore, be remanded to OWCP to obtain additional information from the employing establishment, including the information specifically requested in the December 27, 2018 development letter, and any relevant employing establishment policies regarding OAWP's investigative interviews and documents relating to appellant's allegations of abuse and overwork.<sup>19</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>20</sup>

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<sup>13</sup> *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

<sup>14</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>15</sup> *S.F.*, Docket No. 20-0249 (issued December 31, 2020); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>16</sup> *S.F.*, *id.*; *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

<sup>18</sup> *C.F.*, Docket No. 18-1607 (issued March 12, 2019); *D.M.*, Docket No. 14-0460 (issued February 11, 2016); *C.S.*, Docket No. 14-1994 (issued January 21, 2015).

<sup>19</sup> *L.B.*, Docket No. 17-1671 (issued November 6, 2018).

<sup>20</sup> *L.B.*, Docket No. 15-0905 (issued September 19, 2016).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: June 1, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board