

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 12, 2021 appellant, then a 60-year-old management and program clerk assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2021 her body "shut down" and she experienced transient global amnesia while in the performance of duty. She alleged that S.F., an employing establishment inventory controller, bullied her and was emotionally and verbally abusive toward her during a telephone call regarding a missing case. Appellant listed D.V., an employing establishment team lead, as a witness to the incident. On the reverse side of the claim form, B.N., an employing establishment department manager, acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 6, 2021, and returned to full-duty work on February 22, 2021.

In a development letter dated January 21, 2021, OWCP advised appellant of the deficiencies in her claim. It informed her that additional factual and medical evidence was necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a January 6, 2021 emergency department summary by Dr. Asher Baer, Board-certified in emergency medicine, who diagnosed transient global amnesia and recommended blood pressure management and a neurology referral.

A January 6, 2021 report of magnetic resonance arteriogram of the head was negative for occlusive disease, aneurysm, or arteriovenous malformation.

In a January 9, 2021 after-visit summary, Dr. William Kornrich, a Board-certified internist, diagnosed transient global amnesia and palpitations. He referred appellant to a cardiologist. In a separate letter of even date, Dr. Kornrich advised that she should remain out of work until January 25, 2021.

In a January 15, 2021 statement, appellant indicated that on January 6, 2021 she was on a call with S.F., who asked her to locate a case file. She advised S.F. that they could not locate the case and asked for further instructions. S.F. then began to bully her and verbally and emotionally abuse her to the point that her body and brain "shut down."

In notes dated January 22, 2021, Dr. Kornrich diagnosed transient global amnesia and recommended appellant remain out of work pending a cardiology evaluation.

In an attending physician's report (Form CA-20) dated January 27, 2021, Dr. Kornrich noted a history that appellant was verbally abused by a supervisor over the telephone on January 6, 2021. He diagnosed transient global amnesia and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity.

² Docket No. 23-1067 (issued February 14, 2024).

In a medical note dated January 27, 2021, Dr. John P. Reilly, a Board-certified cardiologist, diagnosed an elevated blood-pressure reading without diagnosis of hypertension. He ordered a laboratory workup. In a Form CA-20 of even date, Dr. Reilly noted a history of an episode of transient global amnesia and checked a box marked “Yes” to indicate that the condition was caused or aggravated by an employment activity, which he described as “verbal argument induced stress.” In a separate duty status report (Form CA-17) of even date, he released appellant to return to full-duty work, effective January 27, 2021.

In a February 4, 2021 Form CA-20, Dr. Lauren DeNiro, a Board-certified neurologist, diagnosed transient global amnesia and checked a box marked “Yes” to indicate that the condition was caused or aggravated by an employment activity, which she described as “triggered by a stressful encounter.” In a Form CA-17 of even date, she released appellant to return to full-duty work.

In a letter dated February 20, 2021, Dr. Kornrich noted that appellant had a history of transient global amnesia but was asymptomatic at present. He released her to return to full-duty work, effective February 20, 2021.

By decision dated March 1, 2021, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted January 6, 2021 employment incident.

OWCP subsequently received a February 19, 2021 medical report by Dr. Kornrich, who documented his physical examination findings and diagnosed transient global amnesia. Dr. Kornrich released appellant to return to work, effective February 20, 2021.

In a March 9, 2021 narrative report, Dr. Kornrich noted that on January 6, 2021 appellant was seen at the emergency department for confusion and was diagnosed with transient global amnesia. He outlined his treatment and indicated that he released her to return to work.

In a letter dated March 19, 2021, Dr. DeNiro noted that she had followed appellant since her emergency room visit on January 6, 2021. She diagnosed “transient global amnesia triggered by a stressful event at work.” Dr. DeNiro explained that “stress had been well described to be a triggering event for this condition.”

On March 31, 2021 appellant requested reconsideration of the March 1, 2021 decision.

By decision dated June 29, 2021, OWCP modified its March 1, 2021 decision, noting that it had erred in denying her claim based upon causal relationship. It rather found that the evidence of record was insufficient to establish that the January 6, 2021 employment incident occurred, as alleged.

On July 29, 2021 appellant requested reconsideration of the June 19, 2021 decision. In support of her request, she submitted a July 24, 2021 statement, wherein she again described the January 6, 2021 telephone call with S.F. and her subsequent symptoms and treatment. Appellant noted that she had previously fallen down the stairs and hit her head 35 years ago.

In further support of her request, appellant submitted a January 6, 2021 form report and discharge sheet by Karen LaChiana, an employing establishment occupational health nurse, who

noted that appellant was accompanied by a co-worker to employee health and had no memory of past events that day. Emergency medical services (EMS) were initiated. Ms. LaChiana indicated that appellant had a history of an amnesia episode 10 years prior and was unable to sign the discharge sheet due to being disoriented.

On January 6, 2021 S.F. e-mailed appellant a summary of a message conversation that occurred between them that day. The summary indicated that S.F. requested a file and appellant attempted to look for it with the assistance of two employees but was unable to locate it. S.F. replied, "I will not except [sic] that this work was [sic] input by someone in clerical, please call me [today]." Appellant responded that "the case was never worked. We researched on AMS. Nothing found."

In a witness statement dated July 29, 2021, M.E. noted that appellant was his supervisor and had witnessed her speaking with S.F. on January 6, 2021. He indicated that he heard her say "stop yelling and cursing at me" and then she began to cry. M.E. noted that D.V. then told appellant to hang up the telephone, and appellant appeared light-headed and disoriented. D.V. escorted her to the nurse's office, and EMS took her to the hospital. M.E. indicated that he was aware of incidents of S.F. arguing with other employees.

By decision dated October 22, 2021, OWCP denied modification of its prior decision.

On April 19, 2022 appellant requested reconsideration of the October 22, 2021 decision.

By decision dated July 11, 2022, OWCP denied modification.

On September 7, 2022 appellant requested reconsideration of the July 11, 2022 decision. In support of her request, she submitted additional witness statements.

In a January 6, 2021 e-mail, D.M., a co-worker, wrote to appellant "It's the same no matter where u [sic] go, you are the BEST!!!" (Emphasis in the original). In an accompanying undated statement, D.M. explained that the reason she sent the e-mail on January 6, 2021 was that she heard appellant hysterically crying after walking out of the ladies' room. She noted that she observed her telling B.N. "what S.F. just put you through." D.M. indicated that S.F. previously screamed and cursed at another employee, R.F., but that incident was never "dealt with."

In a July 22, 2021 statement, R.R., an employing establishment collections representative, indicated that he received a telephone call on January 6, 2021 that appellant was disoriented with regard to time and place. He traveled to the worksite and observed her being taken from the building by EMS. R.R. followed the ambulance to the emergency room and noted that when appellant was taken from the ambulance, she did not recognize R.R., despite having worked together for many years. He related that she was not able to recall the events leading up to and following her visit to the emergency room.

In a statement dated August 26, 2022, D.V. noted that she clearly heard S.F. on the call yelling, being disrespectful, and bullying appellant. D.V. indicated that she heard S.F. yell that she did not "know her job" and that she was going to report her to K.E., an employing establishment program manager, and B.N. She related that S.F.'s yelling was disturbing, so she went in and out of appellant's office.

In a September 1, 2022 addendum to his prior statement, M.E. indicated that when he heard appellant say, “stop yelling and cursing at me,” he went into her office and clearly heard S.F. on the telephone “yelling at her and saying some inappropriate things.”

By decision dated July 10, 2023, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On August 7, 2023 appellant appealed to the Board. By decision dated February 14, 2024,³ the Board reversed OWCP’s July 10, 2023 decision. The Board found that the August 26, 2022 statement by D.V. and the September 1, 2022 statement by M.E. specifically addressed the underlying issue of whether appellant had established an emotional or stress-related condition in the performance of duty, as alleged, and therefore constituted relevant and pertinent new evidence not previously of record which required reopening of appellant’s claim for merit review. The Board remanded the case for OWCP for an appropriate merit decision.

By decision dated March 28, 2024, OWCP denied modification of its July 11, 2022 decision.

On April 16, 2024 appellant requested reconsideration of OWCP’s March 28, 2024 decision.

By decision dated April 23, 2024, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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,⁵ 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 employment injury.⁶ 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.⁷

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has

³ *Id.*

⁴ *Supra* note 1.

⁵ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *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).

⁷ *L.N.*, Docket No. 22-0126 (issued July 15, 2023); *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).

an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her 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 illness has some connection with the employment, but nevertheless does not come within coverage of FECA.¹⁰ When disability results from an emotional reaction to regular or specially assigned work duties, or to a requirement imposed by the employing establishment, the disability is deemed compensable.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 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.¹³ Its regulations 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.¹⁴

⁸ *S.D.*, Docket No. 23-0898 (issued July 13, 2023); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁹ 28 ECAB 125 (1976).

¹⁰ See *L.Y.*, Docket No. 21-0344 (issued June 15, 2023); *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

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

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j (July 1997); see also *J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.K.*, Docket No. 20-0508 (issued December 11, 2020); *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

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

¹⁴ Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 2.800.7a(2) (June 2011) and Part 2 -- Claims, *Fact of Injury*, Chapters 2.803.4a(1)(b) and 2.803.7a (November 2023).

ANALYSIS

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

In her Form CA-1 appellant indicated that on January 6, 2021 she was on a call with S.F., who bullied her and verbally and emotionally abused her to the point that her body and brain “shut down.” On the reverse side of the claim form, B.N., an employing establishment department manager, acknowledged that appellant was injured in the performance of duty. Appellant submitted personal statements, e-mails, witness statements, and medical reports which documented her claims of a stressful event at work involving a telephone call with S.F. on January 6, 2021.

In a development letter dated January 21, 2021, OWCP requested that appellant complete a questionnaire. However, it did not contact the employing establishment directly to request that it provide comments from a knowledgeable supervisor on the accuracy of the allegations and any additional information such as witness statements.

The Board finds that it is unable to make an informed decision in this case as OWCP did not request information from the employing establishment.¹⁵ 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

In this case, further findings by OWCP are needed.¹⁷ 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.¹⁸ It shares responsibility to see that justice is done.¹⁹

The case will, accordingly, be remanded for OWCP to further develop the evidence. On remand, OWCP shall obtain a detailed statement, and relevant evidence and/or argument regarding appellant’s allegations from the employing establishment.²⁰ After this and such other further development as it deems necessary, OWCP shall issue a *de novo* decision.²¹

¹⁵ *J.R.* *supra* note 12; *G.I.*, Docket No. 19-0942 (issued February 4, 2020); *V.H.*, Docket No. 18-0273 (issued July 27, 2018).

¹⁶ *Supra* note 14; *see also M.T.*, Docket No. 18-1104 (issued October 9, 2019); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹⁷ *B.J.*, Docket No. 24-0322 (issued May 21, 2024); *A.B.*, Docket No. 21-1170 (issued August 28, 2023); *A.O.*, Docket No. 19-1612 (issued April 8, 2021); *N.S.*, Docket No. 16-0914 (issued April 10, 2018).

¹⁸ *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *T.B.*, Docket No. 19-0323 (issued August 23, 2019).

¹⁹ *M.T.*, *supra* note 16.

²⁰ *B.J.*, *supra* note 17; *G.K.*, Docket No. 20-0508 (issued December 11, 2020); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

²¹ In light of the Board’s disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 28 and April 23, 2024 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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