

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

C.A., Appellant)

and)

U.S. POSTAL SERVICE, REYNOLDS CORNER)
POST OFFICE, Toledo, OH, Employer)

**Docket No. 23-1056
Issued: January 30, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 7, 2023 appellant filed a timely appeal from an April 13, 2023 merit decision and a May 22, 2023 nonmerit 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 to consider the merits of this case.

¹ The Board notes that, following the May 22, 2023 decisions, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

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.

FACTUAL HISTORY

On December 8, 2022 appellant, then a 34-year-old lead customer care agent, filed a traumatic injury claim (Form CA-1) alleging that on January 21, 2022 her stress and anxiety were triggered as she was sexually harassed by members of management while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, R.C., indicated that appellant was injured in the performance of duty. Appellant stopped work that day.

Dr. Kevin Bingle, a Board-certified family practitioner, in a July 11, 2022 report, diagnosed anxiety, depression, insomnia, and stress at work. He recounted appellant's allegation that her manager at work informed her that she would only be able to further her career through sexual favors and acts.

In a December 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion. In a separate letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's contentions. It afforded the parties 30 days to respond. The employing establishment did not respond.

On December 17, 2022 appellant responded to the development letter with a narrative statement recounting that a manager made sexual comments, remarks, and gestures. He suggested that he could help her advance at the employing establishment through sexual cooperation. The gestures included squeezing motions of the hands and tongue motions. The manager suggested that they go to a bar and then back to his place. Appellant related that these events occurred over a period of several days and asserted that her claim should be considered as an occupational disease.

OWCP converted appellant's claim into an occupational disease as her injury occurred over a period longer than a single work shift or day.

On January 10, 2023 Dr. Bingle related that appellant's anxiety and depression had been worsened by sexual harassment by a manager at work.

By decision dated April 13, 2023, OWCP denied appellant's claim. It found that she had not established that she actually experienced the employment factor, identified as harassment, alleged to have caused her injury. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 12, 2023 appellant requested reconsideration.

By decision dated May 22, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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

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).

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.*

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 this case is not in posture for decision.

Appellant alleged that she developed an aggravation of her preexisting anxiety and depression due to sexual harassment at work.

On December 16, 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 procedures provide 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.¹⁴ 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.¹⁵ Accordingly, OWCP should obtain a response from the employing establishment to the allegations of sexual harassment by a manager and any additional relevant evidence or argument.¹⁶

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.¹⁷ OWCP has an obligation to see that justice is done.¹⁸

¹² *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹³ *Id.*

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997).

¹⁵ *Id.* at Chapter 2.800.7(a)(2) (June 2011).

¹⁶ *See L.O.*, Docket No. 22-1266 (issued June 8, 2023); *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *see also P.K.*, Docket No. 21-0967 (issued December 3, 2021).

¹⁷ *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.

¹⁸ *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).

For these reasons, the case will be remanded to OWCP for further development of the evidence regarding appellant's allegations of sexual harassment at work. On remand, OWCP shall obtain a response from employing establishment to the December 16, 2022 development letter and address all of appellant's allegations. OWCP's procedures provide that, if an employing establishment fails to respond to a request for comments on a claimant's allegations, OWCP's claims examiner may accept the claimant's statements as factual.¹⁹ After such further development as deemed necessary, it shall issue a *de novo* decision.²⁰

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 13 and May 22, 2023 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: January 30, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁹ *Supra* note 16.

²⁰ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.