

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional/stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On September 29, 2020 appellant, then a 37-year-old mission support specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained post-traumatic stress disorder (PTSD), anxiety, panic attacks, blurry vision, sweaty palms, and body tingling due to factors of his federal employment related to an assault by a coworker at work and management's multiple attempts to make him report to the duty station of the alleged assailant. He noted that he first became aware of his claimed injury on December 11, 2019 and first realized its relation to his federal employment on September 18, 2020. Appellant did not stop work. On the reverse side of the form, V.K., appellant's immediate supervisor indicated that appellant was allowed to work at home "for the interim."

In a development letter dated October 7, 2020, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In a November 5, 2020 letter, C.E., an injury compensation coordinator for the employing establishment, reported that the alleged incident, which led to appellant filing an occupational disease claim was being investigated by the employing establishment's Office of Professional Responsibility and advised that, therefore, only summaries of statements by anonymous witnesses could be provided. She indicated that an employee identified as "Witness 1" stated that he did not witness the alleged incident between appellant and "Employee A," but saw appellant after the alleged incident and observed that he was very upset. Witness 1 reported that he had seen Employee A get confrontational with others in the past, but he presently was "not as bad as he used to be." Witness 1 further noted that when Employee A is upset he "gives a bad stare" and his personality can change in a moment's notice, but he usually would return later and apologize for his actions. Witness 1 advised that he was not afraid of or threatened by Employee A.

C.E. further advised that "Witness 2" stated that Employee A confirmed the incident occurred with appellant but explained that it was just horseplay, and he did not intend to physically threaten appellant. Witness 2 further noted there had been other physical alterations and disputes involving Employee A, who had previously initiated conversation with him in a "confrontational and sarcastic manner." Witness 2 also expressed discomfort being in the company of Employee A when he became agitated and angry, and indicted that he had "had contact" with Employee A when he yelled, acted disrespectfully and made implied threats. Witness 2 advised that he told appellant to be cautious around Employee A. In addition, C.E. indicated that Employee A stated he was approximately five inches from appellant and "in his personal space" because the incident took place in a confined area. Employee A advised that he made no physical contact with appellant.

In an undated and unsigned statement received by OWCP on November 5, 2020, an individual who self-identified as appellant's supervisor since June 2020 indicated that the

employing establishment was disputing appellant's claim that "the situation that happened in December 2019" caused him stress and anxiety.⁴ The supervisor maintained that he informed appellant in mid-September of his return to work on September 28, 2020, but appellant did not indicate that the thought of going back to work "gave him all the issues he listed on his claim form."⁵ The supervisor maintained that no aspect of appellant's job was stressful, noting that appellant worked "extremely little" overtime and worked two hours of compensatory time during the past four months. Appellant was not given any extra workload, and that he had less of a workload than his counterpart at work. The supervisor indicated that work deadlines were usually set at a couple of days to a week, and noted that appellant was not involved in a conflict other than "the [one] incident ... which he's using for the claim."

In a December 3, 2020 statement, appellant indicated that at approximately 4:00 p.m. on December 3, 2019 he was receiving computer training in the office of J.D., a work lead maintenance mechanic. He noted that J.D. asked him if he could inform J.A., a maintenance mechanic for the employing establishment, about a modification that needed to be made in order to properly close out a work order pertaining to a repair job done by the maintenance department. Appellant advised that, just as he was about to exit J.D.'s office, J.A. happened to be walking into the office. He noted that J.A. initially acted in a friendly manner, but that his attitude totally changed when he told him that some corrections had to be made by him in the work order. Appellant indicated that J.A. got into a more rigid stance, no longer smiled, and adopted a facial expression that appeared to show he was upset. He advised that J.A.'s face became red, and he exclaimed in sarcastic voice, "do you want me to do it right now?" When appellant replied, "if you can, yes, please," J.A. became more agitated, and stared at him as though he were sizing him up. Appellant indicated that J.A. became even more irate when he called him "Sir," and that he made additional sarcastic comments before he left the office. He noted that, after an unspecified period, he was standing with his back to the door inside J.D.'s office, and turned his head and saw J.A. standing to his right side. Appellant advised that J.A. had a "crazy evil look" in his eyes, stood in place without saying a single word, and was holding a large drywall knife in his hand which was pointed at his right side a little above waist level. The blade was five to six inches long with a serrated edge and sharp tip. Appellant indicated that he was in shock at that point, and told J.A., "You know that what you are doing is a threat, right?" He noted that J.A. did not say a single word, but placed an index finger on the knife's tip and moved the knife in a circular motion while staring at him. Appellant indicated that J.A. then left J.D.'s office without saying a word.

Appellant further indicated that J.D. did not appear surprised that J.A. had assaulted him, but rather advised that J.A. had been involved in prior violent incidents with coworkers. He indicated that J.D. was concerned about how J.A. would react if the incident were reported because, in connection with another altercation, he told another employee, "I know where you live." Appellant advised that on December 4, 2019 he reported the prior day's assault to M.G., a supervisor in the maintenance mechanic division, and to D.W., a regional director. He indicated that D.W. instructed him to take his computer, and work at home until he received further notice. Appellant advised that on December 11, 2019, M.H., another management official, instructed him

⁴ As previously noted, V.K. identified himself as appellant's immediate supervisor on the Form CA-2 filed on September 29, 2020.

⁵ The supervisor advised that appellant had been allowed to work at home since December 2019, and that management requested he return to the work facility on September 28, 2020 because he required more in-depth training and oversight.

to return to his regular duty station, *i.e.*, the same location where J.A. worked during the same hours. He asserted that, around this time, he learned that none of the management officials to whom he had reported the December 3, 2019 assault had referred the matter to upper-management officials. Appellant advised that he became increasingly uncomfortable as additional managers requested that he return to work at his regular duty station, and that he felt that these managers did not have any regard for his safety. He described an instance in late-September 2020 when a manager gave him a direct order to return to his duty station, and then threatened to place him on absent without leave (AWOL) status if he did not comply. Appellant advised that he reluctantly returned to his regular duty station on October 26, 2020 and felt that his safety was threatened while working there. He indicated that he had a flare-up of symptoms on December 1, 2020 and stopped work the next day.

Appellant submitted medical reports, dated beginning in November 2000, in which attending physicians discussed his psychological condition.

In a December 18, 2020 development letter, OWCP requested additional information from the employing establishment, including clarification of the submitted witness statements, and a report of any investigation that was carried out regarding the claimed December 3, 2019 assault. It afforded the employing establishment 30 days to respond. No response was received.

Appellant submitted e-mails concerning the claimed December 3, 2019 assault and its aftermath, including his attempts to remain working at home. He also submitted additional medical reports.

By decision dated January 26, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a compensable employment factor, and therefore, did not establish an emotional condition in the performance of duty.

On January 25, 2022 appellant, through counsel, requested reconsideration of the January 26, 2021 decision. In a brief of the same date, counsel argued that appellant had established the occurrence of a work-related attack on December 3, 2019.

In a January 25, 2022 statement, appellant further discussed the details of his claimed employment factors. He also submitted additional medical evidence.

By decision dated March 3, 2022, OWCP denied modification of its January 26, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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

⁶ 5 U.S.C. § 8101 *et seq.*

employment injury.⁷ 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.⁸

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.⁹

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.¹⁰ 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.¹¹

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions which he or 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.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 factors of employment and may not be considered.¹⁴ 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

⁷ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ 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).

⁹ *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).

¹⁰ *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹² *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.¹⁵

ANALYSIS

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

Appellant has alleged that he sustained an emotional/stress-related condition as a result of a number of incidents and conditions at his workplace. He claimed that he was assaulted by a coworker who had a drywall knife in his hand at work on December 3, 2019 and that management later attempted to have him work in the same workplace as his alleged assailant. OWCP denied appellant's emotional condition claim finding that he had not established a compensable employment factor.

The Board finds that OWCP has not adequately developed the question of whether appellant was assaulted by a coworker at work on December 3, 2019. The Board notes that this claimed incident ostensibly could relate to his regular or specially assigned duties under *Lillian Cutler*.¹⁶ The Board has held that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁷ It has an obligation to see that justice is done.¹⁸

The Board notes that, although OWCP undertook development of the factual evidence, a number of aspects of this development remain unresolved. A management official indicated that an investigation of the claimed December 3, 2019 assault was carried out by the employing establishment's Office of Professional Responsibility, but the case record does not contain any report or findings associated with this investigation. The employing establishment provided very brief summaries of statements from coworkers that were listed anonymously, including one that appears to have been made by J.A., but it remains unclear if any attempts were made to add the actual statements to the record. Importantly, although appellant indicated that J.D. was present during the alleged December 3, 2019 assault by J.A., it is unclear whether an attempt was made to have J.D. provide a witness statement.

Therefore, the case must be remanded to OWCP for further development of this matter. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional/stress-related condition claim, which includes an evaluation of all of his claimed employment factors.

¹⁵ *Id.*

¹⁶ See *Lillian Cutler*, *supra* note 10.

¹⁷ *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018).

CONCLUSION

The Board finds that this case is not in posture for decision. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 4, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board