

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

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K.L., Appellant)

and)

U.S. POSTAL SERVICE, BROCKTON)
PROCESSING & DISTRIBUTION CENTER,)
Brockton, MA, Employer)
-----)

Docket No. 24-0871
Issued: December 2, 2024

Appearances:

Stephanie N. Leet, Esq., for the appellant¹

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 August 27, 2024 appellant, through counsel, filed a timely appeal from an April 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 25, 2024 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on May 4, 2022, as alleged.

FACTUAL HISTORY

On May 14, 2022 appellant, then a 36-year-old mail processing equipment (MPE) maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2022 he injured his head and left hand and wrist while in the performance of duty. He noted that on that date at 6:10 a.m., he received news of a coworker's death, cried, passed out, and hit his head on the floor. Appellant stopped work on the date of injury. On the reverse side of the claim form, appellant's supervisor noted that his regular work schedule was 6:00 a.m. to 2:30 p.m. and contended that appellant was not injured in the performance of duty.

Emergency room discharge instructions dated May 4, 2022 noted a preliminary diagnosis of subarachnoid hemorrhage (SAH).

In a May 11, 2022 note, Dr. Shrein Saini, a Board-certified internist, indicated that appellant was unable to work for two weeks.

In an attending physician's report (Form CA-20) dated May 26, 2022, Thomas Ogbu, a nurse practitioner, noted that appellant fell and hit his head on May 4, 2022. He diagnosed a small SAH. In a note and duty status report (Form CA-17) of even date, Mr. Ogbu indicated that appellant was unable to work and provided a return-to-work date of June 23, 2022.

In work notes dated June 7 and July 6, 2022, Dr. Brian Blanchette, a Board-certified internist, noted that appellant remained symptomatic from a head injury and was totally disabled from work.

In a note dated June 29, 2022, Dr. Volney L. Sheen, a Board-certified neurologist, clinical neurophysiologist, and epilepsy specialist, indicated that appellant had a history of a post-concussional syndrome and SAH from a head strike on May 4, 2022.

In a July 18, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a June 29, 2022 medical report by Dr. Sheen, who related that on May 4, 2022 appellant was at work and "heard of a colleague's death, started crying next, fell and hit head on object with loss of consciousness." Appellant also noted that he related "hearing this news, hyperventilating, and woke up on the floor." Dr. Sheen reviewed a May 4, 2022 computerized tomography (CT) scan of the head, which revealed small-volume subdural blood along the anterior falx and SAH along the sulci of the adjacent frontal lobes, left greater than right. He noted appellant's history of hypertension, his current symptoms, his physical and neurologic examination findings, and documented a posterior scalp hematoma, which he indicated was "likely from falling backwards to the ground." Dr. Sheen diagnosed post-concussion syndrome.

In June 7 and July 6, 2022 medical reports, Dr. Blanchette noted that appellant related a history of a “syncopal fall backwards with head trauma” which “occurred after an emotional trauma, vasovagal.” He diagnosed post-concussion syndrome and SAH.

A follow-up CT scan dated July 10, 2022 revealed no acute intracranial abnormality, resolution of previously seen hemorrhages, and near complete resolution of right posterior parietal scalp hematoma.

In an August 14, 2022 response to OWCP’s development questionnaire, appellant indicated that, “I was at work a coworker told me another coworker has died. I was in shock and started to cry.” He was “not sure” whether he struck any object on the way down to the immediate supporting surface, and “[did] not remember fall just waking up on floor.” Appellant related that no one witnessed him pass out and that he did not sustain any injuries to any other parts of his body other than his head.

Dr. Blanchette, in a medical narrative dated August 15, 2022, noted that appellant “suffered a vasovagal syncope episode on May 4, 2022 while at work due to emotional trauma.” He also noted that he “fell backwards, struck his head” and suffered a small SAH and concussion. Dr. Blanchette indicated that “this was a witnessed event, occurring at work with emotional trauma and fall directly causing the injury.” He opined that appellant was totally disabled due to continued post-concussive symptoms, which included imbalance, limited ability for activity, inability to focus, and daily headaches. Dr. Blanchette concluded that appellant would require specialized physical therapy for brain injury patients.

By decision dated September 20, 2022, OWCP denied appellant’s claim. It accepted that the May 4, 2022 incident occurred, as alleged, and that a medical condition had been diagnosed in connection with the event. However, OWCP found that appellant failed to establish that the alleged injury occurred while in the performance of duty. It found that his fall was due to an idiopathic incident, which was considered to be a personal nonoccupational pathology without intervention or contribution by a factor of employment and, therefore, the requirements had not been met to establish an injury, within the scope of compensable work factors, as defined by FECA.

OWCP continued to receive evidence.

In an undated work slip, Dr. Blanchette recommended that appellant remain off due to a head injury.

In an October 13, 2022 medical narrative, Dr. Blanchette indicated that on May 4, 2022 appellant “was working on the clock, and very busy with several tasks so he was stressed at the time when, in passing, he learned of a coworker’s death. This news, combined with the pressure he was already under, caused [appellant] to become lightheaded. He subsequently had a vasovagal episode and passed out. [Appellant] collapsed, fell backwards and hit his head on the cement floor in the building he works in.” Dr. Blanchette indicated that appellant’s “initial documentation is cloudy because he suffered severe head trauma and was not able to articulate his exact sequence of events.” He opined that “it is highly likely these events would not have occurred if the patient was in a less stressful environment, for example not at work.”

OWCP also received an employing establishment job description for the position of MPE maintenance mechanic.

On October 17, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated March 16, 2023, OWCP's hearing representative affirmed the September 20, 2022 decision.

In March 28, April 26, and May 31, 2023 medical reports, Dr. Blanchette noted a history of a "syncopal fall backwards" which "occurred after an emotional trauma." He documented subjective complaints and physical examination findings and diagnosed post-concussion syndrome and SAH. On May 31, 2023 Dr. Blanchette indicated that he provided appellant with a note to return to work, effective June 14, 2023.

On March 12, 2024 appellant, through counsel, requested reconsideration of the March 16, 2023 decision. In support of the request, he submitted a February 27, 2024 narrative report by Dr. Blanchette, who indicated that on May 4, 2022 appellant "suffered anxiety and excessive stress from being required to complete work orders, without proper training, within the deadline of the day." Appellant claimed that he was to complete a work order for a machine that he had not been trained on, and that a prior employee assigned to the machine was injured while working on the machine. Dr. Blanchette also claimed that appellant had an excessive workload, the company was understaffed, and appellant worked in a very stressful and time-sensitive environment. He opined that this caused appellant to secrete high levels of stress hormones, his blood vessels opened too wide, his heartbeat slowed, and his blood pressure dropped causing a temporary lack of blood to flow to his brain, which resulted in a vasovagal episode. Dr. Blanchette indicated that "prior to fainting, he also was informed that a coworker had passed away, but it was not someone he was close to. While this may have exacerbated an emotional response, it was not the main cause of his vasovagal event."

By decision dated April 25, 2024, OWCP denied modification of the March 16, 2023 decision.

LEGAL PRECEDENT

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

⁴ *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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 *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

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 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.⁷

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*,⁸ 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.⁹ 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.¹⁰

ANALYSIS

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

In denying appellant's traumatic injury claim, OWCP found that his fall was due to an idiopathic incident, which was considered to be a personal nonoccupational pathology without intervention or contribution by a factor of employment.

The Board, however, finds that appellant has attributed his injury to an emotional condition. Dr. Blanchette, in his February 27, 2024 report, indicated that appellant alleged that he was overworked; that he was required to complete orders on a machine that he had not received proper training on, and on which a coworker who used the machine before him was injured; that his work site was understaffed; and that the time sensitive nature of his job caused him to be stressed.

OWCP has not adequately developed appellant's emotional condition claim. It did not provide appellant with a development letter identifying and requesting the information needed to adjudicate his emotional condition claim in accordance with its procedures.¹¹ Additionally, a statement from the employing establishment is necessary to properly develop and adjudicate an emotional condition claim.¹² OWCP shall then determine whether the implicated employment factors actually existed or occurred, and distinguish between those workplace activities and

⁷ *S.D.*, Docket No. 23-0898 (issued July 13, 2023); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁸ 28 ECAB 125 (1976).

⁹ 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).

¹⁰ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 8.

¹¹ *D.F.*, Docket No. 24-0178 (issued April 5, 2024); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

circumstances which are factors of employment and those which are outside the scope of employment.¹³

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹⁴ While the claimant has the burden of proof 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 governmental source.¹⁵

On remand OWCP shall develop appellant's emotional condition claim, to be followed by a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 2, 2024
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

¹³ *Id.*

¹⁴ *See L.S.*, Docket No. 18-1208 (issued April 30, 2020); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁵ *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *N.S.*, 59 ECAB 422 (2008).