

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Langley, WA, Employer**

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**Docket No. 17-1070  
Issued: August 7, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On April 17, 2017 appellant filed a timely appeal from a March 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish an emotional condition due to factors of her federal employment.

**FACTUAL HISTORY**

On October 14, 2018 appellant, then a 49-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) for an alleged work-related panic attack on September 29, 2016. She stopped work on September 29, 2016 and received continuation of pay

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

beginning September 30, 2016. On the Form CA-1, appellant's immediate supervisor, the postmaster at her workplace, checked a box marked "Yes" indicating that appellant was injured in the performance of duty, but noted that she had not advised him of the cause of her claimed September 29, 2016 injury.

In an accompanying statement, appellant indicated that the morning of September 29, 2016 was a normal, hectic day at her workplace and that, at approximately 10:30 a.m., she began to experience hives on the back and side of her neck, and across her belly and groin region. She indicated that approximately an hour and a half later she experienced additional symptoms including dizziness and shortness of breath. Appellant indicated that she was unsure whether she was suffering a heart attack or a panic attack. She advised a supervisor that she needed to seek medical attention and then left the workplace in order to do so.

In an October 19, 2016 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It asked her to complete and return a questionnaire which inquired about her work duties and the factors she was implicating as causing or aggravating her claimed condition. OWCP requested that appellant indicate whether she was claiming a traumatic injury or an occupational disease.

Appellant submitted medical evidence in support of her claim, including several reports of Dr. Christopher J. Bibby, a Board-certified family practitioner. In a September 29, 2016 report, Dr. Bibby noted that appellant reported that she was working in a toxic work environment with overwhelming stress, that she worked seven days per week for 13 to 15 hours per day, and that she had not received support from superiors to handle workplace violence. He diagnosed depression and anxiety. In a September 30, 2016 report, Dr. Bibby noted that appellant reported that she came in secondary to stress and felt that she almost had a panic attack.<sup>2</sup>

On November 25, 2016 appellant filed a claim for compensation (Form CA-7) claiming disability for the period November 12 to 25, 2016.

In a November 28, 2016 decision, OWCP denied appellant's claim because she had failed to establish fact of injury, *i.e.*, that the event or events claimed as causing injury had occurred as alleged. It noted that she had not responded to its questionnaire regarding the facts of the case.

On December 11, 2016 appellant requested reconsideration of OWCP's November 28, 2016 decision denying her claim. She indicated that, prior to suffering a panic attack at work on September 29, 2016, she had to perform her position as the supervisor of customer service, as well as the position of postmaster because the usual postmaster was absent. Appellant asserted that she worked an average of 13 hours per day for a period of 16 straight days without a day off (September 14 to 29, 2016). She indicated that, on September 18 and 25, 2016, which were Sundays, she was on-call and worked from home managing the delivery operations of Amazon parcels, handling employee disputes, and the coordination and assignment of the delivery employees. Appellant noted that she also handled the final summation of the delivered parcels to confirm all parcels had been appropriately delivered and she indicated that she had not been paid

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<sup>2</sup> Dr. Bibby noted that appellant had expressed concern about a coworker who had previously hit or pushed her, but she provided no further details about this matter.

for this Sunday work. She asserted that the stressors of the continuous and excessive hours and days off work, coupled with the lack of support from the postmaster, resulted in her suffering the panic attack on September 29, 2016.

Appellant also noted that, during the week of September 1, 2016, she was notified that the postmaster would be leaving and going to work at the Lynnwood Post Office and she indicated that, each day after September 1, 2016, she would ask the postmaster how long he would be gone and what arrangements would be made to cover for his absence. She asserted that the postmaster would not adequately address her questions. Appellant indicated that various clerks asked her about their work schedules, but noted that she could not respond to them because she had not received direction from the postmaster. She indicated that the postmaster had been “playing with the clerk schedule over the previous weeks” due to a violence in the workplace situation between two workers which had not yet been resolved. Appellant had to create the work schedules without proper guidance. She discussed attempts on September 14, 16, and 17, 2016 to obtain information from the postmaster about the scheduling of clerks and her need for assistance, but she asserted that he did not provide an adequate response. Appellant indicated that on September 29, 2016 she sent another e-mail and text request to the postmaster as she needed him to return one of her mail carriers that he had sent to another post office, but that the postmaster did not respond. She further discussed the panic attack she sustained on September 29, 2016.

Appellant submitted additional medical evidence in support of her claim, including several reports of Dr. Bibby.

In a March 10, 2017 decision, OWCP modified its November 28, 2016 decision to reflect that appellant’s claim for a stress-related condition due to factors of her federal employment was now denied because of her failure to establish that her claimed injury occurred in the performance of duty. It found that she failed to establish any compensable work factors. Under the heading “Accepted Event(s) That Are Not Factors of Employment,” OWCP indicated that the several incidents/conditions of work constituted administrative factors which were not compensable in the absence of management error or abuse. The incidents/conditions included the fact that appellant worked an average of 13 hours per day for a period of 16 straight days and that she was not paid for working on Sunday, that the postmaster did not create a clerk schedule or address the violence in the workplace situation, that she created the clerk schedule and worked fulltime as a clerk for 13 plus hours per day, often without lunch, and that numerous e-mails, telephone calls, and text messages to the postmaster were not returned. OWCP noted that these administrative matters were not directly related to her specific work duties and indicated that an employee’s complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, outside the scope of coverage provided by FECA.

### **LEGAL PRECEDENT**

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

Appellant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>9</sup> This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>10</sup>

In cases involving stress-related or 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

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<sup>3</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>6</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>7</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>8</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>9</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>10</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>12</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the claimant's diagnosed condition and the compensable employment factors.<sup>13</sup>

### ANALYSIS

Appellant alleges that she sustained a stress-related or emotional condition as a result of a number of employment incidents and conditions she experienced overtime.<sup>14</sup> OWCP denied her claim because she had not established any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA. The Board notes that a number of appellant's allegations pertain to her regular or specially assigned duties under *Cutler*.<sup>15</sup>

The Board finds that, at present, OWCP has not adequately addressed appellant's allegations that she sustained a stress-related condition related to her regular or specially assigned duties. In its March 10, 2017 decision denying her claim, it indicated, under the heading "Accepted Event(s) That Are Not Factors of Employment," that it was accepted that she worked an average of 13 hours per day for a period of 16 days, but it noted that her working this schedule did not constitute a work factor because it was considered an administrative factor which was not compensable in the absence of management error or abuse.<sup>16</sup> As noted above, appellant explicitly implicated this work schedule as causing or aggravating her claimed stress-related condition. OWCP did not explain how its finding that appellant's work schedule was an administrative factor comports with relevant Board precedent. As noted above, a claimant's

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<sup>11</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>12</sup> *Id.*

<sup>13</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>14</sup> The Board notes that, while appellant initially filed a claim for a September 29, 2016 traumatic injury, she later claimed that incidents and conditions at work which she experienced over the course of more than one workday or work shift, caused or aggravated her stress-related condition. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

<sup>15</sup> See *supra* note 4.

<sup>16</sup> OWCP also noted, under the heading "Accepted Event(s) That Are Not Factors of Employment," that appellant worked full time as a clerk for 13 plus hours per day, often without lunch, but indicated that this fact constituted an administrative factor which was not compensable in the absence of management error or abuse. See *supra* notes 6 through 8 regarding the characterization of administrative factors.

reaction to his or her regular or specially assigned work duties, if factually established, may constitute a compensable work factor.<sup>17</sup> Moreover, the Board has held that overwork, when substantiated by sufficient factual information to corroborate a claimant's account of events, may be a compensable factor of employment.

Moreover, OWCP did not adequately address appellant's other allegations that aspects of her work duties caused or aggravated a stress-related/emotional condition. In its March 10, 2017 decision, it addressed some of these matters in a cursory manner. Under the heading "Accepted Event(s) That Are Not Factors of Employment," OWCP indicated that the several incidents/conditions of work constituted administrative factors which were not compensable in the absence of management error or abuse. The incidents/conditions included the fact that the postmaster did not create a clerk schedule or address the violence in the workplace situation, that appellant created the clerk schedule, and that numerous e-mails, telephone calls, and text messages to the postmaster were not returned. However, in her December 11, 2016 statement, appellant provided a much more detailed list of incidents and conditions at work which she felt were directly related to her regular or specially assigned work duties as a customer service supervisor of customer service, as well as the additional duties she had to perform when the postmaster was absent. She provided specific dates on which these claimed incidents and conditions occurred, but OWCP did not address her claims in any detail.<sup>18</sup>

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.<sup>19</sup> OWCP procedures further specify that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."<sup>20</sup> These requirements are supported by Board precedent.<sup>21</sup> For the reasons described above, OWCP did not provide sufficient findings of fact so that appellant could clearly understand the reason for the disallowance of her claim and the evidence necessary to overcome the defect of the claim.

The Board notes that it does not appear that OWCP made any attempt to obtain information from the employing establishment regarding the nature and extent of appellant's work duties, work schedule, or other conditions of her job as a supervisor of customer service, particularly during the period when the postmaster was absent. Under FECA, although it is the

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<sup>17</sup> See *supra* note 4; *W.M.*, Docket No. 15-1080 (issued May 11, 2017).

<sup>18</sup> Moreover, the Board notes that, while OWCP characterized the matters it accepted as factual as constituting administrative factors, it did not adequately explain why some of them, such as appellant's creation of the clerk schedule, would not be directly related to her regular or specially assigned work duties as a supervisor of customer service.

<sup>19</sup> 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

<sup>20</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

<sup>21</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

burden of an employee to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>22</sup>

Therefore, the case shall be remanded to OWCP for further development as set forth above and including the issuance of a *de novo* decision which contains adequate findings of facts and reasoning concerning appellant's claim for a stress-related condition.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 10, 2017 merit decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: August 7, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>22</sup> *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).