

FACTUAL HISTORY

On July 12, 2017 appellant, then a 51 year-old individual tax advisory specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained stress, anxiety, and asthma causally related to factors of her federal employment. She maintained that a customer related that K.B., a manager, had instructed her to telephone a taxpayer advocate and make false complaints about “that black lady.”³ Appellant added that, as a result, she was afraid to report to work.

In a July 17, 2017 development letter, OWCP advised appellant of the additional factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her alleged injury, including comments from a knowledgeable supervisor on the accuracy of her statements and explaining any points of disagreement. OWCP afforded both parties 30 days to submit the requested evidence.

In response, appellant submitted an undated letter to her supervisors in which she addressed allegations that she was rude and described her challenges dealing with customers. With her response she further submitted an October 29, 2013 statement addressing allegations that she was “booty dancing,” March 24, 2014 and March 6, 2015 statements regarding complaints by a customer, a statement addressing July 8, 2015 instructions to scan each payment when received, and e-mails regarding a complaint from a taxpayer about the order in which he was served.

On August 7, 2017 the employing establishment indicated on a copy of the July 17, 2017 development letter that comments from a knowledgeable supervisor upon the accuracy of appellant’s statement and explaining any points of disagreement were “N/A” (not applicable). It further responded “No” to the question of whether staffing shortages affected her workload and responded in the affirmative that she was able to perform her duties in accordance with expectations with no conduct problems. The remainder of the questions were answered with a simple “yes” or “no” without explanation.

By decision dated August 29, 2017, OWCP denied appellant’s occupational disease claim finding that she had failed to establish the factual component of fact of injury. It explained that she had not provided a detailed factual statement providing specific details regarding the incidents that she believed resulted in her emotional condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 25, 2017 appellant requested reconsideration. In an undated accompanying statement to OWCP, she related that on July 7, 2017 a customer, S.B., “apologized for allowing herself to make a false statement....” S.B. told appellant that a thin Caucasian lady gave her and others a telephone complaint number and advised them to refer to her as “the black lady.” She telephoned the complaint line and told them that appellant “gave her poor customer service.” S.B. advised that the thin Caucasian lady had “lined us up and told us what to say which was negative and damaging” and had rewarded their participation with “tax benefits and [preferential]

³ On the claim form, appellant referred to K.B. as C.B.

treatment.” Appellant advised that S.B. told her coworkers, R.C. and W.L. about the incident. She maintained that she had become “overwhelmed with fear that triggered an asthma attack.”

In a separate undated statement, appellant asserted that she had sustained an injury on July 7, 2017 when S.B. told her “she and many others were recruited to make false allegations about [appellant]” and to refer to her as “the black lady” by the manager, who appellant indicated was to K.B. S.B. agreed to inform a manager, L.P., about the incident. Appellant was not in the room when the customer spoke with the manager.

Appellant related that her condition began in 2012 when K.B. sent an e-mail which falsely accused her of putting a sign on the door. She further contended that the employing establishment maintained that she was rude to a customer, investigated her purchase of a house, and watched her house. Appellant alleged that she had been threatened and called racial “epitaphs” by customers.

In a statement dated September 18, 2017, R.C., a coworker advised that a taxpayer told appellant that K.B. had “asked her if she wanted to complain about the black lady and gave her the phone to do so.”⁴ In an undated statement received by OWCP on September 25, 2017, W.L., a coworker, advised that on July 7, 2017 S.B. told appellant that “she was referred to as the black lady while having a conversation with K.B. [S.B.] stated to [appellant] that she [did not] know why they would treat her that way because she is so nice.”

On November 1, 2017 S.B. confirmed that on July 7, 2017 she “spoke with [appellant] and told her about the incident in December 2016. The incident involved [K.B.] and her handling of people waiting to see [appellant] as she was the only person working that day.” She advised that appellant took her to speak with L.P. regarding the incident and, after appellant had left the room, she “proceeded to tell her what I had told [appellant].”

By decision dated February 22, 2018, OWCP denied modification of its August 29, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.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

⁴ R.C. also referred to K.B. as C.B.

⁵ *Supra* note 2.

⁶ A.J., Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ 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).

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.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 an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

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."¹²

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 the factual argument with which it disagrees and provide evidence or argument to support that position.¹³ Its

⁸ 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).

⁹ 28 ECAB 125 (1976).

¹⁰ See *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹¹ See *G.G.*, Docket No. 18-0432 (issued February 12, 2019).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997); see also *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

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

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.¹⁴

ANALYSIS

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

Appellant has not attributed her emotional conditions to the performance of her work duties under *Cutler*.¹⁵ Instead, she generally contended that K.B. inaccurately accused her of placing a sign on the door and that the employing establishment maintained that she was rude to a customer, investigated her home purchase, and watched her house. Appellant also asserted that customers called her racial “epitaphs.” Primarily, however, she attributed her condition to a customer, S.B., informing her on July 7, 2017 that K.B. had told her to complain about her to a taxpayer advocate. The customer apologized to her for making a false statement. S.B. related that a thin Caucasian woman provided her and others with a telephone number to call and complain about “the black lady,” told them what to say, and rewarded their cooperation with tax advantages. In a November 1, 2017 statement, S.B. confirmed that on July 7, 2017 she had spoken with appellant and L.P. about a December 2016 incident and told L.P. the same information that she had conveyed to appellant.

OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. In response, it advised that comments from a knowledgeable supervisor regarding the accuracy of her allegations and explaining any points of disagreement was not applicable. Further, one word answers were given to a series of questions asking for an explanation. OWCP did not request further information from the employing establishment addressing appellant’s contentions. As discussed, OWCP’s procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.¹⁶

Although it is a claimant’s burden of proof to establish her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment. It shares responsibility to see that justice is done.¹⁷ In a case where it “proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner.”¹⁸ On remand, OWCP should obtain a statement from the employing establishment addressing appellant’s allegations. OWCP’s Federal (FECA) Procedure Manual provide that, if an employing establishment fails to respond to a request for comments on a claimant’s allegations, OWCP’s

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

¹⁵ *Supra* note 12.

¹⁶ *Supra* note 17.

¹⁷ *S.L.*, *supra* note 15.

¹⁸ *Id.*

claims examiner may usually accept the claimant's statements as factual.¹⁹ After such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2018 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: October 9, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5d(1) (June 2011). See also *L.B.*, Docket No. 17-1671 (issued November 6, 2018).