

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on July 8, 2022, as alleged.

FACTUAL HISTORY

On July 15, 2022 appellant, then a 49-year-old postal distributor, filed a traumatic injury claim (Form CA-1) alleging that on July 8, 2022 she developed an emotional condition due to work-related stress and depression related to harassment and retaliation while in the performance of duty. On the reverse side of the claim form, an employing establishment supervisor controverted the claim, asserting that she had not been injured in the performance of duty and had reported experiencing ongoing stress and anxiety in her personal life due to issues unrelated to her federal employment. Appellant stopped work on July 9, 2022.

In a July 18, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to respond. Appellant did not respond.⁴

By decision dated August 22, 2022, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish fact of injury as she had not established that the events or incident occurred as alleged. It noted that she had not responded to its development questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim,⁶ 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.⁷ 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.⁸

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

⁴ In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor.

⁵ *Supra* note 2.

⁶ *L.G.*, Docket No. 21-0690 (issued December 9, 2021); *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).

⁷ *L.G.*, *id.*; *S.S.*, *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999).

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.⁹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.¹⁰ There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.¹¹ On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.¹²

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.¹³ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹⁴ For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁵ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on July 8, 2022, as alleged.

Appellant has not provided sufficient detail to establish that an emotional condition occurred in the performance of duty.¹⁷ In her July 15, 2022 Form CA-1, she generally alleged that on July 8, 2022 she experienced work-related stress and depression due to harassment and retaliation while in the performance of duty. Appellant did not provide details such as when, where, or how the alleged harassment occurred, the individuals involved, or the actions or

⁹ See *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).

¹⁰ See *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹¹ See *S.K.*, *supra* note 9; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² See *S.K.*, *id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹³ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

¹⁴ *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

¹⁵ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁶ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ See *J.W.*, Docket No. 19-0335 (issued July 2, 2019).

statements that took place during the incident. By failing to sufficiently describe the employment incident and/or circumstances surrounding her alleged condition, she has not established that an emotional condition occurred in the performance of duty.¹⁸ In a July 18, 2022 development letter, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. Appellant did not respond.¹⁹ Accordingly, the Board finds that she has not established a compensable employment factor under FECA and, thus, has not met her burden of proof to establish an emotional condition in the performance of duty.²⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on July 8, 2022, as alleged.

¹⁸ *Supra* notes 12 and 13.

¹⁹ *K.S.*, Docket No. 17-2001 (issued March 9, 2018); *see also K.W.*, Docket No. 16-1656 (issued December 15, 2016).

²⁰ *See E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board