

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, WEIMAR POST)
OFFICE, Weimar, CA, Employer)

**Docket No. 24-0074
Issued: July 12, 2024**

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2023 appellant filed a timely appeal from an August 30, 2023 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 causally related to the accepted compensable factor of her federal employment.

FACTUAL HISTORY

On September 11, 2021 appellant, then a 32-year-old window clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained chronic mental illness, severe anxiety, and depression due to cumulative stressors caused by factors of her federal employment. She noted

¹ 5 U.S.C. § 8101 *et seq.*

that she first became aware of her conditions, and realized their relationship to her federal employment on June 11, 2021.

On the reverse side of the claim form, M.H., the postmaster, controverted the claim, noting that appellant never reported an on-the-job injury. She further noted that appellant was in a car accident on June 9, 2021, while she was off work. Appellant came to work on June 10, 2021 and reported the car accident. M.H. related that about an hour into her shift, appellant asked to go to the emergency room with a possible concussion. Appellant declined transportation by ambulance. On June 29, 2021 appellant informed M.H. that she was off work until further notice.

In a June 11, 2021 note, M.H. documented that she advised appellant to clock out and go to the emergency room when appellant related that she had temple pain, which was a sign of concussion.

In e-mails dated June 14, 2021, appellant informed M.H. and J.P., a coworker, that she had been in a car accident a few days prior and that she would be off work. She further related that she had accessed the online portal to request sick leave. Appellant requested that M.H. send her a copy of her timecard from the prior week. She related that M.H. had made two punches on the timecard without her permission for the day she went to the emergency room. In a handwritten note on the June 14, 2021 e-mail, M.H. reiterated that appellant reported being involved in a car accident, but that she never told her that it was work related.

In a June 11, 2021 excuse form, a physician assistant, advised that appellant was unable to work commencing that date. In reports dated June 14 and 30, 2021, Dr. Krishna Bezwada, a Board-certified psychiatrist, advised that appellant was unable to work from June 14 through 26, 2021. In a June 26, 2021 form report, Gaylon Palmer, a licensed clinical social worker (LCSW), indicated that appellant was unable to work for the period June 11, 2021 through June 10, 2022.

In e-mails dated June 26 and 29, 2021, appellant indicated that her LCSW held her off work until further notice “due to [her] situation at work.”

In a development letter dated September 20, 2021, 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 provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. It also notified the employing establishment that if appellant was treated at its medical facility, they must provide the treatment notes.

OWCP received a June 24, 2021 statement, wherein appellant explained that she wrecked her truck on June 11, 2021, because she was crying and had blurred vision as she believed that M.H. was trying to fire her. Appellant noted that she was laughed at and subjected to hostility and harassment by M.H., and that she was seeing a counselor for anxiety.

In an unsigned statement, appellant further alleged that M.H. tampered with her time clock rings when she left work to receive treatment in the emergency room following her car accident, and when she arrived at work late the next day.

In a September 27, 2021 report, Dr. Bezwada noted that appellant had been struggling with major depressive disorder recurrent moderate, generalized anxiety disorder, and post-traumatic stress disorder (PTSD). He opined that she was unable to function.

Appellant responded to OWCP's September 20, 2021 development letter and submitted a completed questionnaire dated October 4, 2021. She attributed her claimed emotional condition to an attempt to make her send through incorrect passport applications.

In an accompanying undated statement, appellant alleged that she was advised by C.R., a union representative, that either she or the union could file a grievance for a write-up she received on January 23, 2021, but no grievance was filed. She alleged that she had not used a time clock until February, as her supervisor preferred to input time entries herself, her paid hours would not occasionally match her work hours. Appellant further alleged that M.H. attempted to suspend her the same week she was scheduled for jury duty and advised that she would not get paid for her service, and that M.H. blindsided her with an investigative interview on May 12, 2021. She also related that she did not routinely receive breaks from work, but was allowed breaks following the investigative interview.

Appellant also submitted a grievance form dated June 15, 2021 alleging that she was entitled to compensation for never receiving a break, 20 minutes per 8-hour shift, from July 18, 2020 to February 24, 2021; that a January 23, 2021 letter of warning should be removed as a time clock had not been installed; that she was entitled to overtime pay because a time clock was not installed until February 24, 2021; and that she was subjected to a hostile work environment following her June 2021 car accident. Appellant further alleged that a PS Form 3971 was falsified, that she never had a start time of 0600 hours; that her suspension, letter of warning, and write-ups were invalid that she was subjected to harassment, discrimination; and that there was a lack of privacy.

In an October 5, 2021 statement, T.M., a union steward, noted that appellant contacted the union on June 3, 2021, regarding a suspension for lateness and that the postmaster had sprung an investigative interview on her without notice. T.M. noted that appellant was in a car accident on June 10, 2021 and, when she reported the accident on June 11, 2021, the postmaster heard she was going to the emergency room, grabbed appellant's timecard, clocked her out, and asked her to sign some papers, after which she told her, "Whatever ... have fun." T.M. alleged that the postmaster expressed sympathy in front of others, but showed a different side to appellant, and that T.M. had heard that the postmaster had animosity toward appellant.

In a statement dated September 23, 2021, appellant recounted her prior allegations. In a letter dated May 28, 2021, M.H. suspended appellant from duty for seven days, for failure to maintain regular attendance.

In a June 3, 2021 letter, M.H. rescinded the May 28, 2021 suspension and removed it from her official personnel folder due to an administrative error and reissued the seven-day suspension.

A September 9, 2021 Step 3 grievance decision reduced the June 3, 2021 suspension to a seven-day paper suspension.

Appellant submitted a September 24, 2021 Equal Employment Opportunity (EEO) pre-complaint and notice of right to file a formal complaint, regarding harassment and bullying by M.H. on June 10, 2021.

Appellant also submitted a September 27, 2021 report, wherein Dr. Bezwada noted that he had been seeing appellant since March 2021 and that her recurrent major depressive disorder and generalized disorder had worsened significantly, affecting her functioning level. Dr. Bezwada

related that she reported to him that stress and conflicts at work also impacted her mental state. He opined that appellant was unable to function due to significant distress, depression, and anxiety.

In an October 26, 2021 development letter, OWCP requested that the employing establishment submit additional information regarding the accuracy of appellant's allegations, including comments from a knowledgeable supervisor.

In a November 24, 2021 statement, M.H. denied appellant's allegations. She recounted that appellant's vehicle accident occurred late at night on a dirt road after appellant visited friends in an unfamiliar area. M.H. noted that appellant never informed her that she had anxiety or was unhappy at work, told her all about her family, which indicated that appellant felt comfortable communicating with her, and told her on multiple occasions that she enjoyed processing passport applications. She denied that appellant was not given breaks, noted that employees received two 10-minute breaks and an hour lunch break during each shift, and she confirmed that she discussed tardiness with appellant. M.H. noted that she asked appellant to sign her late slips for prior days. She explained that when appellant told her she was leaving to be evaluated at an emergency room, she told her that she could sign them later, and when appellant did not clock out before leaving, M.H. wrote down the time to enter into the timekeeping system. M.H. explained why she started the punch timeclock system, noting that there were discrepancies in employees' timekeeping. She asserted that appellant indicated that she arrived on time, but she was 10 to 15 minutes late every day, with the exception of being 30 minutes late on one day. M.H. noted that she met with the union representative on February 23, 2021, and discussed how they could help appellant report to work on time.

In a February 10, 2022 report, Dr. Bezwada reiterated his prior diagnoses of major depressive disorder recurrent, generalized anxiety disorder, and PTSD, appellant's account that stress and conflicts at work impacted her mental state, and opinion that she was unable to function due to her diagnosed conditions.

In treatment notes dated March 1, 2021 through February 10, 2022, Dr. Bezwada continued to restate his prior diagnoses and noted that appellant's mood was worse in the context of work stress and that she was working with a lawyer on legal matters. He attributed her depression in part to a seasonal component.

By decision dated March 14, 2022, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that her allegations occurred as alleged. Consequently, it found that appellant had not met the requirements to establish an injury as defined by FECA.

On April 10, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 5, 2023.

By decision dated August 30, 2023, OWCP's hearing representative modified the March 14, 2022 decision to find that she had established a compensable employment factor with respect to the administrative error when the employing establishment issued the May 28, 2021 suspension notice. However, the hearing representative denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted compensable employment factor.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

The Board finds that appellant has not established an emotional/stress-related condition causally related to the accepted compensable factor of her federal employment. OWCP accepted that the employing establishment's error in issuing the May 28, 2021 suspension notice constituted a compensable employment factor. The issue, consequently, is whether the medical evidence of record is sufficient to establish that appellant sustained a diagnosed physical or emotional condition causally related to the accepted compensable employment factor.

² *Id.*

³ See *S.F.*, Docket No. 23-0264 (issued July 5, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *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).

⁵ *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).

⁶ See *J.C.*, Docket No. 22-0254 (issued November 29, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *M.B.*, Docket No. 20-1160 (issued April 2, 2021); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In support of her claim, appellant submitted a series of reports from Dr. Bezwada. In reports dated September 27, 2021 and February 10, 2022, Dr. Bezwada diagnosed recurrent moderate depressive disorder, generalized anxiety disorder, and PTSD. He noted that the diagnosed conditions had worsened and according to appellant, stress and conflicts at work also impacted her mental state. Dr. Bezwada opined that she was unable to function due to these conditions. Although he provided a conclusory opinion on causal relationship, Dr. Bezwada failed to offer a rationalized medical explanation as to how this employment factor caused or contributed to appellant's diagnosed emotional conditions and disability. The Board has held that reports which lack rationale are of limited probative value on the issue of causal relationship.⁹ Thus, the Board finds that Dr. Bezwada's reports are insufficient to establish the claim.

In reports dated June 14 and 30, 2021 and treatment notes dated March 1, 2021 through February 10, 2022, Dr. Bezwada reiterated his prior diagnoses of recurrent moderate depressive disorder, generalized anxiety disorder, and PTSD and again addressed appellant's disability from work. However, he did not provide an opinion on causal relationship between the diagnosed emotional conditions and disability to the accepted compensable employment factor. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ This evidence is, therefore, insufficient to establish appellant's claim.¹¹

Appellant also submitted reports from a physician assistant and a licensed clinical social worker. Certain healthcare providers such as physician assistants, physical therapists, nurse practitioners, and social workers are not considered "physicians" as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹²

As the medical evidence of record is insufficient to establish an emotional condition casually related to the accepted compensable employment factor, the Board finds that appellant has not met her burden of proof.

⁹ *B.H.*, Docket No. 23-0497 (issued December 29, 2023); *A.B.*, Docket No. 08-2508 (issued July 10, 2009).

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ See *K.J.*, Docket No. 22-0611 (issued January 5, 2024); *P.B.*, Docket No. 20-0124 (issued March 10, 2021); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *L.C.*, Docket No. 08-1655 (issued April 2, 2009); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined by FECA); *T.R.*, Docket No. 20-0666 (issued May 19, 2022); *C.A.*, Docket No. 18-0824 (issued November 15, 2018); *L.D.*, Docket No. 17-0639 (issued August 18, 2017); *B.B.*, Docket No. 06-0392 (issued January 22, 2007); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000); *Frederick C. Smith*, 48 ECAB 132 (1996) (social workers and mental health counselors are not physicians as defined by FECA).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an emotional/stress-related condition causally related to the accepted compensable factor of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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