

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

S.D., Appellant)

and)

DEPARTMENT OF LABOR, OFFICE OF)
WORKERS' COMPENSATION PROGRAMS,)
Jacksonville, FL, Employer)
-----)

**Docket No. 23-0898
Issued: July 13, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 25, 2018 appellant filed a timely appeal from a February 14, 2018 merit decision and a June 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 1, 2018 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.*

FACTUAL HISTORY

On August 17, 2017 appellant, then a 50-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that she developed aggravation of diagnosed conditions of anxiety, chronic post-traumatic stress disorder (PTSD), adjustment disorder with mixed anxiety and depressed mood, amnesia, confusion, panic disorder and agoraphobia, and major depressive disorder due to factors of her federal employment. She explained that she was overworked. Appellant noted that she first became aware of her condition on May 1, 2015 and realized its relation to her federal employment on June 12, 2017. She did not stop work.

In a September 13, 2017 development letter, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received medical evidence.

In response to OWCP's development questionnaire, appellant submitted a November 11, 2017 statement in which she recounted a series of incidents which she believed contributed to her emotional condition. She noted personal stressors, including medical problems, injuries, and deaths of family members and friends. Appellant further outlined various employment-related issues, including a transfer from a different department to a department within the employing establishment; an increase in her workload in April 2016 due to a "switch of 14 digits"; discrimination and an equal employment opportunity (EEO) claim; receipt of unfavorable memoranda on May 16 and 23, 2017; meetings with a supervisor on May 30, 2017; procedures for deleting documents from case files between February 2016 and August 2017; and schedule conflicts in September 2017 following a local hurricane. She also related that in May 2017 she became overwhelmed with covering the phone bank as a customer service representative while also managing her own workload amidst a staffing shortage. As of June 29, 2017, appellant was limited to working four hours to per day and had difficulty completing her claims examiner duties and covering the phone bank. She attached copies of e-mails with employing establishment supervisors from February 2016 through October 30, 2017, which reflected dates that she was assigned to cover the phone bank from either 8:45 a.m. to 12:00 p.m. or from 12:45 p.m. to 4:00 p.m. and logs of Form CA-110 notice of telephone call callbacks for the time periods August 16 through 24, 2017 (34 total), July 13 and 14, 2017 (13 total), and July 26 through 28, 2017 (14 total).

In an undated statement, appellant outlined various e-mail exchanges with her supervisor on October 30, 2017 regarding the schedule for the phone bank, a meeting regarding her accommodations request, and her personal issues with scheduling a contractor to complete a roof repair on her home following a hurricane.

In a December 14, 2017 letter, the employing establishment controverted appellant's occupational disease claim based upon a lack of medical evidence.

In a separate letter of even date, R.F., appellant's supervisor, reviewed appellant's statements and supporting documentation. He indicated that the reassignment of work that occurred in April 2016 was administrative in nature and denied any discrimination or inappropriate incidents. R.F. noted that he routinely assisted appellant to prioritize and complete her work

assignments and provided her with assistance from other supervisors. He explained that he counseled her to complete callbacks during business hours and to properly delete documents from the system in order to avoid mailing out incorrect letters. R.F. indicated that he provided appellant with an accommodation of waiver of core hours as of June 5, 2015 and, in 2017, had meetings with her as part of a performance improvement plan (PIP). He further noted that the phone bank was a regularly assigned duty of a claim's examiner.

In a witness statement dated January 16, 2018, K.H., appellant's former coworker, noted that she worked with appellant for the employing establishment from 2013 to 2017 in District 6. She noted that claims examiners were assigned 6,000 cases each, and District 6 was the first district where claims examiners handled all events through a claim from inception to closure. K.H. noted that she observed appellant's condition "drastically decline" over the time that she worked with her, and that she appeared to be "drowning in tasks that were overdue and needed to be completed." She indicated that she personally became overwhelmed with the workload after a "major shakeup of the digits/cases assigned to us," and that she eventually left her position with the employing establishment due to the "outrageous demands" and "insane amounts of work required at District 6." K.H. indicated that she observed instances where R.F. wrote appellant e-mails within minutes of assigning her tasks to ask what she was working on. She further related that after appellant reduced her work hours due to ongoing health issues, R.F. assigned appellant to the phone bank for four hours of her workday and also expected her to complete her case management tasks.

By decision dated February 14, 2018, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It noted that the evidence submitted failed to establish the alleged incidents. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 11, 2018 appellant requested reconsideration of the February 14, 2018 decision. No additional evidence was received.

By decision dated June 1, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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,⁴ 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

³ *Id.*

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁵ 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.⁶

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) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ 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.⁹ 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.¹⁰ 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.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹² 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.¹³

ANALYSIS -- ISSUE 1

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

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹¹ *Lillian Cutler*, *id.*

¹² *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

¹³ *Id.*

Appellant attributed her emotional condition in part to *Cutler*¹⁴ factors. She alleged that she felt overwhelmed by her work duties when she was limited to working four hours per day. Appellant indicated that there was an increase in her workload in April 2016 due to a “switch of 14 digits,” and that she was assigned additional duties to cover the phone bank for four hours per day on various occasions from July 21, 2016 through August 29, 2017, which made it very difficult to also complete claims examiner’s tasks within her assigned case files. She asserted that her workload was overwhelming, and resulted in an exacerbation of her depression, anxiety, and panic symptoms.

The Board finds that, as to appellant’s allegation that she sustained an emotional condition due to overwork based upon her regular and specially assigned job duties, appellant has established a compensable work factor under *Cutler*.¹⁵ The case record contains evidence, particularly the statements of appellant’s former co-worker, K.H., who confirmed that after appellant was limited to working four hours per day, she was assigned to cover the phone bank for nearly her entire shift on various occasions while also expected to complete her other assigned duties. The case record contained numerous e-mails which detailed the dates that she was assigned to the phone bank, and also the number of callbacks she was assigned. K.H. also noted that she observed appellant’s condition deteriorate due to the increased workload and agreed that there was an overwhelming amount of work and stress involved in the position, especially following the change of digits/cases assigned to claims examiners. The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.¹⁶ Further, the Board has held that overwork is a compensable factor of employment if appellant submits sufficient evidence to substantiate this allegation.¹⁷ As appellant attributed her emotional condition, in part, to the stress of trying to meet the duties of her position, including covering the phone bank while also completing her regularly assigned tasks in a high volume case load, the Board, thus, finds that appellant has established a compensable employment factor of overwork. On remand, OWCP shall consider the medical evidence with regard to whether she has established a diagnosed emotional condition casually related to this accepted employment factor of overwork.

Appellant has also alleged stress and anxiety due to actions by her supervisors, discrimination, and an EEO claim. Mere disagreement or dislike of actions taken by a supervisor are not compensable absent evidence establishing error or abuse.¹⁸ Further, an employee’s reaction to an administrative or personnel matter is not covered by FECA, unless there is evidence that the employing establishment acted unreasonably.¹⁹ The case record contains e-mails between appellant and her supervisors which establish that she received assistance for issues with deleting documents from case files, and that her scheduling needs were accommodated at the time of the

¹⁴ *Lillian Cutler*, *supra* note 12.

¹⁵ *Id.*

¹⁶ *S.S.*, Docket No. 21-0184 (issued July 14, 2021); *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *K.J.*, Docket No. 17-1851 (issued September 25, 2019); *P.W.*, Docket No. 08-0315 (issued August 22, 2008); *Jeral R. Gray*, 57 ECAB 611 (2006).

¹⁷ *W.F.*, Docket No. 18-1526 (issued November 26, 2019).

¹⁸ *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *D.J.*, Docket No. 16-1540 (issued August 21, 2018); *Linda Edwards-Delgado*, 55 ECAB 401 (2004).

¹⁹ *Id.*; *see also Alfred Arts*, 45 ECAB 530 (1994).

damage to her roof. The case record does not contain any documentation regarding an EEO claim or discrimination claim. Because appellant has not presented sufficient evidence to establish that her supervisor acted unreasonably, or that the employing establishment engaged in error or abuse in these personnel matters, she has failed to identify a compensable work factor relating to this allegation.²⁰

As noted above, the Board finds that appellant has established a compensable employment factor under *Cutler* with regard to her claim of overwork based upon her regular and specially assigned job duties. Accordingly, OWCP must analyze the medical evidence to determine whether she sustained an emotional condition as a result of this compensable employment factor. The case will, therefore, be remanded to OWCP. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.²¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 14 and June 1, 2018 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 13, 2023
Washington, DC

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

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

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

²⁰ *Id.* See also *B.G.*, Docket No. 18-0491 (issued March 25, 2020).

²¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.