

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

L.O., Appellant)	
)	
and)	Docket No. 22-1266
)	Issued: June 8, 2023
U.S. POSTAL SERVICE, NORTH HOUSTON)	
POST OFFICE, Houston, TX, Employer)	
)	

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
JANICE B. ASKIN, Judge

JURISDICTION

On August 29, 2022 appellant filed a timely appeal from a June 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because OWCP did not respond to her March 2022 occupational disease claim within 45 days. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On March 18, 2022 appellant, then a 46-year-old customer services supervisor, filed an occupational disease claim (Form CA-2) alleging that she developed depression, anxiety, and chest pains due to factors of her federal employment including when she was attacked by R.B., a carrier, in mid-June 2021. She noted that she first became aware of her condition and realized its relationship to her federal employment on March 16, 2022. Appellant stopped work on March 16, 2022.

In a form report signed on March 6, 2022, Dr. Mark Blick, an osteopathic physician specializing in internal medicine, noted a diagnosis of generalized anxiety disorder. He indicated that appellant was unable to work from March 6 through July 5, 2022.

In a development letter dated March 25, 2022, OWCP notified appellant of the deficiencies of her claim. It requested additional factual and medical evidence, and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding her occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

In a report dated March 28, 2022, Dr. Blick noted that appellant was evaluated for elevated blood-pressure reading, without diagnosis of hypertension, and generalized anxiety disorder. He indicated that appellant was diagnosed several months ago and now complained of worsening symptoms. Dr. Blick reported that the symptoms first appeared following an incident at work when she was sexually assaulted by a co-worker. He noted that the attacker was never really disciplined. Dr. Blick opined that the assault and lack of discipline had caused appellant moderate to severe anxiety. He reviewed appellant's history and provided examination findings. Dr. Blick diagnosed elevated blood-pressure reading, without diagnosis of hypertension, generalized anxiety disorder, insomnia, and irritable bowel syndrome without diarrhea.

In a patient visit note dated April 6, 2022, Dr. Blick noted a correction to his previous March 28, 2022 report. He explained that appellant was physically assaulted, not sexually assaulted, and that appellant had sought treatment to discuss her anxiety. Dr. Blick reviewed appellant's history and conducted a physical examination. He diagnosed irritable bowel syndrome without diarrhea, elevated blood-pressure reading, without diagnosis of hypertension, and generalized anxiety disorder.

In an undated statement, appellant alleged that on June 23, 2021 she was assaulted by employee R.B. at the Westbury location. She contended that after she instructed R.B. to pivot on his T-6 assignment route, he turned around, came out of the case, told her to "get the [f***] out of his face," and pushed her. Appellant reported that she was very shaken and called her manager, F.H., who instructed her to take R.B. into the office. She sought the assistance of a union

representative to accompany her and alleged that, while she was in the office, R.B. began screaming in a very hostile manner. Appellant explained that she had to go to the back office because she was visibly shaken up, crying, and couldn't catch her breath. She noted that she reported the incident to employing establishment police, but no one responded. Appellant indicated that she also filed a report of the assault at the local police department and provided an incident number. She reported that she began to feel depressed and scared for her safety at work.

Appellant also asserted that Manager F.H. had advised her not to worry about R.B. because he was being fired, but R.B. returned to the employing establishment post office sometime at the end of August. She described another incident on September 11, 2021 when R.B. began to threaten her and her family. Appellant contended that Manager F.H. reassigned her to the Greenbriar location and then the TW House location. She alleged that when she spoke to Manager F.H. about e-travel because the Greenbriar and TW House locations were further from her original station, Manager F.H. got upset and screamed at her. Appellant noted that she also asked him not to move her around because she needed stability for her mental health.

Appellant also alleged that during an Equal Employment Opportunity Commission (EEOC) hearing, she had to sit and listen to R.B. tell lies about her and the June 23, 2021 incident. She asserted that during the hearing she felt a sharp pain go up from the right side of her neck. Appellant indicated that later that week she went back to Manager F.H. about her request for e-travel and contended that Manager F.H. "started hollering" at her. She further asserted that when she came back from COVID-19 leave on January 5, 2021, Mr. A made sarcastic comments to her. Appellant contended that he also instructed her to get off the clock and come back after two hours and that she was to report to River Oaks on Monday because Manager F.H. was sending her on another detail. She explained that that Sunday, she had to go on leave because her son contracted COVID-19 so she did not report to the River Oaks location until January 20, 2022. Appellant asserted that approximately one week later she started to get sick again about not clearing the cage and checking vehicles and getting off in an eight-hour time frame. She reported that she was also still stressed about the assault and now being moved around to different stations without receiving proper compensation.

By decision dated June 6, 2022, OWCP denied appellant's claim for an employment-related emotional condition. It found that the factual evidence of record was insufficient to establish that appellant actually experienced the employment incident(s) alleged to have occurred. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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 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: (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 she has a diagnosed emotional or psychiatric disorder; and (3) medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.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 purview of workers' compensation. When disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁹ 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.¹⁰

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, in fact, occur.¹¹ Mere perceptions of harassment or discrimination are not compensable under FECA.¹² A claimant must substantiate allegations of harassment or discrimination with probative

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *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 *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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 *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹⁰ *Cutler, id.*

¹¹ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

¹² *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

and reliable evidence.¹³ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁴

ANALYSIS

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

Appellant alleged that she developed depression, anxiety, and chest pains due to fear of retaliation from a hostile work environment and fear of her safety in the workplace.

On March 25, 2022 OWCP requested that the employing establishment address the accuracy of appellant's allegations and claims. The employing establishment, however, did not respond to the development letter. OWCP's procedure manual provides that when developing emotional condition claims, the claims examiner must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was said and done.¹⁵ It also provides 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.¹⁶ Accordingly, OWCP should obtain a response from the employing establishment to the allegations of a hostile work environment and any additional relevant evidence or argument.¹⁷

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP 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.¹⁸ OWCP has an obligation to see that justice is done.¹⁹

For these reasons, the case will be remanded to OWCP for further development of the evidence regarding appellant's allegations of a hostile work environment. On remand, OWCP shall obtain a response from employing establishment to the March 25, 2022 development letter and address all of appellant's allegations. OWCP's procedure manual provides that, if an employing establishment fails to respond to a request for comments on a claimant's allegations,

¹³ *Supra* note 11.

¹⁴ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997).

¹⁶ FECA Procedure Manual, *id.*, at Chapter 2.800.7(a)(2) (June 2011).

¹⁷ *See A.F.*, Docket No. 20-1635 (issued June 9, 2022); *see also P.K.*, Docket No. 21-0967 (issued December 3, 2021).

¹⁸ *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013). *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹⁹ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

OWCP's claims examiner may accept the claimant's statements as factual.²⁰ After such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 8, 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

²⁰ *Supra* note 13.