

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

K.F., Appellant)	
)	
and)	Docket No. 23-0278
)	Issued: August 7, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
CHARLIE NORWOOD VA MEDICAL)	
CENTER, Augusta, GA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 22, 2022 appellant filed a timely appeal from a December 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

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

FACTUAL HISTORY

On July 25, 2022 appellant, then a 49-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed extreme stress, aggravating her preexisting medical

¹ 5 U.S.C. § 8101 *et seq.*

condition due to factors of her federal employment, including her supervisor's abuse, belittlement, humiliation, harassment, retaliation, isolation, and discrimination against her due to her Equal Employment Opportunity Commission (EEOC) complaint which created a hostile work environment. She asserted that she experienced debilitating panic and anxiety attacks due to the harassment she was subjected to, which caused lapses in memory, focus, and concentration. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on July 22, 2022. She did not stop work.

In support of her claim, appellant provided a series of medical reports. Dr. Cynthia Butler, a licensed clinical psychologist, examined appellant on September 8, 2018 through April 4, 2019 diagnosing persistent depressive disorder with persistent major depressive episode, panic disorder, and generalized anxiety disorder. On March 26 and 30, 2018 Dr. Adrian Janit, a licensed clinical psychologist, examined appellant and diagnosed post-traumatic stress disorder (PTSD), persistent depressive disorder with persistent major depressive episodes, with current episode, moderate. In notes dated June 25 through September 2, 2020, Dr. M. Kevin Turner, a clinical psychologist, diagnosed recurrent major depressive disorder and PTSD.

In an August 9, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant provided an August 12, 2022 notice advising that her EEOC complaint was accepted. She also provided a series of e-mails dated June 2 through August 18, 2022 detailing interactions with her supervisor, M.S. On June 2, 2022 appellant received an e-mail from J.T., a program support screening supervisor, regarding S.W.'s assistance as a screener on June 5, 2022. She noted on June 6, 2022 that M.S. had not yet confirmed S.W.'s action and that she, therefore, could not enter her premium pay without authorization. Appellant asked that she be included on correspondence with M.S. regarding timekeeping. On June 6, 2022 M.S. directed S.W. to ignore appellant's request as she would inform her directly. On August 18, 2022 appellant alleged that this was an incident of M.S. undermining her, harassing her, abusing her, and preventing her from performing her job as she needed to be included to perform timekeeping duties accurately and proficiently.

Appellant alleged that on June 6, 2022 M.S. asserted that "something was going on" with her in regard to her tone and attitude. When she replied that she did not understand M.S.'s reference, M.S. became irritated, hatefully glared, and retorted that she could play this game, but appellant denied playing a game. Appellant believed this statement to be a direct threat and alleged that M.S. treated her disrespectfully and abusively throughout that day.

On June 7, 2022 appellant received a request for mediation with M.S., which she refused. She asserted that M.S. had been investigated three times, and that she had abused her power. Appellant alleged that 20 members of staff had left in the last six months due to M.S. She asserted that on June 9, 2022 she experienced a timekeeping issue with M.S. and S.W., that M.S. was condescending, and that she refused to respond to request for information regarding accounts. Appellant further asserted that M.S. did not know what she was talking about when she directed her to mirror a coworker's accounts and that she had to endure demeaning, condescending, and derogatory treatment.

Following an informal discussion on June 13, 2022 M.S. sent a June 13, 2022 e-mail including a request that appellant wear shoes at the employing establishment, an inquiry about reasonable accommodations, a request that she notify her supervisors when leaving the premises for breaks, lunch, or business, and a directive to attend the daily meeting. On August 18, 2022 appellant alleged that M.S. had abused her on June 6, 2022 that she had refused mediation scheduled by M.S., and that M.S. had scheduled a meeting regarding reasonable accommodations and grilled her which was harassment and retaliation.

On July 5, 2022 M.S. requested that appellant update a memorandum. Appellant provided the requested updates on July 6, 2022. On July 22, 2022 M.S. directed her to make corrections. Appellant requested specific guidance and M.S. instructed her to print out the document for notations. M.S. signed the document and found it ready for submission on July 22, 2022. Q.M., a budget analyst, requested the addition of a certifying official in a July 22, 2022 email. On July 23, 2022 M.S. indicated that she was unaware of the requirement for two officials. Appellant alleged on August 18, 2022 that this was harassment as she had successfully completed documentation for 13 years and as the revisions required by M.S. were incorrect and a pretext to harass her.

In a July 21, 2022 e-mail, appellant requested that M.S. add a supervisor for time and leave. M.S. responded and requested a subject line on e-mails. Appellant acknowledged the oversight, and M.S. asserted that all of the training e-mails also lacked a subject line. On August 18, 2022 she alleged that M.S. used a condescending tone, nitpicked, and harassed her.

In a report dated September 15, 2022, Dr. Turner noted appellant's allegations of harassment and bullying by her supervisor. He diagnosed PTSD, borderline intellectual function, and attention deficit/hyperactivity type.

By decision dated December 16, 2022, OWCP denied appellant's occupational disease claim on the basis of performance of duty, finding that the requirements had not been met to establish that she sustained an emotional condition that arose during the course of employment and within the scope of any compensable factors of employment as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

employment injury.³ 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.⁴

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.⁵

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*,⁶ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁷ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.⁸ 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.⁹

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹² A disabling condition resulting from an employee's feelings of job insecurity per se is not sufficient to constitute a person's injury sustained in the performance of duty within the meaning of FECA. Thus, disability

³ *G.W.*, Docket No. 22-1360 (issued May 4, 2023); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.115(e); *G.W., id.*; *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).

⁵ *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).

⁶ 28 ECAB 125 (1976).

⁷ *Supra* note 1.

⁸ *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

⁹ *Supra* note 6.

¹⁰ *B.O.*, Docket No. 17-1986 (issued January 18, 2019).

¹¹ *Id.*

¹² *M.R.*, Docket No. 18-0305 (issued October 18, 2018).

is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment, or to hold a particular position.¹³

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.¹⁴ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁵ A claimant must support his or her allegations with probative and reliable evidence.

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁶ Mere perceptions of harassment are not compensable under FECA.¹⁷ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁸ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁹

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 compensable factors of employment and may not be considered.²⁰ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that

¹³ *Supra* note 6.

¹⁴ *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁵ *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁶ *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁷ *Id.*

¹⁸ *See J.R.*, Docket No. 20-1382 (issued December 30, 2022); *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁹ *L.J. and S.G., id.*; *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

²⁰ *L.J. and S.G., supra* note 18; *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.²¹

OWCP's regulations 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.²² Its procedures further provide 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.²³

ANALYSIS

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

In her July 25, 2022 Form CA-2, appellant alleged that she was subjected to a hostile work environment due to stress as the result of abuse, belittlement, humiliation, harassment, retaliation, isolation, and discrimination by her supervisor after filing a EEOC complaint. The Board finds that OWCP has not properly developed appellant's claim. In its August 9, 2022 development letter, OWCP advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It, however, did not request a statement from the employing establishment concerning appellant's allegations, as is required under its procedures.²⁴

As discussed, 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.²⁵ Its procedures 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.²⁶ While appellant provided a detailed response to OWCP's development letter, along with supporting documentation, OWCP did not request relevant information from the employing establishment, that is information normally in control of the employing establishment. OWCP then denied her emotional condition claim, finding that she had not established a compensable employment factor.

²¹ *L.J. and S.G.*, *supra* note 18; *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

²² 20 C.F.R. § 10.117(a); *L.J. and S.G.*, *supra* note 18; *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011).

²⁴ *Id.*

²⁵ *L.J. and S.G.*, *supra* note 18; and *supra* note 23.

²⁶ *Id.*; *see also S.S.*, Docket No. 19-1021 (issued April 21, 2021); *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.²⁷ It shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.²⁸ Since appellant's allegations and the evidence of record indicate that the employing establishment would have in its possession evidence relevant to her allegations of a hostile work environment, OWCP should obtain a response from the employing establishment to the allegations of a hostile work environment and any additional relevant evidence or argument.²⁹

The case must, therefore, be remanded to OWCP for further development of the evidence regarding appellant's emotional condition claim. On remand, it shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding her allegations. Following this and any such further development as deemed necessary it shall issue a *de novo* decision regarding appellant's claim.

CONCLUSION

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

²⁷ See *S.G.*, *supra* note 18; *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

²⁸ See *id.*; *K.W.*, Docket No 15-1535 (issued September 23, 2016).

²⁹ *Id.*; see 20 C.F.R. § 10.117(a), which provides that an employing establishment that has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or any other relevant information; see also *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *P.K.*, Docket No. 21-0967 (issued December 3, 2021).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2022 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: August 7, 2023
Washington, DC

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

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

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