

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ 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 set forth below.

On October 4, 2021, appellant, then a 40-year-old vessel traffic operator, filed an occupational disease claim (Form CA-2) alleging that she developed major depressive disorder and severe anxiety due to factors of her employment, including the COVID-19 vaccine mandate for federal employees. She explained that she was a veteran with a service-connected disability rating of 90 percent due to major depressive disorder and severe anxiety, and the vaccine mandate aggravated her existing condition. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on September 17, 2021. She stopped work on September 30, 2021.

Appellant submitted a form report dated October 14, 2021, by Dr. Lavinia Bizeta, a Board-certified psychiatrist and neurologist, who noted diagnoses of recurrent moderate major depressive disorder and anxiety disorder. Dr. Bizeta noted that appellant was initially diagnosed in 2010 and that her symptoms had increased following the COVID-19 vaccine mandate and interfered with her functioning due to stress. She indicated that appellant stopped work on October 19, 2021.

In an undated statement, C.D., appellant's supervisor, described the work performed by appellant as managing vessel traffic. She indicated that appellant was responsible for promoting safety and security for the New York and New Jersey waterways and that she had continuous communication with various port partners and coworkers using radio, telephone, and verbal communications. C.D. stated that in the beginning of September 2021, she noticed that appellant had been increasingly anxious. She noted that due to the pandemic and constant changes, e-mails, news reports, and policy changes, appellant had been directed to comply with COVID-19 mandates or the possibility of mandates. C.D. indicated that on September 29, 2021 appellant informed her at work that she felt her anxiety increasing and that she was concerned in regard to mandated vaccinations for federal employees. She noted that in the early morning of September 30, 2021 appellant contacted her that she could not come to work due to three major anxiety attacks. C.D. explained that later that day, appellant informed her that due to her condition and excessive stress, her psychologist recommended that she be placed on disability.

In a progress note dated September 21, 2021, Dr. Bizeta indicated that she had treated appellant for the last 12 years and was familiar with the limitations imposed by her diagnosis. She diagnosed severe anxiety and major depressive disorder, recurrent with associated passive suicidal ideation, which was service connected. Dr. Bizeta opined that the deadline for the COVID-19

³ Docket No. 24-0111 (issued April 12, 2024).

immunization had exacerbated appellant's anxiety and depression, as she worried about the possibility of losing her job.

In a progress note dated September 30, 2021, Dr. Salvatore Giantinoto, an osteopath Board-certified in family medicine, indicated that his patient suffered from major depressive disorder and severe anxiety, which significantly worsened secondary to the COVID-19 pandemic. He stated that he had advised appellant against participating in any of the COVID-19 vaccines, secondary to the significant negative impact it would have on appellant's overall health. Dr. Giantinoto explained that appellant believed that the risks outweighed any perceived benefit associated with the vaccine.

In a report dated October 19, 2021, Dr. Bizeta recounted appellant's medical history as noted in her prior reports. She concluded that while appellant had a long history of anxiety and depression, for which she has received treatment, the pressure of having to receive a vaccination that she did not feel comfortable with, had been a contributing factor to her current worsening mood symptoms.

By decision dated March 3, 2022, OWCP accepted that the employment factors occurred as alleged. However, it denied appellant's claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the accepted employment factors. As appellant had not received the vaccine, she had not established an injury. Thus, OWCP concluded that the requirements had not been met to establish that she sustained an injury as defined by FECA.

On August 10, 2022, appellant, through counsel, requested reconsideration. He noted his disagreement with the March 3, 2022 OWCP decision and alleged that OWCP had misconstrued appellant's claim. Counsel clarified that appellant was not claiming an adverse reaction to receiving the COVID-19 vaccine, but rather an exacerbation of a preexisting military service-connected severe anxiety and major depressive disorder caused by the employment-related vaccine mandate. He contended that the medical evidence of record was sufficient to establish that appellant sustained an aggravation of her preexisting emotional/stress-related conditions due to factors of her federal employment.

In an attached February 16, 2022 report, Dr. Bizeta noted appellant's history of severe anxiety and major depressive disorder, recurrent with associated passive suicidal ideation, which was service connected. She indicated that the deadline for the COVID-19 immunization had amplified appellant's anxiety and depression as appellant worried about the possibility of losing her job as a result of not accepting the vaccination. Dr. Bizeta stated that appellant complained of worsening depressive and anxiety symptoms as a result of the COVID-19 vaccine mandate. She noted diagnoses of anxiety, major depressive disorder -- recurrent, and adjustment disorder. Dr. Bizeta indicated that while appellant had a long history of anxiety and depression, for which she received treatment, the pressure of having to receive a vaccination, given that appellant was not comfortable with receiving a vaccination, had contributed to her current worsening mood symptoms. These symptoms consisted of increased anxiety symptoms, frequent panic attacks, inability to sleep, and difficulty concentrating. Dr. Bizeta opined that appellant was unable to work.

In a September 22, 2022 letter, counsel reiterated that appellant was claiming an aggravation of her preexisting military service-connected severe anxiety and major depressive disorder, caused by a severe increase in stress due to the employment-related vaccine mandate. He contended that appellant had met her burden of proof to establish her emotional/stress-related condition claim.

By decision dated September 27, 2022, OWCP modified its March 3, 2022 decision to find that the medical evidence of record was sufficient to establish a diagnosed psychological condition. However, the claim remained denied as the evidence of record was insufficient to substantiate a compensable factor of employment.

On May 8, 2023, appellant, through counsel, requested reconsideration. In an attached March 25, 2023 response to OWCP's development questionnaire, appellant explained that as of November 2021, the employing establishment required all employees to receive a COVID-19 vaccination. She alleged that the requirement added to her already-diagnosed anxiety and depression, causing multiple anxiety attacks per week. Appellant stated that she noticed that her anxiety had worsened when federal employees were required to get the vaccine in order to remain employed. She noted that both her and her treating physician disagreed with her being forced to take a vaccine, for which any side effects were unknown. Appellant indicated that after discussing this stress and anxiety with her psychologist, she stopped work and filed for workers' compensation benefits.

By decision dated July 18, 2023, OWCP denied modification.

On November 20, 2023, appellant, through counsel, appealed to the Board.

By decision dated April 12, 2024, the Board set aside the July 18, 2023 decision and remanded the case for further proceedings, finding that the case was not in posture for decision as OWCP had not properly developed appellant's claim as it had not requested relevant information from the employing establishment regarding appellant's allegations.

In a development letters dated May 17 and June 25, 2024, OWCP requested information from the employing establishment, including comments from a knowledgeable supervisor regarding whether appellant was required to obtain a COVID-19 vaccine under mandate. It afforded the employing establishment 30 days to respond.

By *de novo* decision dated July 29, 2024, OWCP denied appellant's claim finding that the COVID-19 mandate was an administrative matter that was not compensable under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 2.

disability or specific 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 on a traumatic injury or an occupational disease.⁶

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.⁷

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.⁸ 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 his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.⁹

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.¹⁰ 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.¹¹ However, to the extent the evidence demonstrates that the employing

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 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).

⁷ *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).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ *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).

¹¹ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an aggravation of a preexisting emotional/stress-related condition in the performance of duty, as alleged.

Appellant has not alleged that her emotional condition was due to the performance of her regularly or specially assigned duties under *Cutler*.¹³ Instead, she primarily attributed the aggravation of her emotional conditions to the employing establishment's implementation of a vaccine mandate for COVID-19. In *Thomas D. McEuen*,¹⁴ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA, as such matters pertain to procedures and requirements of the employer, and do not bear a direct relation to the work required of the employee. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.¹⁵ Appellant has not submitted any evidence supporting that the employing establishment committed error or abuse in the implementation of a vaccine mandate for COVID-19, and thus, she has not established a compensable employment factor.¹⁶

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.¹⁷

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 aggravation of a preexisting emotional/stress-related condition in the performance of duty, as alleged.

¹² *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹³ *Supra* note 8.

¹⁴ *Supra* note 10.

¹⁵ *M.B.*, Docket No. 29-1160 (issued April 2, 2021); *William H. Fortner*, *supra* note 11.

¹⁶ *See Y.R.*, Docket No. 24-0612 (issued September 13, 2024); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

¹⁷ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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