

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

J.M., Appellant	)	
	)	
and	)	Docket No. 24-0268
	)	Issued: May 21, 2024
U.S. POSTAL SERVICE, BRANDON POST	)	
OFFICE, Brandon, FL, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 23, 2024 appellant filed a timely appeal from a September 29, 2023 merit decision and a January 2, 2024 nonmerit 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.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

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

## **FACTUAL HISTORY**

On June 22, 2023 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional/stress-related condition due to factors of his federal employment related to prejudice and racism in his workspace and mail delivery route. He noted that he first became aware of his claimed condition on July 20, 2021, and first realized its relation to his federal employment on May 19, 2023. Appellant stopped work on May 22, 2023. On the reverse side of the form, A.G., appellant's supervisor, controverted the claim.

In an undated narrative statement, appellant reported that he worked at the employing establishment in Brandon, Florida, where he had to defend himself against false allegations from coworkers and customers on his route. He described being spat on, called racial slurs, chased down the road while delivering mail, having doors slammed in his face, and getting screamed at by customers because he was so tall. Appellant reported feeling unsafe and uncomfortable. He explained that he was having a hard time focusing and concentrating because he was in fear of his life.

In a June 22, 2023 report, Ian Gerhard, a licensed mental health counselor, reported treating appellant for generalized anxiety disorder since July 20, 2021. He noted that appellant was also undergoing therapy, and had been incapacitated since May 19, 2023 due to symptoms associated with this diagnosis.

In a July 20, 2023 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. In a separate development letter dated August 29, 2023, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, and an explanation of appellant's work activities. It afforded appellant 60 days to submit the necessary evidence.

Appellant subsequently submitted an official position description for a city carrier, detailing his employment duties.

By decision dated September 29, 2023, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish the implicated factors of employment. It noted that he provided a vague description of the alleged employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 24, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On November 15, 2023 OWCP's hearing representative notified appellant that an oral hearing was scheduled for December 20, 2023 at 3:00 p.m. Eastern Standard Time (EST). The notice provided the toll-free telephone number and passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing, and no request for postponement was received.

By decision dated January 2, 2024, OWCP found that appellant had abandoned his request for an oral hearing, because he had received written notification of the hearing 30 days in advance, but failed to appear. It further found that there was no indication in the case record that he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</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 filed within the applicable time limitation of FECA,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.<sup>7</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *See C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

<sup>8</sup> *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

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

The Board finds that appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

In his June 22, 2023 Form CA-2 and accompanying narrative statement, appellant generally alleged that he experienced prejudice and racism in the workplace due to factors of his federal employment. He has not, however, presented a clear factual statement in the record describing the specific alleged employment-related factors he believed caused or contributed to his claimed medical condition.<sup>9</sup> Appellant did not provide details such as when, where, or how the alleged harassment occurred, the individuals involved, or the actions or statements that took place during the incidents.<sup>10</sup> By failing to sufficiently describe the employment incidents and/or circumstances surrounding his alleged condition, he has not established that an emotional condition occurred in the performance of duty as alleged.<sup>11</sup> In a July 20, 2023 development letter, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. Appellant did not respond.<sup>12</sup> Accordingly, the Board finds that he has not established the implicated factors of employment and, thus, has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty.<sup>13</sup>

Appellant may submit new evidence or argument, together 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>14</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before

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<sup>9</sup> See *B.M.*, Docket No. 21-1185 (issued March 4, 2022); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>10</sup> See *L.T.*, Docket No. 20-0345 (issued June 21, 2022); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>11</sup> See *S.K.*, Docket No. 18-1648 (issued March 14, 2019).

<sup>12</sup> See *K.S.*, Docket No. 17-2001 (issued March 9, 2018); see also *K.W.*, Docket No. 16-1656 (issued December 15, 2016).

<sup>13</sup> See *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).

<sup>14</sup> 20 C.F.R. § 10.616(a).

the scheduled date.<sup>15</sup> OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>16</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's September 29, 2023 decision denying appellant's emotional condition claim for fact of injury, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a November 15, 2023 notice, OWCP's hearing representative informed him that she had scheduled a telephonic hearing for December 20, 2023 at 3:00 pm. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.<sup>18</sup> The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received.<sup>19</sup> This is called the mailbox rule.<sup>20</sup>

Appellant failed to call in for the scheduled hearing at the prescribed time. He also did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned his request for an oral hearing.<sup>21</sup>

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<sup>15</sup> *Id.* at § 10.617(b).

<sup>16</sup> *H.C.*, Docket No. 22-0047 (issued May 25, 2022); *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>17</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6g (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> *T.D.*, Docket No. 22-0705 (issued October 7, 2022).

<sup>20</sup> *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020).

<sup>21</sup> *J.F.*, Docket No. 23-0348 (issued July 24, 2023); *T.B.*, Docket No. 23-0202 (issued May 16, 2023).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged. The Board further finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2023 and January 2, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 21, 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