

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

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B.E., Appellant )

and )

DEPARTMENT OF JUSTICE, FEDERAL )  
BUREAU OF PRISONS, U.S. PENITENTIARY )  
ATLANTA, Atlanta, GA, Employer )  
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**Docket No. 22-1285  
Issued: May 6, 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 September 3, 2022 appellant filed a timely appeal from an August 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the August 4, 2022 decision, OWCP received additional evidence. However, 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.*

## **FACTUAL HISTORY**

On April 13, 2022 appellant, then a 43-year-old supervisory correctional officer, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety due to factors of her federal employment. She explained that she had an anxiety attack while drafting a memorandum for Human Resources regarding her son's death.<sup>3</sup> Appellant noted that she first became aware of her condition and realized its relation to factors of her federal employment on April 1, 2022. She stopped work on April 4, 2022.

In a January 23, 2022 letter, Jennifer Sewing, a physician assistant, noted that appellant related a history of panic attacks, syncopal episodes, and cognitive processing issues, which she attributed to contracting COVID-19 and the death of her child. She diagnosed PTSD, anxiety, depression, panic attack disorder, and insomnia. Ms. Sewing restricted appellant to desk work within her commuting area.

In a letter dated January 24, 2022, Louise Wise, a nurse practitioner, diagnosed major depressive disorder, recurrent, severe; generalized anxiety disorder; PTSD due to COVID-19; and insomnia. She indicated that appellant was "likely to perform well at a desk job."

In a March 1, 2022 statement, appellant indicated that she returned to work on March 28, 2022 following a COVID-19 infection. She related that the employing establishment did not notify her that a staff member had tested positive for the disease and that she had been exposed and subsequently spread the disease to her entire family. Appellant further related that her son became very ill and was hospitalized on August 5, 2021. She observed that he coded three times, the medical staff forcibly intubated him, his organs failed, medical personnel performed chest compressions on him, and he died on August 8, 2021. Appellant indicated that the employing establishment then transferred her position, which required her to move five hours away from where her son was buried. She related that, since her son's death, she has had nightmares, blackouts, and anxiety attacks, for which she takes various medications.

In an April 20, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the allegations in appellant's narrative statement and the accompanying documentation. It afforded both parties 30 days to respond.

OWCP thereafter received a position description detailing the requirements of appellant's position as a supervisory correctional officer, which included shift and administrative operations, training and custodial responsibilities, special investigation functions, and law enforcement functions.

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<sup>3</sup> The record reflects that appellant also has a July 17, 2021 traumatic injury claim under OWCP File No. xxxxxx214, which was accepted by OWCP for COVID-19. Appellant sought expansion of the acceptance of the claim to include consequential injuries of generalized anxiety disorder, post-traumatic stress disorder (PTSD), insomnia, and panic disorder after she transmitted COVID-19 to her son, which caused his death. OWCP denied her expansion claim by decision dated January 13, 2022.

In a May 4, 2022 response to OWCP's development questionnaire, appellant indicated that, when she returned to work, she met with M.M., an employing establishment human resources manager, who asked her to explain why she had been off work following her COVID-19 infection. She related that she was instructed to write a memorandum, and while doing so, she recalled memories of her son's passing and began to cry in front of M.M.

In a June 27, 2022 letter, M.M. indicated that, in December 2021, appellant was reassigned effective March 13, 2022 "due to issues unrelated to this claim" and instructed that failure to report would make her subject to further administrative action. Appellant indicated that she was also placed on a temporary job modification with no inmate contact for 30 days and that she worked in that capacity beginning March 28, 2022 for approximately eight days. M.M. noted that appellant's position was inherently stressful, but that appellant was not aware of any prior performance or conduct issues.

By decision dated August 4, 2022, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish the implicated factors of federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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 timely filed within the applicable time limitation of FECA,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>8</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *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).

<sup>8</sup> *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>9</sup> There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.<sup>10</sup> When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>11</sup> 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.<sup>12</sup>

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>13</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>14</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>15</sup>

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.<sup>16</sup> 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 employment factor.<sup>17</sup>

### **ANALYSIS -- ISSUE 1**

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

Appellant alleged that she sustained an emotional condition after her manager directed her to prepare a memorandum detailing the reason for her absence from work, which was her son's death from COVID-19. She became upset describing his death. Appellant's supervisor did not dispute this allegation. The Board has long held that emotional reactions to situations in which an

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<sup>9</sup> *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

<sup>10</sup> *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

<sup>11</sup> *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).

<sup>12</sup> *Pamela D. Casey, id.*; *Lillian Cutler, id.*

<sup>13</sup> *A.R.*, Docket No. 18-0930 (issued June 5, 2020); *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *A.C.*, *supra* note 11.

<sup>14</sup> *L.S., id.*; *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

<sup>15</sup> *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *see also A.C., supra* note 11.

<sup>16</sup> *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

<sup>17</sup> *Id.*

employee is trying to meet his or her regularly or specially-assigned position requirements are compensable.<sup>18</sup> For example, in *Lillian Cutler*,<sup>19</sup> the Board discussed its finding in *Helen E. Hendrick*,<sup>20</sup> that an employee rewriting a job description based on instructions from a superior constituted a compensable work factor, and that the employee's subsequent heart attack would be compensable if the medical evidence established that her frustration over rewriting the job description precipitated the attack. As appellant has attributed her condition, in the instant case, to a specially-assigned work duty, the requirement that she prepare a memorandum explaining her absence, she has established a compensable employment factor under *Cutler*.

As noted above, the Board finds that appellant has established a compensable employment factor under *Cutler* regarding her manager's instruction that she prepare a memorandum explaining her absence from work. Since OWCP found in its August 4, 2022 decision that there were no compensable employment factors, it did not review the medical evidence submitted on the issue of causal relationship.<sup>21</sup> Accordingly, OWCP must analyze the medical evidence to determine whether appellant has sustained an emotional condition due to this compensable employment factor. The case will, therefore, be remanded to OWCP. Furthermore, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>22</sup> Appellant attributed her emotional condition, in part, to a previously accepted claim under OWCP File No. xxxxxx214. For full and fair adjudication, OWCP shall administratively combine the case record in the present claim under OWCP File No. xxxxxx649 with OWCP File No. xxxxxx214. This will allow OWCP to consider all relevant claim files in adjudicating this claim.<sup>23</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>18</sup> *C.F.*, Docket No. 20-1070 (issued August 9, 2023); *J.K.*, Docket No. 19-0720 (issued November 21, 2019).

<sup>19</sup> *Supra* note 11.

<sup>20</sup> 15 ECAB 479 (1964).

<sup>21</sup> *See B.J.*, Docket No. 23-1079 (issued March 14, 2024).

<sup>22</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

<sup>23</sup> *Id.* at Chapter 2.400.8(c)(1); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2022 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: May 6, 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