

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

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<b>X.F., Appellant</b>	)	
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<b>and</b>	)	
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<b>DEPARTMENT OF VETERANS AFFAIRS, VA</b>	)	<b>Docket No. 22-0045</b>
<b>CONNECTICUT HEALTHCARE SYSTEM,</b>	)	<b>Issued: April 14, 2023</b>
<b>West Haven, CT, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On October 4, 2021 appellant filed a timely appeal from a May 10, 2021 merit decision and a September 10, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0045.

On March 29, 2021 appellant, then a 57-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained work-related stress and mental abuse, which aggravated her preexisting depression, anxiety, nightmares, loss of sleep, and post-traumatic stress disorder (PTSD). She noted that she first became aware of her condition on July 15, 2019 and realized its relation to her federal employment on September 5, 2019. Appellant stopped work on March 26, 2021.<sup>1</sup>

OWCP received a September 11, 2020 notice of change in patient care assignment from the employing establishment which indicated that, due to safety concerns, appellant would cease providing direct patient care.

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<sup>1</sup> The employing establishment indicated that her employment was terminated effective March 26, 2021.

In a detailed March 4, 2021 statement, appellant referred to 20 separate patient cases and discussed issues and problems she had been confronted with in handling each case.

In a March 24, 2021 notice of separation during probation, A.M., the employing establishment director, revealed that a recommendation was made to separate appellant effective March 26, 2021.

In an April 22, 2021 response, T.C., the chief nurse of specialty care, noted that no agency employees reported witnessing abuse of appellant. She noted that appellant's position required her to provide care to complex oncology patients and work with other providers and staff in a high-stress work environment. T.C. explained that appellant lacked experience in hematology/oncology and was given a slow transition with her volume of patient assignments and offered oncology courses and biotherapy and chemotherapy training. She provided duties of the position and indicated that she was unaware of any duties of appellant that differed from the official position description. T.C. noted that there were no staffing shortages that affected appellant's workload that would subject her to extra demands. She explained that the section chief of hematology/oncology reported that appellant's performance did not meet expectations and that her clinical skills in the management and care of patients in hematology/oncology were marginal.

By decision dated May 10, 2021, OWCP denied appellant's claim, finding that she had not established any compensable factors of employment. It specifically noted that she did not provide any further statement or factual evidence as to how her federal employment contributed to her condition.

On June 15, 2021 appellant requested reconsideration.

OWCP received a position description, appellant's resume; a copy of appellant's prior statement; appellant's letter of resignation; a November 28, 2008 letter of recommendation for appellant from urgent care; a letter of recommendation for appellant from a medical provider; newspaper articles pertaining to a family clinic owned by appellant; documentation related to appellant's certification as a nurse practitioner; and a handwritten list of appellant's current treatment and medication regimen. It also received a statement from appellant alleging that she was singled out, mistreated, discriminated against, and abused at work.

In a letter dated June 28, 2021, the employing establishment again controverted appellant's claim.

By decision dated September 10, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim.

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

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.<sup>2</sup> The

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<sup>2</sup> 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.126.

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 it.<sup>3</sup>

In an emotional condition claim, the claims examiner should distinguish between those which are factors of employment and those which are outside the scope of employment for purposes of compensation by outlining work-related and nonwork-related elements.<sup>4</sup> These should be labeled as alleged events that are factors of employment, alleged events that are not factors of employment, and compensable factors which are not factually substantiated. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must then base its decision on an analysis of the medical evidence.<sup>5</sup>

Appellant submitted a number of documents related to her claim as well as a March 4, 2021 detailed statement outlining 20 specific patient care cases which she alleged were difficult to handle and contributed to her emotional condition. The employing establishment submitted a response which included an April 22, 2021 memorandum addressing appellant's allegations. The Board finds that OWCP denied the claim by listing the documentation submitted and noting that each document was administrative in nature. OWCP summarily denied the claim, finding that appellant had not established an emotional condition, without explaining why the specific incidents she alleged were substantiated or compensable. Thus, the Board finds that OWCP in its May 10, 2021 merit decision 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 it.<sup>6</sup>

On remand OWCP shall make findings of fact as to whether the evidence of record establishes that any of the alleged incidents constitute compensable factors of employment.<sup>7</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision.<sup>8</sup>

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also G.S.*, Docket No. 14-1933 (issued November 7, 2014).

<sup>4</sup> *Id.* *See also supra* note 3 at Chapter 2.804.17 (j) (July 1997).

<sup>5</sup> *Robert Breeden*, 57 ECAB 622 (2006).

<sup>6</sup> *K.J.*, Docket No. 14-1874 (issued February 26, 2015); *see also J.J.*, Docket No. 11-1958 (issued June 27, 2012).

<sup>7</sup> *A.R.*, Docket No. 11-1949 (issued April 16, 2012).

<sup>8</sup> In light of the Board disposition of Issue 1, Issue 2 is rendered moot.

**IT IS HEREBY ORDERED THAT** the May 10 and September 10, 2021 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 14, 2023  
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