

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

M.H., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
ARMAMENT RESEARCH DEVELOPMENT &)
ENGINEERING CENTER, PICATINNY)
ARSENAL, Picatinny, NJ, Employer)
_____)

Docket No. 23-0467
Issued: February 21, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 19, 2023 appellant filed a timely appeal from a February 13, 2023 merit 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition causally related to the accepted compensable factor of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are set forth below.

On June 15, 2017 appellant, then a 59-year-old product assurance engineer, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition due to factors of his federal employment, including stress and because his previously accepted bilateral hearing loss³ made it difficult to communicate with his colleagues in the workplace. He noted that he first became aware of his condition on September 18, 2016 and realized its relation to his federal employment on May 17, 2017. OWCP assigned the claim, OWCP File No. xxxxxx814.

OWCP received an unsigned June 17, 2017 emergency department visit summary, noting a diagnosis of adjustment disorder.

In a development letter dated July 19, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter dated July 19, 2017, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In response, appellant submitted statements dated from July 8 through August 5, 2017, alleging a pattern of supervisory discrimination and disparate treatment beginning in 2001. He described a series of unfavorable work assignments, being denied or removed from assignments in 2012, unfair work allocation in May 2015, removal from an email distribution list, and denial of a promotion in February 2017. Appellant sometimes became stressed while communicating with coworkers, noting that some individuals were willing to write down on paper what they wanted to tell him, while others disregarded him totally. He had been off work from December 1, 2005 through March 17, 2007 due to blepharospasms.

The employing establishment submitted an August 2, 2017 statement by R.N., appellant's supervisor, who noted that since 2010 appellant's decline in health and increased hearing loss had "impacted [appellant's] ability to communicate with his peers to complete his assignments," with "several communication issues especially in the last several years as [appellant's] hearing has gotten worse."

By decision dated December 21, 2017, OWCP denied appellant's claim for an employment-related emotional condition, finding that he had not established that his allegation of

² Docket No. 21-1297 (issued December 20, 2022); *Order Remanding Case*, Docket No. 19-1187 (issued August 7, 2020).

³ Appellant has a previously-accepted occupational disease claim for bilateral noise-induced hearing loss sustained on or before January 14, 1998 under OWCP File No. xxxxxx200. On February 12, 2018 OWCP granted him a schedule award for 100 percent permanent impairment due to binaural hearing loss. On August 1, 2018 it administratively combined OWCP File Nos. xxxxxx814 and xxxxxx200, with the latter serving as the master file.

supervisory harassment factually occurred, as alleged. It further found that the remainder of his allegations pertained to administrative functions of the employing establishment, were not considered to be compensable employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 30, 2018 appellant, through counsel, requested reconsideration. He submitted a January 9, 2018 report by Dr. Jonathan H. Mack, a licensed clinical psychologist, who recounted a history of the accepted 1998 traumatic injury and bilateral hearing loss, and two motor vehicle accidents. Dr. Mack noted that appellant experienced stress, dizziness, and difficulty concentrating at work on August 25, 2016 as he could not understand others' speech. He diagnosed mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance, deficits in sustained attention and executive functioning, bilateral sensorineural hearing loss, blepharospasm, vertigo of central origin, person on foot injured in collision with car, and multilevel cervical and lumbar disc herniations. Dr. Mack opined that appellant was disabled from work due to profound bilateral hearing loss, blepharospasms, more probable-than-not traumatic brain injury, severe executive-frontal dysfunction, impaired memory and attention, marked visual scanning difficulty, decreased bilateral manual dexterity, and chronic pain.

By decision dated March 13, 2018, OWCP denied modification of its December 21, 2017 decision.

On July 12, 2018 appellant, through counsel, requested reconsideration. He submitted a September 11, 2009 negotiated Equal Employment Opportunity (EEO) settlement agreement in which the employing establishment did not admit any wrongdoing.

OWCP received a series of emails dated from April 21, 2008 through August 12, 2009 between appellant and supervisor M.B. regarding work assignments and requests for reasonable accommodation. In a May 7, 2008 memorandum, M.B. noted that appellant had "difficulty working with other personnel due to [appellant's] hearing" loss.

By decision dated April 16, 2019, OWCP modified its March 13, 2018 decision to find that appellant had factually established that, in June 2001, a supervisor subjected him to harassment. It denied the claim, however, finding that there were no compensable employment factors.

On May 3, 2019 appellant, through counsel, appealed to the Board. By order dated August 7, 2020, the Board set aside OWCP's April 16, 2019 decision and remanded the case to OWCP to make findings of fact and provide a clear statement of reasons explaining the basis for the decision.⁴

By decision dated June 25, 2021, OWCP denied appellant's claim, finding that he had not established a compensable factor of employment.

Appellant appealed to the Board. By decision dated December 20, 2022, the Board set aside OWCP's June 25, 2021 decision, finding that he had established a compensable employment factor in the form of experiencing an emotional reaction to attempting to meet the requirements of

⁴ *Order Remanding Case, supra* note 2.

his position, as his accepted hearing loss made it difficult for him to communicate with supervisors and coworkers.⁵ The Board further found that appellant had not established his allegations of harassment and discrimination as factual, and that his dissatisfaction with administrative and personnel matters regarding work assignments, performance discussions, promotions, requests for reasonable accommodation, and EEO complaints was not compensable as no error or abuse had been demonstrated. The Board remanded the case for consideration of the medical evidence of record to determine whether the accepted employment factor had caused or aggravated the claimed emotional condition.

By *de novo* decision dated February 13, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that he had sustained an emotional condition causally related to the compensable work factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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, 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.⁷ These are the essential elements of every compensation claim regardless of whether the claim is predicated on 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 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 a claimant's employment. 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 emotional reaction to regular or specially

⁵ Docket No. 21-1297 (issued December 20, 2022).

⁶ *Supra* note 1.

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

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

assigned work duties or to 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 a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹² If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to the accepted compensable factor of his federal employment.

In support of his claim, appellant submitted June 17, 2017 unsigned emergency department discharge instructions noting a diagnosis of adjustment disorder. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁴ Thus, this evidence is insufficient to establish the claim.

In a January 9, 2018 report, Dr. Mack described the accepted 1998 traumatic injury and two subsequent incidents where appellant had been struck by a motor vehicle. He recounted that on August 25, 2016 appellant experienced stress while at work as he could not understand others' speech due to the accepted bilateral hearing loss. Dr. Mack diagnosed mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance, and attention and executive functioning deficits. However, he did not provide medical rationale explaining how and why the accepted compensable employment factor of appellant's reaction to attempting to meet the

¹⁰ See *A.M., id.*; *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).

¹¹ *Lillian Cutler, id.*

¹² *R.B.*, Docket No. 21-0962 (issued February 23, 2023); *C.G.*, Docket No. 20-0058 (issued September 30, 2021); see *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

¹³ *Id.*

¹⁴ *J.M.*, Docket No. 22-1173 (issued November 20, 2023); *T.U.*, Docket No. 19-1636 (issued October 29, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

requirements of position would cause an emotional condition. Dr. Mack's opinion in therefore insufficient to meet appellant's burden of proof.¹⁵

As the medical evidence of record is insufficient to establish that appellant sustained an emotional condition causally related to the accepted compensable factor of his federal employment, the Board finds that he has not met his burden of proof.

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 his burden of proof to establish an emotional condition causally related to the accepted compensable factor of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2024
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁵ C.V., Docket No. 22-0078 (issued November 28, 2022).