

² The Board notes that, following the October 8, 2024 decision, OWCP received additional evidence. However, 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 his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On July 31, 2024 appellant, then a 55-year-old manager of vehicle maintenance, filed an occupational disease claim (Form CA-2) alleging that he developed stress, severe anxiety, and major depressive disorder due to factors of his federal employment, including being subjected to daily personal degrading, humiliation, and constant accusations regarding situations outside of his control for which he was held accountable. He noted that he first became aware of his condition on September 1, 2023 and realized its relation to his federal employment on April 1, 2024. On the reverse side of the claim form, J.D., a supervisor, controverted the claim.

In a July 17, 2024 statement, J.S., a coworker, wrote that there was a pattern of mistreatment and abuse at the employing establishment which he had experienced. He also recounted that he had witnessed appellant, “being screamed [at] and threatened one evening through two doors and how [appellant] looked when [he] walked out.”

In a July 24, 2024 e-mail, appellant related that in 2015 he was promoted to mail handler supervisor at the Syracuse Vehicle Maintenance Facility (VMF). However, a sexual harassment complaint was filed against him when he bought a female employee a coffee one evening and gave her a gift card to buy coffee/donuts for all the employees on the floor. Appellant was demoted, and the complainant became his supervisor. He learned in the spring of 2016 that the female who had filed the complaint against him was involved with his boss, W.W., and they had set appellant up. Her employment was terminated, but W.W. was never charged, and he continued to mock appellant every time he saw him. Appellant indicated that he was promoted again in 2019, and his career took off as he was running the office without a manager or closing supervisor, and he was working 16 to 18 hours 7 days a week. However, a female supervisor was hired, and he was subjected to harassment and being written up every day. Appellant related that he had a stroke and was hospitalized and in 2020 during COVID-19, was let go for 3.5 months with pay, and brought back with no charges against him. He noted that he was moved to a different post office in 2021. In the spring of 2022, appellant accepted a detail to the employing establishment, and was subjected again to harassment, including supervisor J.C. calling him while he was in the hospital for knee surgery and threatening him because he was not at work. He also alleged that he was wrongly accused of improperly selling LLV’s (long life vehicles) to a vendor he hired.

E-mail correspondence dated July 27, 2020 from S.J. to appellant noted that there were 88 parcel failures in his unit and requested a detailed response and action plan, before his leave request would be discussed.

On August 1, 2024 OWCP received a narrative statement wherein appellant outlined the telephone calls and texts he received after hours on Saturday, April 25, 2020 and Sunday, April 26, 2020, regarding collection boxes which required clearing. Appellant also alleged that on April 27, 2020 he received an unusual amount of Priority Mail, which had not been sorted on Sunday, but had been left for him. He also recounted overhearing J.H., who was promoted to an acting

supervisor position, on numerous occasions discussing with S.B., station manager, about “how to get D.P.”

On August 5, 2024 OWCP received an unsigned and undated statement from a supervisor who noted that appellant never expressed any issues regarding work or their personal relationship. The supervisor explained that appellant took a detail at the Syracuse VMF in 2021 where he was appellant’s manager, was detailed to the employing establishment in July 2022 where he also was appellant’s manager and accepted the position as manager at the employing establishment in July 2022, knowing that he would be appellant’s manager. He noted that he traveled to the employing establishment every two weeks for two to three days to assist appellant with all phases of the operation. The supervisor noted that appellant indicated that he received medical attention in July 2022, but the supervisor was not aware of this. With regard to an April 2024 doctor visit, he noted that appellant indicated it was a follow up to surgery appellant had earlier in the year. The statement related that on May 7, 2024 appellant told him that he needed to leave for two days to go see his father and would be back Friday and was granted leave. However, appellant did not call or show to work on Friday or Monday and on Tuesday, the supervisor called him, and appellant said he had problems with flights; however, appellant did not return on May 15, 16, or 17, 2024. On May 20, 2024 the supervisor received a text message of a doctor note taking appellant out of work from May 13 to August 14, 2024. He related that he reached out on July 31, 2024 to ask if appellant was going to provide new documentation or return to work and appellant did not respond; however, he received notice of this claim on the same day.

In a development letter dated August 8, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 60 days to respond.

OWCP received an undated report from Dr. Christine Ashour, an osteopathic physician specializing in family medicine. Dr. Ashour diagnosed post-traumatic stress disorder (PTSD), severe anxiety, depression, insomnia, and newly diagnosed bipolar disorder. She concluded that appellant’s conditions were exacerbated by work-related stressors.

In an October 7, 2024 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It also requested that the employing establishment identify any agency employees who may have additional information regarding appellant’s allegations and provide witness statements from each such employee. OWCP afforded 30 days for the submission of the requested information.

By decision dated October 8, 2024, OWCP denied appellant’s claim finding that he had not established an emotional/stress-related condition in the performance of duty. It explained that he had not established any compensable employment factors, and thus, the requirements had not been met to establish an injury as defined by FECA.

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

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁶ 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 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.⁸

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.⁹ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.¹⁰ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹¹

³ *Supra* note 1.

⁴ *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *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); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁷ *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁹ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

¹¹ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

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.¹² Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.¹⁴ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. 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.¹⁵ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.¹⁶

OWCP's procedures provide:

“An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, 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 [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission.”¹⁷

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

¹² *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹³ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁴ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁵ *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁶ *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j (July 1997); see also *J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.K.*, Docket No. 20-0508 (issued December 11, 2020); *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

¹⁸ 20 C.F.R. § 10.117(a); *G.K.*, *id.*; *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹⁹

ANALYSIS

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

On October 7, 2024 OWCP issued a development letter to the employing establishment requesting that it provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It also requested that the employing establishment identify any agency employees who may have additional information regarding appellant's allegations and provide witness statements from each such employee. OWCP afforded the employing establishment 30 days for the submission of the requested information. However, it issued the final decision denying appellant's claim, one day later on October 8, 2024.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.²⁰ While the claimant has the burden of proof 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 governmental source.²¹

On remand, OWCP shall obtain the requested information from the employing establishment regarding appellant's emotional/stress-related condition claim. Following this and other such further development, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁹ Federal (FECA) Procedure Manual, *supra* note 17 at Chapter 2.800.7a(2) (June 2011) and Part 2 -- Claims, *Fact of Injury*, Chapters 2.803.4a(1)(b) and 2.803.7a (November 2023).

²⁰ See *L.S.*, Docket No. 18-1208 (issued April 30, 2020); *Phillip L. Barnes*, 55 ECAB 426 (2004).

²¹ *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *N.S.*, 59 ECAB 422 (2008).

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2024 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 20, 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