

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

D.G., Appellant)	
)	
and)	Docket No. 22-1367
)	Issued: June 28, 2024
DEPARTMENT OF LABOR, OFFICE OF)	
WORKERS' COMPENSATION PROGRAMS,)	
Kansas City, MO, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 28, 2022 appellant filed a timely appeal from a May 27, 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 over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

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 order are incorporated herein by reference. The relevant facts are set forth below.

On May 28, 2020 appellant, then a 61-year-old retired claims examiner, filed an occupational disease claim (Form CA-2) alleging that she sustained stress, depression, anxiety, and claustrophobia causally related to her federal employment. She alleged stress and harassment by a supervisor and her union steward until her retirement on May 29, 2017. Appellant noted that she first became aware of her condition on October 10, 1988 and realized its relationship to her federal employment on June 1, 2001.

In a development letter dated June 19, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

By decision dated July 30, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed work factors occurred as alleged. It noted that she had not submitted a statement outlining the details of work activities believed to have caused or contributed to her condition, and as such, she had not provided a factual basis to support her claim.

On May 27, 2021 appellant requested reconsideration. With her request, she submitted a narrative statement dated April 12, 2021 in which she described work incidents alleged to have caused her emotional conditions. Appellant alleged that, from 1988 through 1992 her supervisor, T.V., harassed and verbally abused her, and that the same individual continued to harass her after she was promoted in February 1993. She alleged that a union steward, L.M., also harassed her. Appellant further alleged that the complexity of her assigned cases caused her stress. After L.M. was promoted to a supervisory position, appellant alleged that she was hyper-critical of her work. She also alleged that she was routinely assigned complex cases involving employing establishment employees. Appellant noted that she had to deal with an unruly employee, and that this caused her claustrophobia. She stated that she was not given the tools or staffing necessary to achieve mandated goals after she was promoted to a supervisory position. Appellant retired in 2017. Immediately prior to her retirement, she requested sick leave for 12 hours per day during the last week of her employment, which was questioned and caused her further stress.

OWCP also received a May 24, 2021 attending physician's report (Form CA-20) from Dr. Rubin Moore, a psychiatrist. Dr. Moore noted that appellant's interactions with a previous supervisor caused anxiety, panic, depression, insomnia, and tension. He diagnosed generalized anxiety disorder and unspecified depressive disorder, and indicated by check mark that the diagnosis was caused by the alleged employment factors.

² *Order Remanding Case*, Docket No. 21-1412 (issued April 26, 2022).

By decision dated August 24, 2021, OWCP modified the July 30, 2020 decision to find that appellant had established that the claimed work factors occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between her diagnosed emotional conditions and factors of her federal employment.

On September 16, 2021 the employing establishment responded to appellant's allegations. It maintained that she had not timely filed her claim. The employing establishment further alleged that appellant had not substantiated her allegations with corroborating evidence, and that her allegations were vague regarding overwork. Appellant's supervisor disputed appellant's allegations regarding his interactions with her.

On September 20, 2021 appellant filed a timely appeal to the Board from OWCP's August 24, 2021 decision.

OWCP issued another development letter dated December 6, 2021, informing appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a letter dated December 26, 2021, appellant contended that her claim was timely filed. In a letter dated March 28, 2022, she contended that a supervisor had made false statements regarding her work, that he had stated that he was happy she retired, that there had been disputes with supervisors over the use of sick leave, and that a supervisor had removed her name plate before she retired.

By order dated April 26, 2022, the Board set aside OWCP's August 24, 2021 decision, finding that the case was not in posture for decision, as OWCP had not made proper findings of fact.³ The Board remanded the case for proper findings of fact, to be followed by a *de novo* decision.

In a letter dated May 9, 2022, Dr. Moore diagnosed panic disorder, generalized anxiety disorder, and unspecified depressive disorder. Appellant had indicated that her anxiety conditions were related to the stress of her position at the employing establishment. She told Dr. Moore that she was given more difficult cases by a previous supervisor around 2001, among other circumstances. Appellant stated that the stress from her position manifested in symptoms of anxiety, panic attacks, irritability, low energy, insomnia, feelings of guilt, restlessness, muscle tension, and anhedonia which had persisted upon retirement.

By *de novo* decision dated May 27, 2022, OWCP reviewed appellant's alleged factors of employment and found that the claim remained denied as appellant had not established a compensable factor of employment.

³ *Id.*

LEGAL PRECEDENT

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

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.⁷

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

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.¹⁰ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

⁴ *Supra* note 1.

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.115(e); *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).

⁷ *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).

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹⁰ *See A.R.*, Docket No. 18-0930 (issued June 5, 2020); *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence, which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁴ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁵ The claim must be supported by probative evidence.¹⁶ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence, which has been submitted.¹⁷

ANALYSIS

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

The Board notes that appellant has alleged that her regular or specially assigned duties¹⁸ caused her stress as she was assigned complex cases. Appellant has also alleged that she was not given the tools or staffing necessary to achieve mandated goals after she was promoted to a supervisory position. As explained above, the Board has held that such allegations may constitute compensable factors of employment.¹⁹

OWCP's procedures provide that, when developing emotional condition claims, the claims examiner must obtain from the claimant, agency personnel and others, such as witnesses to the

¹¹ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *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).

¹² See *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹³ *R.B.*, *id.*; *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁴ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *C.W.*, 58 ECAB 137 (2006).

¹⁵ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018).

¹⁶ *Id.*

¹⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of medical record.

¹⁸ See *Lillian Cutler*, *supra* note 8.

¹⁹ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

incident, a statement relating in detail exactly what was said and done.²⁰ 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.²¹ While the employing establishment responded to appellant's allegations, noting that her allegations were vague and uncorroborated, it did not specifically address whether appellant was assigned complex cases, and whether she was provided the tools and staffing to meet her productions goals, after she was promoted to a supervisory position. Accordingly, OWCP should obtain a further response from the employing establishment to the allegations of stressful work conditions and any additional relevant evidence or argument.²²

Although it is a claimant's burden of proof to establish his 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.²³

The case shall therefore be remanded to OWCP for further development of the evidence regarding appellant's allegations of overwork at the employing establishment. OWCP shall request that the employing establishment provide relevant information including whether appellant was assigned complex cases, and whether she was provided the tools and staffing to meet her productions goals, after she was promoted to a supervisory position. If the employing establishment fails to respond OWCP may accept the claimant's statements as factual.²⁴ After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

²⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (May 2023).

²¹ *Id.* at Chapter 2.800.7(a)(2) (June 2011).

²² *See C.A.*, Docket No. 23-1056 (issued January 30, 2024); *L.O.*, Docket No. 22-1266 (issued June 8, 2023); *A.F.*, Docket No. 20-1635 (issued June 9, 2022); *see also P.K.*, Docket No. 21-0967 (issued December 3, 2021).

²³ *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2016).

²⁴ *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2022 decision of the Office of Workers' Compensation Programs is set aside, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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