

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

T.B., Appellant)	
)	
and)	Docket No. 22-0072
)	Issued: October 29, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
San Diego, CA, Employer)	
)	

Appearances:
Kelley Craig, Esq., for the appellant
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 October 19, 2021 appellant, through counsel, filed a timely appeal from an August 5, 2021 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 his burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On December 30, 2019 appellant, then a 52-year-old revenue officer, filed an occupational disease claim (Form CA-2) alleging that he developed an emotional condition, as well as back and

¹ 5 U.S.C. § 8101 *et seq.*

lower extremity pain causally related to factors of his federal employment. He specifically alleged his “mental and physical health challenges were exacerbated due to case load and not receiving ergonomic chair/evaluation as requested by his doctor in a timely manner.” Appellant noted that he was a veteran with a service-connected disability and that he first became aware of his condition and its relationship to his federal employment on December 3, 2019. He stopped work on December 4, 2019.

In a September 10, 2019 note, a medical provider with an illegible signature, held appellant off work until September 12, 2019 and requested that he be provided an ergonomic evaluation of his workstation.

In a January 3, 2020 development letter, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP provided appellant 30 days to submit the requested information. It also sent a development letter to the employing establishment the same day requesting a response to appellant’s allegations.

In a January 27, 2020 statement, J.M., Acting Group Manager, indicated that appellant was in the training phase of his employment with a reduced level of inventory (a 23 percent normal work load) and an on-the-job instructor assisted with the case load. He advised that appellant was generally able to perform the required duties in accordance with expectations and that there were no performance or conduct problems. J.M. noted that appellant was in training from September 17 through 26, 2019 and October 28 through November 8, 2019 and that he took leave prior to and after his training. With regard to the ergonomic chair request, J.M. indicated that on October 3, 2019, appellant presented an ergonomic chair accommodation request to Supervisor T.M. without the required medical documentation. On October 22, 2019 the employing establishment received the required documentation to proceed with the chair evaluation. It attempted to contact appellant on October 30, 2019 for a chair evaluation but he was away at unit training from October 28 through November 8, 2019 and returned on November 12, 2019. On November 13, 2019 the chair evaluation was completed and submitted to the Territory Manager for approval. On November 20, 2019 Supervisor T.M. received a confirmation that the purchase order was created and approved. The delivery of the ordered chair remained pending.

OWCP subsequently received narrative statements, wherein appellant explained that his migraines and back pain worsened shortly after being hired in August 2019 as a Veteran with service-connected disabilities, which caused him to frequently call off work. A Dr. Shah, his primary doctor, provided a September 10, 2019 note requesting that he receive an ergonomic evaluation of his workstation as his chair was inadequate and his standing desk was broken. Appellant explained that, while awaiting a reasonable accommodation, he was assigned several cases which needed to be completed in a timely manner. However, he began to fall behind on his work, as he needed to take frequent breaks because of his pain. Appellant alleged that his supervisors, T.M. and G.D., counseled him several times on his declining work performance and sick days off. He alleged that T.M. suggested in one meeting that he should resign. Appellant indicated that he tried to stay at work late or come in early to catch-up on his work but was notified by a coworker that he was not allowed to work before or after his eight-hour shift. He alleged that being unable to keep up with his workload caused a decline in his mental health. Appellant also indicated that, as his back pain and migraines worsened, he took frequent breaks to recover, noting

that his prescription medication made him drowsy. He alleged that when he asked his supervisor about his ergonomic evaluation, she responded that he should hear from the ergonomic department. While he received e-mails from the ergonomic department, appellant alleged that he never received a workstation evaluation or a chair. By December 2019, his doctor took him off work due to his back pain, lower extremity pain, migraines, post-traumatic stress disorder (PTSD), depression, and anxiety. Appellant alleged that after his vacation and sick leave were depleted, the employing establishment notified him daily through certified letters that he was Absent Without Leave (AWOL), which worsened his mental health challenges. He contacted the union and filed a claim on December 28, 2019. In February 2020, appellant filed for disability retirement due to his ongoing physical and mental challenges. He alleged that the failure to receive his requested accommodation and his psychological stress regarding his physical symptoms, exacerbated his diagnosed lumbar radiculopathy, lumbar degenerative disc disease, PTSD, generalized anxiety disorder, depression and migraine headaches. Appellant further indicated that he received a notice of termination on April 28, 2020, which referenced the pay periods for which he was charged with AWOL. She submitted the April 28, 2020 termination letter, notices of AWOL charges dated March 12, March 16, March 17, March 26, March 27, 2020; copies of texts from August 28 through December 30 between appellant and "I.T.," a supervisor; a statement of "triggering events" to the union; an April 28, 2020 letter indicating that a formal grievance had been filed on behalf of appellant for improper leave denial of Employee Rights and hostile work environment.

On March 26, 2020 Dr. Richard M. Scott, a licensed clinical psychologist, opined that appellant had permanent psychological/psychiatric conditions which rendered him incapable of work.

On April 28, 2020 the employing establishment terminated appellant's appointment because of his unavailability to report to duty since February 10, 2020. It noted that he had been AWOL for 360 hours from February 10 through April 10, 2020, and notices of AWOL charges were provided.

In several reports and work release notes dated December 3, 2019 and January 4, January 21, March 19, June 23, and December 16, 2020, Dr. Scott noted appellant's psychiatric conditions of post-traumatic stress disorder, anxiety and major depression, and relational problems, provided for dates of disability to "recover psychologically, emotionally, mentally, and physically." In his March 19, 2020 report, he explained that appellant had a number of conditions including PTSD, major depression, insomnia, and noted that his PTSD had originated during his military service. Dr. Scott related that appellant's work environment, which appellant described as hostile, veteran discriminatory, insensitive, non-compliant, and unhelpful, for example in failing to obtain an ergonomically structured chair for him, retriggered his PTSD.

Several reports and work release notes from Dr. Ron Brizzie, an osteopath and Board-certified physiatrist, dated January 8 through August 21, 2020, were also received. In a January 8, 2020 work form, he held appellant off work until February 10, 2020 due to a diagnosis of lumbar radiculopathy.

By decision dated January 22, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an emotional condition in the performance of duty, as alleged. It determined that he had not established a compensable employment factor.

On February 23, 2021 appellant, through counsel, requested reconsideration.

Additional medical reports from Dr. Brizzie were also received, which discussed appellant's lumbar condition. In a report dated August 21, 2020, Dr. Brizzie related that appellant's lumbar radiculopathy and lumbar degenerative disc disease were exacerbated by his work duties and lack of an ergonomic chair, that was supposed to be provided to him. He explained that during the time appellant worked at the employing establishment, he reported a worsening of his back problems directly related to his job duties, he experienced increased low back pain which radiated down into his legs. The mechanism of injury and physical symptoms were consistent with his history of diagnosis and were supported by physical examination findings of decreased sensation, loss of lumbar range of motion, and tenderness of the lumbar spine. Dr. Brizzie concluded that appellant's work duties temporarily exacerbated his existing lumbar disc degeneration and lumbar radiculopathy.

Appellant also resubmitted a narrative statement previously of record.

By decision dated August 5, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

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.⁵

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of

² *Supra* note 1.

³ *C.Y.*, Docket No. 21-0179 (issued September 30, 2021); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.115(e); *C.Y., id.*; *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).

⁵ *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).

workers' compensation. 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.⁶ However, disability is not compensable when it results from factors such 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.⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.⁸ 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.⁹

ANALYSIS

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

The Board notes that appellant's allegations do not pertain to his regularly or specially assigned duties under *Cutler*.¹⁰ Rather, appellant attributed his condition to administrative or personnel matters under *Thomas D. McEuen*.¹¹

Appellant alleged that he was a disabled veteran when he was hired by the employing establishment in 2019 and that he had requested an ergonomic evaluation of his workstation as his standing desk was broken and he required an ergonomic chair. He alleged that he was given several cases that had to be completed in a timely manner, but he had difficulty completing his work because he had to take frequent breaks due to back pain. Appellant further alleged that the delay in obtaining his ergonomic chair worsened his back pain and caused a triggering of his preexisting PTSD.¹² On November 20, 2019 Supervisor T.M. received a confirmation that the purchase order was created and approved. In a statement dated January 28, 2020, an employing establishment manager, J.M., confirmed that while an ergonomic evaluation had been conducted on November 13, 2019, delivery of appellant's requested ergonomic chair was still pending. There

⁶ 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).

⁷ *Cutler, id.*

⁸ *C.L.*, Docket No. 22-0499 (issued June 4, 2024); *C.V.*, Docket No. Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁹ See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹⁰ See *J.C.*, Docket No. 24-0280 (issued September 27, 2024); *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 6.

¹¹ *Supra* 10; see also *C.L.*, Docket No. 22-0499 (issued June 4, 2024).

¹² The Board notes that as OWCP has not rendered a final decision regarding the physical aspect of appellant's claim, this issue is not presently before the Board. See 20 C.F.R. §§ 501.2(c) and 501.3.

is no evidence of record that appellant received his ergonomic chair before he was separated from employment on April 28, 2020. There is also no evidence that the employing establishment exercised due diligence, in the interim, to otherwise provide a reasonable accommodation.

The Board therefore finds that appellant's allegation that he developed an emotional condition as he was not timely provided an ergonomic chair, which he believed interfered with his ability to complete his assigned work, was factually established and constitutes a compensable factor of employment.

In denying appellant's claim, OWCP did not review the medical evidence submitted on the issue of causal relationship regarding the accepted compensable factor. The Board will, therefore, set aside OWCP's August 5, 2021 decision and remand the case for a review of the medical opinion evidence. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.¹³

CONCLUSION

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

¹³ See *D.B.*, Docket No. 19-1310 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2021 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: October 29, 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