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R.D., Appellant)	
)	Docket No. 22-1185
and)	Issued: February 6, 2025
)	
U.S. POSTAL SERVICE, WHITEHALL POST)	
OFFICE, Whitehall, AR, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On August 10, 2022 appellant filed a timely appeal from a July 29, 2022 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.

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

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

On October 15, 2019 appellant, then a 57-year-old carrier technician/letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed stress-related emotional and physical conditions, including hypertension and anxiety, due to factors of her federal employment. She explained that she was mandated to work overtime, often with no scheduled days off, and that her stress-related mental and physical reactions resulted in lengthy absences beginning November 2011. Appellant noted that she first became aware of her conditions on September 1, 2009, and realized their relation to her federal employment on November 4, 2016.

In an October 24, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It also specifically requested information as to whether there were staffing shortages which affected her workload or extra demands for any reason. OWCP afforded both parties 30 days to submit the necessary evidence.

In a December 4, 2019 response, appellant indicated that shortly after she began her postal career in 1995 as a part-time flexible (PTF) carrier, management required her to work "horrendous" amounts of overtime. She described the duties of a PTF noting that her routes required her to walk and carry a heavy satchel for extended periods of time, which caused pain and fatigue to her body. Appellant alleged that she had signed a list for "no overtime" when she became a regular carrier, but was "always forced to carry ... on a weekly basis." She noted that the paystubs from her years of working showed the excessive amounts of overtime worked. Appellant alleged that the employing establishment's practice of mandating her to work overtime caused a lot of stress and eventually led to on-the-job injuries, unscheduled absences, elevated hypertension and depression. She noted that, in 1997, her employment vehicle was hit from behind, but she alleged that the employing establishment never recognized that she had sustained a back injury, and did not approve her Family and Medical Leave Act (FMLA) requests. Appellant indicated that she had requested permanent light duty for her chronic permanent conditions, but the employing establishment removed her from her job for a year as she had less than five years of service. She noted that she was reinstated to her prior job with no back pay following an Equal Employment Opportunity (EEO) claim. Appellant also noted participating in counseling through the Employee Assistance Program (EAP) for work-related issues in 2005 and 2008. She alleged that she strained her back on several occasions while being mandated to work overtime, despite not being on the overtime list. However, appellant related that she was too afraid to identify her back injury given her removal for a year in 1999, having been disciplined for attendance issues in 2008 and 2009, and her EEO claims were resolved with findings that no discriminatory or disparate

² Docket No. 21-0050 (issued February 25, 2022).

treatment had occurred. She indicated that she became anxious and depressed in 2002, 2005-2008, 2011, 2016, and 2018, and described several acute stress reactions she had in November 2011 and December 2016. Appellant noted that work became so stressful that she resigned, but she later rescinded her letter of resignation and was reinstated a few months later with no back pay. She alleged that she continued to work excessive amounts of overtime due to the employing establishment's mandate. In 2000, appellant filed grievances for distribution of overtime and being mandated to work off days and carry splits on other routes. She claimed that she began to suffer emotionally and physically as she could not rest, and the exhaustion caused struggles in other areas of her life. Appellant further alleged that, in 2011, after working excessive amounts of overtime and missing work, she started to be harassed and retaliated against. She noted having an acute stress reaction, elevated hypertension, and concerns of a heart attack. Appellant indicated that the mandated overtime resumed after she returned to work from medical leave.

Appellant submitted a series of documents, including paystubs for specific pay periods during the years 1995 through 1999, 2001 through 2007, and 2011 through 2015, which noted the specific amounts of overtime worked. She also submitted medical evidence in support of her claim.

In an undated note, the employing establishment advised appellant that she was "mandated to work her NS (non-scheduled) day Wednesday, November 22, 2017." In a note dated January 10, 2018, appellant was mandated to work her nonscheduled day on Friday, January 19, 2018. In a note dated February 13, 2018, she was mandated to work her nonscheduled day on Thursday, February 22, 2018.

In June 7, 2016 and December 6, 2017 letters, G.R., appellant's union president, indicated that review of her June 3, 2016 and November 21, 2017 grievance statement and investigation, respectively, revealed that there was no violation by management on its selection of appellant to work overtime. He indicated that there were no overtime-desired personnel assigned to the employing establishment. In the December 6, 2017 letter, G.R. further noted that, per management's December 1, 2017 statement, appellant did not have any restrictions. He also noted that appellant's FMLA paperwork addressed leave requests, and that a modified assignment request and approval was needed.

By decision dated April 20, 2020, OWCP denied appellant's emotional/stress-related condition claim, finding that the evidence of record was insufficient to establish that an injury in the performance of duty. It accepted as factual that she was mandated to work overtime on November 22, 2017, but found there was no evidence that overtime was mandatory and/or that an employee could not say no to overtime on some occasions or to working on scheduled days off. The remainder of appellant's other allegations were denied as not factually substantiated. This included allegations that she was overworked and required to work seven days a week from sunrise to 7:00 p.m., that the mandated overtime work led to other on-the-job injuries and unscheduled absences, and that she was being harassed and retaliated against by the employing establishment.

On July 22, 2020 appellant requested reconsideration. She continued to allege that when she started work at the employing establishment, she was expected to work anytime management needed her, especially during the probationary period, which she did. After years of working mandated overtime, appellant developed hypertension, anxiety, and depression. She alleged that

she had no control over the work schedules, and that overtime was addressed in the collective bargaining agreement between the employing establishment and union officials. Appellant indicated that she attached a copy of an EEO case to support her allegations concerning the mandating of overtime. She also attached a copy of the letter rescinding her 2002 resignation.

OWCP received additional evidence including, an undated copy of a statement; additional documentation concerning her EEO case; a duplicate copy of a pay stub from 2016; and a document entitled “How To Read Your USPS Earnings Statement.”

By decision dated October 14, 2020, OWCP denied modification of its prior decision.

Appellant filed an appeal with the Board. By decision dated February 25, 2022, the Board found the case not in posture for decision as the employing establishment failed to respond to OWCP’s development letter addressing the accuracy of her allegations and claim, including whether there were staffing shortages or extra demands which affected her workload. Accordingly, the Board set aside OWCP’s October 14, 2020 decision and remanded the case to OWCP for further development of the evidence regarding appellant’s emotional/stress-related condition claim.³ OWCP was directed to request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding appellant’s allegations.

In a May 11, 2022 letter to the employing establishment, OWCP noted that pursuant to the Board’s February 25, 2022 decision, additional information was required to issue a *de novo* decision in appellant’s claim. It requested that the employing establishment provide a response to appellant’s claims, as a response was critical in rendering a decision. OWCP attached documentation including appellant’s October 19, 2020 statement, wherein she expressed her concerns regarding overtime, as well as safety concerns regarding a broken gas pedal, bald tires, faulty steering; a pay stub; and additional documentation concerning appellant’s EEO claim.

In an undated statement, D.R., station manager, stated that she had no knowledge of any complaints about broken gas pedals, bald tires and faulty steering and denied receiving a complaint from OSHA on safety issues. She further advised that “these allegations never happened. Employee was put off the clock for threatening another employee. She had union representation and was given her job back twice. Employee failed to report for work.” D.R. also denied being aware of any injury to appellant in 2009.

By *de novo* decision dated July 29, 2022, OWCP denied appellant’s emotional/stress-related condition claim, finding that the evidence of record was insufficient to establish a compensable employment factor.

³ *Id.*

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim,⁵ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶ 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.⁷

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) rationalized medical evidence establishing that he or she has 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.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.¹⁰ 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.¹¹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer, rather than regular or specially assigned work duties of the employee and are not covered under FECA.¹² Where the evidence demonstrates

⁴ *Supra* note 1.

⁵ *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *M.J.*, *id.*; *O.G.*, *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ 20 C.F.R. § 10.115; *M.H.*, Docket No. 21-1297 (issued December 20, 2022); *C.V.*, Docket No. 22-0078 (issued November 28, 2022); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁸ See *C.C.*, Docket No. 21-0283 (issued July 11, 2022); *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ 28 ECAB 125 (1976).

¹⁰ *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 9.

¹² See *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

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

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁴ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁵

ANALYSIS

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

Appellant has attributed her emotional/stress-related condition, in part, to performing the regular or specially-assigned duties of her position as a PTF and regular carrier. She alleged that she was overworked as she worked excessive amounts of overtime. The Board has held that a claimant's demonstrated overwork in attempting to carry out work duties and meet deadlines, including through the use of overtime, may constitute a compensable employment factor.¹⁶

In support of her claim, appellant submitted paystubs for specific pay periods during the years 1995 through 1999, 2001 through 2007, and 2011 through 2015, which noted the amount of overtime worked. By decision dated April 20, 2020, OWCP denied the claim, finding that appellant had not established a compensable employment factor. On prior appeal, by decision dated February 25, 2022, the Board found the case not in posture for decision as the employing establishment failed to fully respond to OWCP's development letter addressing the accuracy of her allegations, including whether there were staffing shortages or extra demands which affected her workload. Accordingly, the Board set aside OWCP's decision and remanded the case to OWCP for further development of the evidence regarding appellant's emotional/stress-related condition claim.¹⁷ The Board directed OWCP to request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding her allegations. OWCP subsequently requested that the employing establishment respond to appellant's claims as their response was critical in rendering a decision. D.R.'s undated response, however, did not provide additional information regarding appellant's assignment of overtime.

As discussed, OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes

¹³ See *C.J.*, Docket No. 19-1722 (issued February 19, 2021); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹⁴ See *J.C.*, Docket No. 22-0254 (issued November 29, 2022); *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁵ *Id.*; *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁶ See *M.R.*, Docket No. 16-0125 (issued October 2, 2017); *M.D.*, Docket No. 15-1796 (issued September 7, 2016) (appellant established a compensable factor of routinely working overtime during a specified period as the evidence of record supported her allegation and the employing establishment did not dispute the allegation); *Bobbie D. Daly*, 53 ECAB 691 (2002); *Sherman Howard*, 51 ECAB 387 (2000).

¹⁷ *Supra* note 2.

the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁸ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹⁹ D.R.'s undated statement was limited and unresponsive to the information requested by OWCP with regard to appellant's allegations of understaffing and overtime as previously directed by the Board.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²⁰ Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.²¹

The case shall, therefore, be remanded for OWCP to further develop the evidence. On remand OWCP shall request that the employing establishment provide comments from a knowledgeable supervisor explaining the frequency, duration, nature of overtime hours worked by appellant (mandatory and voluntary) during the relevant period. It shall also request all of the paystubs documenting appellant's overtime during the relevant period. If the employing establishment does not sufficiently respond to OWCP's request for additional information, OWCP may accept appellant's allegations as factual in accordance with its regulations.²² Following this and other 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.

¹⁸ 20 C.F.R. § 10.117; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹⁹ *Id.*; see also *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

²⁰ *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

²¹ See *T.S.*, Docket No. 23-0839 (issued January 17, 2024); *S.S.*, *supra* note 19; *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2016).

²² 20 C.F.R. § 10.117.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 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: February 6, 2025
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