

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

B.J., Appellant)

and)

U.S. POSTAL SERVICE, ASHFORD WEST)
POST OFFICE, Houston, TX, Employer)
-----)

**Docket No. 24-0322
Issued: May 21, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On February 7, 2024 appellant filed a timely appeal from a January 23, 2024 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 in the performance of duty on November 6, 2023, as alleged.

FACTUAL HISTORY

On November 7, 2023 appellant, then a 59-year-old supervisor of customer services, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2023 she experienced chest pain and headaches due to mental harassment from an employee while in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty. She explained that she developed anxiety and was under stress as a result of an employee who harassed, defamed, and made false allegations about her, and filed numerous Equal Employment Opportunity Commission (EEOC) complaints against her. Appellant stopped work on November 6, 2023, and returned on November 7, 2023. On the reverse side of the claim form, appellant's supervisor, M.J., checked a box marked "No" indicating that his knowledge of the facts about the injury did not agree with the statements of appellant. He further controverted the claim asserting that causal relationship had not been established as appellant was a supervisor and managed other employees, such that her stress may be self-induced.

In a November 13, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In an authorization for examination and/or treatment (Form CA-16), the employing establishment indicated that the date of injury was November 6, 2023, and that the injury was mental stress on the job. In an attending physician's report, Part B of the Form CA-16 dated November 27, 2023, Dr. Louis Train, a family practitioner, diagnosed bipolar II disorder, anxiety and depression. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity and described the history of injury as an employee falsely accusing appellant and her family of threatening that employee. Dr. Train found that she was totally disabled. In a separate report of even date, he recounted that an employee falsely accused appellant and her family of threatening her and planning to assault her off of the employing establishment premises. Dr. Train explained that appellant was treated with medication by another physician for chronic anxiety, depression, and bipolar II disorder. He also completed a duty status report (Form CA-17) dated November 27, 2023 and diagnosed anxiety and stress.

Dr. Train examined appellant on December 19, 2023, and repeated her allegations of multiple complaints by an employee who alleged that appellant threatened her. He opined that appellant had developed post-traumatic stress disorder (PTSD) because of these complaints. Dr. Train also completed a Form CA-17 of even date diagnosing PTSD and finding that appellant could return to work.

In a follow-up January 9, 2024 letter, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the November 13, 2023 letter to submit the requesting supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated January 23, 2024, OWCP denied appellant's traumatic injury claim finding that she had not submitted sufficient evidence to establish that the incident occurred, as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

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 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.⁶

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*,⁷ 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.⁸ 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.⁹

² *Id.*

³ *P.S.*, Docket No. 23-0822 (issued January 23, 2024). *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 *A.B.*, Docket No. 21-1170 (issued August 28, 2023); *S.D.*, Docket No. 23-0898 (issued July 13, 2023); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁷ 28 ECAB 125 (1976).

⁸ *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).

⁹ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 7.

OWCP's procedures provide:

“An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission.”¹⁰

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹¹ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.¹²

ANALYSIS

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

On her claim form, appellant, a supervisor, alleged that an employee harassed her, defamed her character, and filed numerous EEOC complaints against her.

In a development letter dated November 13, 2023, OWCP requested that appellant complete a questionnaire. However, it did not contact the employing establishment directly to request that it provide comments from a knowledgeable supervisor on the accuracy of the allegations and any additional information such as witness statements.

The Board finds that it is unable to make an informed decision in this case as OWCP did not request information from the employing establishment.¹³ As discussed, OWCP's procedures

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j (July 1997); *see also J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.K.*, Docket No. 20-0508 (issued December 11, 2020); *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

¹¹ 20 C.F.R. § 10.117(a); *G.K.*, *id.*; *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹² *Supra* note 10 at Chapter 2.800.7a(2) (June 2011).

¹³ *P.S.*, *supra* note 3; *J.R.*, *supra* note 10; *G.I.*, Docket No. 19-0942 (issued February 4, 2020); *V.H.*, Docket No. 18-0273 (issued July 27, 2018).

provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.¹⁴

In this case, further findings by OWCP are needed.¹⁵ Although it is appellant's burden of proof to establish her 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.¹⁶ It shares responsibility to see that justice is done.¹⁷

The case will accordingly be remanded for OWCP to further develop the evidence. On remand, OWCP shall obtain a statement and any relevant evidence regarding appellant's allegations from the employing establishment.¹⁸ After this and such other further development as it deems necessary, it shall issue a *de novo* decision.¹⁹

CONCLUSION

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

¹⁴ *Supra* note 12; *see also P.S., id.; M.T.*, Docket No. 18-1104 (issued October 9, 2019); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

¹⁵ *P.S., id.; A.O.*, Docket No. 19-1612 (issued April 8, 2021); *N.S.*, Docket No. 16-0914 (issued April 10, 2018).

¹⁶ *P.S., id.; L.J.*, Docket No. 20-0998 (issued December 14, 2022); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *T.B.*, Docket No. 19-0323 (issued August 23, 2019).

¹⁷ *P.S., id.; M.T.*, *supra* note 14.

¹⁸ *P.S., id.; A.O.*, *supra* note 15; *G.K.*, *supra* note 10; *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

¹⁹ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2024 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 21, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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