

² The Board notes that, following the June 13, 2023 decision, 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.*

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

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference.³ The relevant facts are as follows.

On January 7, 2021 appellant, then a 52-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2020 she developed post-traumatic stress disorder (PTSD), moderate-to-severe depression, and anxiety causally related to factors of her federal employment, including "an extreme hostile work environment." On the reverse side of the claim form the employing establishment acknowledged that she was injured in the performance of duty by checking a box marked "Yes." Appellant stopped work on January 13, 2020.⁴

In a January 13, 2020 note, Stephanie Huie, a licensed professional counselor, recommended that appellant remain out of work until January 21, 2020.

OWCP also received a notification of personnel action form (Standard Form (SF) 50) dated June 25, 2019 and an incomplete position description.

In a January 14, 2021 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated February 19, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the events or incident occurred, as alleged. It noted that she had only provided vague and general information without supporting evidence and specific examples and not responded to its development questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

On February 22, 2022 appellant requested reconsideration of OWCP's February 19, 2021 decision. In support of her request, she submitted a February 16, 2022 letter by Dr. Glenn O. Archibald, a psychiatrist, who noted that his office had completed Family Medical Leave Act (FMLA) paperwork for appellant on February 7, 2022, which requested that she be off from work for six weeks due to major depressive disorder, generalized anxiety disorder, and PTSD. Dr. Archibald noted that appellant required a stress-free environment in order to provide an

³ *Order Remanding Case*, Docket No. 23-0179 (issued May 23, 2023).

⁴ OWCP developed appellant's claim as an occupational disease claim.

accurate assessment of her medication changes. The completed FMLA forms were attached to Dr. Archibald's February 16, 2022 letter.

By decision dated May 23, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On November 19, 2022 appellant appealed OWCP's May 23, 2022 decision to the Board. By order dated May 23, 2023,⁵ the Board set aside OWCP's May 23, 2022 decision, finding that her February 22, 2022 request for reconsideration was timely filed pursuant to OWCP procedures.⁶ The Board remanded the case to OWCP to apply the proper standard of review for timely requests for reconsideration, to be followed by an appropriate decision.

By decision dated June 13, 2023, OWCP denied modification of its May 23, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 limitation of FECA,⁸ 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.⁹ 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.¹⁰

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.¹¹

⁵ *Supra* note 3.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims., *Reconsiderations*, Chapter 2.1602.4a (September 2020).

⁷ *Supra* note 1.

⁸ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.¹² 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.¹³ On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁴

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.¹⁵ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹⁶ For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁷ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁸

ANALYSIS

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

Appellant has not provided sufficient detail to establish that an emotional condition occurred in the performance of duty.¹⁹ In her January 7, 2021 Form CA-1, she generally alleged that on January 13, 2020 she developed PTSD, moderate-to-severe depression, and anxiety due to "an extreme hostile work environment." Appellant did not provide details such as when, where, or what constituted a hostile work environment, the individuals involved, or any actions or statements that took place. By failing to sufficiently describe the employment circumstances surrounding her alleged conditions, she has not established that an emotional condition occurred in the performance of duty.²⁰ In a January 14, 2021 development letter, OWCP advised appellant

¹² See *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ See *S.K.*, *supra* note 11; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

¹⁴ See *S.K.*, *id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁵ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

¹⁶ *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

¹⁷ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁸ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁹ See *L.W.*, Docket No. 23-0214 (issued April 25, 2023); *J.W.*, Docket No. 19-0335 (issued July 2, 2019).

²⁰ See *L.W.*, *id.*; *supra* notes 14 and 15.

of the type of factual and medical evidence needed to establish her claim, and provided a factual questionnaire for her completion. Appellant, however, did not respond.²¹ Accordingly, the Board finds that she has not established a compensable employment factor under FECA and, thus, has not met her burden of proof to establish an emotional condition in the performance of duty.²²

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 10.607.15.

CONCLUSION

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

ORDER

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

Issued: March 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *K.S.*, Docket No. 17-2001 (issued March 9, 2018); *see also* *K.W.*, Docket No. 16-1656 (issued December 15, 2016).

²² *See E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).