

² The Board notes that, following the February 26, 2024 nonmerit 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.*

properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 8, 2023, appellant, then a 55-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that she developed major depressive disorder due to factors of her federal employment. She explained that the effects of constantly being overburdened, understaffed in a covid-infected environment, and placed under strenuous time constraints became too much, which took a toll on her body and led to undergoing surgery in July 2021. Appellant noted that she first became aware of her condition on May 8, 2021, and realized its relation to her federal employment on October 27, 2021. She stopped work on May 15, 2021.³

In an August 8, 2023 statement, appellant explained that while she was employed at the employing establishment and in a leave without pay (LWOP) status, she applied for and was denied unemployment insurance benefits, as a result she had no income. Recently, she realized that her emotional condition was the result of her earlier employment and that she should have applied for FECA compensation in October 2021 when she was diagnosed with major depressive disorder.

Appellant submitted a June 15, 2022 note from Karen Honecker, a licensed clinical professional counselor (LCPC), who noted that appellant was a client from October 27, 2021 through April 13, 2022, and was suffering from depression and anxiety. Ms. Honecker noted that one of appellant's chief complaints was stress that was prevalent in her workplace environment.

In development letters dated August 9 and 24, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 60 days to respond.

OWCP received a copy of an Equal Employment Opportunity (EEO) initial interview and withdrawal of complaint.

Appellant also provided a September 16, 2023 statement, wherein she reiterated that she had major depressive disorder and anxiety disorder and that she was unable to perform her employment duties due to the toxic work environment, which included heavy workloads, long work hours, staff shortages, and constant changes within the organization to meet tight deadlines. She explained that during staff shortages, supervisors had to pitch in to help with the operation, which included pushing and pulling mail containers. Appellant alleged that her physicians supported that her working conditions and duties contributed to a stressful work environment. She noted that she filed an EEO complaint in 2022, but she withdrew it as she was only a few weeks from retirement.

In a May 10, 2023 report, Dr. Joyce Evans, a Board-certified family practitioner, noted that during treatment visits, appellant was noted to have depression with anxiety. In an August 4, 2023

³ The record indicates that appellant retired from the employing establishment in April 2022.

report, she related that appellant's depression had not resolved, and that it impacted her activities of daily living. Dr. Evans related that appellant had headaches and sleep problems due to her depression, and that she had to stop working due to a toxic work environment.

In a May 1, 2023 report, Ms. Honecker noted that she treated appellant for major depressive disorder from October 27, 2021 to April 13, 2022.

In a September 15, 2023 report, Jacqueline L. Navin, Ph.D., a licensed psychologist, noted that as the facility's director she had supervised Ms. Honecker in her treatment of appellant for the diagnosed condition of major depressive disorder.

In a September 20, 2023 development letter, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor and information regarding appellant's job and whether there were staffing shortages or extra demands. It afforded the employing establishment 30 days to respond. No response was received.

In a follow-up letter dated October 13, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 24, 2023 letter to submit the requested necessary evidence. OWCP further advised that if the necessary evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a November 1, 2023 medical report, Dr. Ernest Africano, Board-certified in cardiovascular disease and internal medicine, noted that appellant presented with chief complaints of major depressive disorder and generalized anxiety disorder that she attributed to her employment at the employing establishment. He related that she worked at the employing establishment for 25 years and as a service supervisor from December 2016 to April 2022 when she retired as a result of mental health conditions. Dr. Africano related that appellant attributed her condition to her toxic work environment, heavy work loads, long hours, staff shortages, and the constant pressure from management to meet tight deadlines. He noted that her symptoms began in May 2021, after having worked at the employing establishment for approximately four years. Dr. Africano noted that appellant had excessive anxiety and worry (apprehensive expectation), occurring more days than not for at least six months, regarding a number of events/activities which included work, financial matters, and her personal life, all as a result of her workers' compensation case.

By decision dated February 6, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a compensable employment factor. Thus, the requirements had not been met to establish an injury as defined by FECA.

On February 21, 2024 appellant requested reconsideration. She noted that additional documentation would be presented to substantiate her claim. However, no further evidence was received.

By decision dated February 26, 2024, 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 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 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 accepted compensable employment factors are causally related to the diagnosed emotional condition.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 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.⁹ 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.¹⁰

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. However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 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).

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); Michael E. Smith, 50 ECAB 313 (1999).

⁷ *See C.C.*, Docket No. 21-0283 (issued July 11, 2022); S.K., Docket No. 18-1648 (issued March 14, 2019); Donna Faye Cardwell, 41 ECAB 730 (1990).

⁸ T.G., Docket No. 19-0071 (issued May 28, 2019); L.D., 58 ECAB 344 (2007); Robert Breeden, 57 ECAB 622 (2006).

⁹ Lillian Cutler, 28 ECAB 125 (1976); L.H., Docket No. 18-1217 (issued May 3, 2019); Trudy A. Scott, 52 ECAB 309 (2001).

¹⁰ A.E., Docket No. 18-1587 (issued March 13, 2019); Gregorio E. Conde, 52 ECAB 410 (2001).

in what would otherwise be an administrative matter, coverage will be afforded.¹¹ 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.¹²

OWCP's procedures 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.¹³ In certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹⁴

ANALYSIS -- ISSUE 1

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

In a September 20, 2023 development letter, OWCP requested additional information from the employing establishment including comments from a knowledgeable supervisor and additional information regarding appellant's job, and whether there were staffing shortages or extra demands. It afforded the employing establishment 30 days to respond. No response was received.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁵ 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.¹⁶

On remand, OWCP shall obtain the requested information from the employing establishment regarding appellant's emotional/stress-related condition claim, particularly the allegations of overwork. Following this and other such further development, it shall issue a *de novo* decision.¹⁷

CONCLUSION

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

¹¹ *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).

¹² *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

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

¹⁴ 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).

¹⁵ *See L.S.*, Docket No. 18-1208 (issued April 30, 2020); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁶ *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *N.S.*, 59 ECAB 422 (2008).

¹⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2024 decision of the Office of Workers' Compensation Programs is set aside, and this case is remanded for further proceedings consistent with this decision of the Board. The February 26, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: July 8, 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