

ISSUE

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

FACTUAL HISTORY

On October 4, 2021 appellant, then a 40-year-old vessel traffic operator, filed an occupational disease claim (Form CA-2) alleging that she developed major depressive disorder and severe anxiety due to factors of her employment including the vaccine mandate for federal employees which caused aggravation to her preexisting disorder. She explained that she was a veteran with a service-connected disability rating of 90 percent due to major depressive disorder and severe anxiety. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on September 17, 2021. She stopped work on September 30, 2021.

Appellant submitted a form report dated October 14, 2021, by Dr. Lavinia Bizeta, a Board-certified psychiatrist and neurologist, who noted diagnoses of recurrent, moderate, major depressive disorder, and anxiety disorder. She reported that appellant was initially diagnosed in 2010 and that her symptoms had increased and interfered with her functioning due to stress. Dr. Bizeta indicated that appellant stopped work on October 19, 2021 and had an exacerbation of depressive and anxiety symptoms.

In an undated statement, C.D., appellant's watch supervisor, described that the work performed by appellant was managing vessel traffic. She indicated that appellant was responsible for promoting safety and security for the New York and New Jersey waterways and that she had continuous communication with various port partners and coworkers using radio, telephone, and verbal communications. C.D. reported that in the beginning of September 2021, she noticed that appellant had been increasingly anxious. She reported that due to the pandemic and constant changes, e-mails, news reports, and policy changes, appellant had been exposed to COVID-19 mandates or the possibility of mandates and had also been exposed to strong opinions both for and against the mandating of the COVID-19 vaccine. C.D. indicated that on September 29, 2021 appellant informed her at work that she felt her anxiety increasing and that she was concerned in regards to the mandated vaccinations for federal employees. She noted that in the early morning of September 30, 2021 appellant contacted her that she could not come to work due to three major anxiety attacks. C.D. explained that later that day, appellant informed her that due to her condition and excessive stress, her psychologist recommended that she be placed on disability.

In a progress note dated September 21, 2021, Dr. Bizeta indicated that she had been treating appellant for the last 12 years and was familiar with the limitations imposed by her diagnosis. She reported diagnoses of severe anxiety and major depressive disorder, recurrent with associated passive suicidal ideation, which was service connected. Dr. Bizeta opined that the deadline for the COVID-19 immunization had been making appellant's anxiety and depression worse as she had been worrying over the possibility of losing her job.

In a progress note dated September 30, 2021, Dr. Salvatore Giantinoto, an osteopath Board-certified in family medicine, indicated that his patient suffered from major depressive

disorder and severe anxiety, which significantly worsened secondary to the COVID-19 pandemic. He reported that he had advised appellant against participating in any of the COVID-19 vaccines, secondary to the significant negative impact it would have on appellant's overall health. Dr. Giantinoto explained that appellant believed that the risks outweighed any perceived benefit associated with the vaccine.

In a report dated October 19, 2021, Dr. Bizeta reported that she had treated appellant for the past 12 years for severe anxiety and major depressive disorder, recurrent with associated passive suicidal ideation, which was service connected. She indicated that the deadline for the COVID-19 immunization had been making appellant's anxiety and depression worse because she worried over the possibility of losing her job as a result of not being vaccinated. Dr. Bizeta noted that appellant was first diagnosed with anxiety disorder and major depressive disorder in September 2010. She reported that appellant complained of worsening depressive and anxiety symptoms as a result of the COVID-19 vaccine mandate. Dr. Bizeta indicated that while appellant had a long history of anxiety and depression, for which she has received treatment, the pressure of having to receive a vaccination that she did not feel comfortable with, had been a contributing factor to her current worsening mood symptoms.

In a development letter dated January 21, 2022, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided her with a questionnaire. OWCP afforded her 30 days to provide the necessary evidence.

By decision dated March 3, 2022, OWCP accepted that the employment factors occurred as alleged. However, it denied appellant's claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the accepted employment factors. Thus, it concluded that the requirements had not been met to establish that she sustained an injury as defined by FECA.

On August 10, 2022 appellant, through counsel, requested reconsideration. He noted his disagreement with the March 3, 2022 OWCP decision and alleged that OWCP had misconstrued appellant's claim. Counsel clarified that appellant was not claiming an adverse reaction to receiving the COVID-19 vaccine, but rather an exacerbation of a preexisting military service-connected severe anxiety and major depressive disorder caused by the employment-related vaccine mandate. He contended that the medical evidence of record was sufficient to establish that appellant sustained an aggravation of her preexisting emotional/stress-related conditions due to factors of her federal employment.

In a February 16, 2022 report, Dr. Bizeta noted appellant's history of severe anxiety and major depressive disorder, recurrent with associated passive suicidal ideation, which was service connected. She indicated that the deadline for the COVID-19 immunization had amplified appellant's anxiety and depression because appellant began to worry about the possibility of losing her job as a result of not accepting the vaccination. Dr. Bizeta reported that appellant complained of worsening depressive and anxiety symptoms as a result of the COVID-19 vaccine mandate. She noted diagnoses of anxiety, major depressive disorder -- recurrent, and adjustment disorder. Dr. Bizeta indicated that while appellant had a long history of anxiety and depression, for which she has received treatment, the pressure of having to receive a vaccination that she did not feel

comfortable with, had been a contributing factor to her current worsening mood symptoms, which consisted of increased anxiety symptoms, frequent panic attacks, inability to sleep, and difficulty concentrating. She opined that appellant was unable to work.

In a development letter dated August 26, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 22, 2022 letter, appellant's counsel indicated that she was claiming an aggravation of her preexisting military service-connected severe anxiety and major depressive disorder caused by a severe increase in stress due to the employment-related vaccine mandate. He contended that appellant had met her burden of proof to establish her emotional/stress-related condition claim.

By decision dated September 27, 2022, OWCP modified its March 3, 2022 decision to find that the medical evidence of record was sufficient to establish a diagnosed disorder medical conditions. However, the claim remained denied as the evidence of record was insufficient to substantiate a compensable factor of employment.

On May 8, 2023 appellant, through counsel, requested reconsideration.

In a March 25, 2023 response to OWCP's questionnaire, appellant explained that in November 2021, the employing establishment required the COVID-19 vaccine for all employees. She alleged that the requirement added to her already diagnosed anxiety and depression, causing multiple anxiety attacks per week. Appellant reported that she noticed her anxiety worsened when federal employees were required to get the vaccine in order to remain employed. She noted that both her and her doctor did not agree with being forced to take a vaccine that they did not know all the side effects to. Appellant indicated that after discussing this stress and anxiety with her psychologist, she went out of work and filed for workers' compensation.

By decision dated July 18, 2023, OWCP denied modification of the September 27, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ 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 to the

³ *Id.*

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁵ 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.⁶

To establish an emotional/stress-related condition in the performance of duty, appellant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional/stress-related condition; (2) medical evidence establishing that he or she has a diagnosed emotional/stress-related or psychiatric disorder; and (3) medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional/stress-related condition.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁹ However, disability is not compensable when it results from factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁰

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.¹¹ 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

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

¹⁰ *Cutler, id.*

¹¹ *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

employment factor.¹² A claimant must support his or her allegations with probative and reliable evidence.¹³

ANALYSIS

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

Appellant contended that she developed an exacerbation of her preexisting anxiety and major depressive disorder due to the alleged mandate that federal employees receive the COVID-19 vaccine. In an August 26, 2022 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish her emotional/stress-related claim, and attached a questionnaire for her completion. It did not, however, request a statement from the employing establishment concerning appellant's allegations, as required under its procedures. Accordingly, the Board finds that OWCP has not properly developed appellant's claim.¹⁴

OWCP's procedures provide that when developing emotional/stress-related condition claims, 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 said and done.¹⁵ It also provides that in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹⁶ While appellant provided a response to OWCP's development letter, OWCP did not request relevant information from the employing establishment regarding appellant's allegations. OWCP then denied her emotional/stress-related condition claim, finding that she had not established a compensable employment factor.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP 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.¹⁷ OWCP has an obligation to see that justice is done.¹⁸

¹² *C.V., id.*; *Kim Nguyen*, 53 ECAB 127 (2001); *William H. Fortner*, 49 ECAB 324 (1998). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

¹³ *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Roger Williams*, 52 ECAB 468 (2001).

¹⁴ See *K.F.*, Docket No. 23-0278 (issued August 7, 2023).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j (July 1997).

¹⁶ FECA Procedure Manual, *id.*, at Chapter 2.800.7a(2) (June 2011).

¹⁷ *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013); see e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹⁸ See *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).

For these reasons, the case will be remanded to OWCP for further development of the evidence regarding appellant's emotional/stress-related condition claim.¹⁹ On remand, OWCP shall obtain a statement from the employing establishment and relevant evidence regarding whether appellant was mandated by the employing establishment to obtain a COVID-19 vaccine and the circumstances surrounding that mandate. After 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.

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2023 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: April 12, 2024
Washington, DC

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

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

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

¹⁹ See *L.O.*, Docket No. 22-1266 (issued June 8, 2023); see also *L.J.*, Docket No. 20-0998 (issued December 14, 2022).