

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

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C.D., Appellant	)	
	)	
and	)	Docket No. 21-0700
	)	Issued: December 7, 2021
DEPARTMENT OF THE INTERIOR, BUREAU	)	
OF LAND MANAGEMENT, Elko, NV, Employer	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 1, 2021 appellant filed a timely appeal from a November 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> The Board notes that, following the November 10, 2020 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition causally related to the accepted July 30, 2020 employment incident.

## FACTUAL HISTORY

On September 3, 2020 appellant, then a 53-year-old transportation specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2020 he witnessed a collision between two single engine air tankers, which caused him to develop post-traumatic stress disorder. On the reverse side of the claim form appellant's supervisor acknowledged that he was injured in the performance of duty.

In a development letter dated October 1, 2020, OWCP advised appellant that it had not received any documentation in support of his claim. It further advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant responded on October 12, 2020; however, most of the document was illegible.

Appellant subsequently submitted a letter dated October 22, 2020 from Amanda T. Lutz, M.A., LPA, HSP-PA, a licensed psychological associate. Ms. Lutz stated that appellant appeared to meet the criteria for post-traumatic stress disorder (PTSD), which resulted from work incidents that occurred in July 2020.

By decision dated November 10, 2020, OWCP accepted that the July 30, 2020 employment incident occurred, as alleged, but denied the claim as appellant had not submitted any medical evidence from a qualified physician containing a medical diagnosis and rationalized medical opinion regarding causal relationship. It concluded, therefore, that the requirement had not been met to establish an injury as defined by FECA.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>3</sup> *Id.*

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>7</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>8</sup> In the case of *Lillian Cutler*,<sup>9</sup> 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 illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>10</sup> When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>11</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>13</sup>

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *see W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>8</sup> *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

<sup>9</sup> 28 ECAB 125 (1976).

<sup>10</sup> *See G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>11</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 9.

<sup>12</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to the accepted July 30, 2020 employment incident.

Appellant submitted a letter dated October 22, 2020 from Ms. Lutz, a licensed psychological associate, who diagnosed PTSD and noted in general terms that appellant had experienced an employment incident in July 2020. However, certain healthcare providers are not considered physicians as defined under FECA.<sup>14</sup> 5 U.S.C. § 8101(2) provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” The evidence of record does not establish that Ms. Lutz was a clinical psychologist and, therefore, a physician under FECA. Consequently, Ms. Lutz’ report is of no probative medical value for purposes of establishing entitlement to FECA benefits.<sup>15</sup>

As there is no medical evidence of record establishing that appellant’s emotional condition was causally related to the accepted July 30, 2020 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for rec onsideration 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 his burden of proof to establish an emotional condition causally related to the July 30, 2020 employment incident.

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<sup>14</sup> 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>15</sup> *See also M.C.*, Docket No. 19-1074 (issued June 12, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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