

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

M.S., Appellant)	
)	
and)	Docket No. 23-1173
)	Issued: February 7, 2024
DEPARTMENT OF DEFENSE, EDUCATION)	
ACTIVITIES SECTION, Quantico, VA,)	
Employer)	
)	

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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 16, 2023 appellant filed a timely appeal from a March 22, 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 met her burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On April 9, 2021 appellant, then a 42-year-old education and training technician, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2021 she sustained an emotional

¹ 5 U.S.C. § 8101 *et seq.*

condition as a result of being assigned to restricted work environment while in the performance of duty.²

OWCP received a position description dated April 9, 2021 for the position of educational aide.

In a report dated June 10, 2021, Tami Streib, a registered nurse, related that appellant had post-traumatic stress disorder (PTSD) and ongoing panic attacks. She related that appellant was a victim of the 9/11 attack in New York City. Ms. Streib further related that most of appellant's panic attacks occurred when she was in a room with walls that blocked her view. One such incident occurred when the school was placed on lock down due to suspicion of an active shooter on base. Appellant was on a school bus with students and witnessed emergency personnel, and people running to escape harm.

By development letter dated July 25, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical and factual evidence required to establish her claim and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment regarding appellant's emotional condition claim, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

On August 23, 2022 OWCP received a response from the employing establishment. A supervisor noted that she was unaware of appellant losing any time from work and that a reasonable accommodation was set in place in August 2021. The supervisor further noted that as of March 2022, appellant was placed in a kindergarten paraprofessional position and that appellant was working full duty and full time. She stated that appellant had an open claim before the Equal Employment Opportunity Commission (EEOC) relative to children crying, blocked windows, and furniture blocking a door, which allegedly increased appellant's stress. Appellant was granted reasonable accommodation of an open room, access to doors, no covered windows and was allowed to stay with a school nurse or psychologist during a lock down drill. She was also afforded administrative leave to attend stress management classes.

By decision dated August 29, 2022, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish that the claimed work event caused her emotional condition.

On September 5, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a statement dated October 29, 2022, appellant responded to OWCP's development letter. She explained that the stressful aspect of her position included assignment to a restricted classroom

² OWCP assigned the present claim OWCP File No. xxxxxx363. Under OWCP File No. xxxxxx388, on May 23, 2022, appellant filed a Form CA-1 alleging that on May 27, 2021 she sustained an emotional and mental condition as a result of sheltering in a bus while there was an active shooter while in the performance of duty. Under OWCP File No. xxxxxx378, on May 23, 2022, appellant filed a Form CA-1 alleging that on October 22, 2021 she sustained an emotional and mental condition as a result of harassment at work while in the performance of duty. These claims have been administratively combined with the present claim, with OWCP File No. xxxxxx388 serving as the master file.

environment for students with severe special education issues, and that accommodations provided by the employing establishment were ineffective, only aggravating her condition. Appellant stated that the self-contained restricted environment triggered her memories of September 11, 2001 by feeling trapped in a room where the windows were covered and shelves and desks blocked doors. She noted that she endured frequent periods of anxiety and panic attacks.

A hearing was held on January 6, 2023. By decision dated March 22, 2023, OWCP's hearing representative affirmed the August 29, 2022 decision of OWCP. The hearing representative found that appellant had not alleged any compensable factors of employment.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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 emotional condition is causally related to the identified compensable employment factors.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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.⁷ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or

³ *Supra* note 1.

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

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

⁶ *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).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.⁸

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.⁹ Although related to the employment, administrative, and personnel matters are functions of the employing establishment rather than the regular or specially-assigned duties of the employee.¹⁰ However, to the extent 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

Appellant explained that she developed PTSD when she worked in New York City on 9/11, across the street from the World Trade Center. She alleged that she sustained an emotional condition on April 9, 2021 in the performance of duty because she was assigned to work in a restricted classroom for students with severe special education issues, which was set up in a closed manner with window coverings and a doorway that was blocked. As previously noted, frustration from not being permitted to work in a particular environment is not a compensable factor of employment.¹² The employing establishment controverted the claim and indicated that it had provided reasonable accommodations to appellant as requested. Appellant's supervisor explained that appellant had an open EEOC claim and that the claim was relative to children crying, blocked windows, and furniture blocking a door, thus increasing appellant's stress. Appellant was granted reasonable accommodation of reassignment to an open room, access to doors, no covered windows and was allowed to stay with a school nurse or psychologist during a lock down drill. The evidence of record, however, establishes that the employing establishment granted appellant's reasonable accommodation request and did not err or act abusively in this regard.

As appellant has not established a compensable employment factor, the Board need not address the medical evidence of record.¹³

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹² *Supra* note 9.

¹³ *A.K.*, 58 ECAB 119 (2006).

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.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2024
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