

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

_____)
A.M., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS AND BORDER PROTECTION,)
BORDER PATROL ACADEMY, El Paso, TX,)
Employer)
_____)

Docket No. 24-0460
Issued: September 25, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 20, 2024 appellant filed a timely appeal from a March 1, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ The Board notes that, following the March 1, 2024 decision, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

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 October 14, 2023, as alleged.

FACTUAL HISTORY

On December 14, 2023 appellant, then a 58-year-old general student trainee, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced an anxiety attack while in the performance of duty. She explained that she later realized that the anxiety attack was the result of “something to do with” her participation in a firearms training class. On the reverse side of the claim form, the employing establishment controverted the claim by checking a box marked “No” indicating that appellant was not in the performance of duty when injured, as she was in her dormitory room when she experienced an anxiety attack. Appellant stopped work on October 17, 2023.

In a development letter dated December 27, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary information. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

In a January 11, 2024 response, an employing establishment supervisor related that appellant’s nervous breakdown was triggered when she attended an “Intro to Firearms” class during her workweek. Appellant sought treatment in the emergency room the following weekend due to her anxiety regarding firearms. She resigned from the employing establishment, effective October 17, 2023.

In a follow-up letter dated January 24, 2024, 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 December 27, 2023 letter to submit the requested 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.

In an October 14, 2023 emergency room note, Dr. Jessica Avila, a resident physician, described appellant’s symptoms of headache, pressure on her chest, difficulty breathing, nausea, vomiting, cough with green sputum, and congestion. Dr. Daniel Taylor, family practitioner, diagnosed chest pressure and a productive cough.

By decision dated March 1, 2024, OWCP denied appellant’s claim, finding that she had not established that the injury occurred, as alleged. It noted that she had not responded to its development questionnaire and concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

To establish an emotional/stress-related 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.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

³ *Id.*

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 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).

⁶ *See D.B.*, Docket No. 23-0857 (issued February 7, 2024); *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).

⁷ *C.T.*, Docket No. 23-0381 (issued February 28, 2024); *S.W.*, Docket No. 17-0261 (issued May 24, 2017); *Virgil F. Clark*, 40 ECAB 575 (1989); *Elizabeth A. Keller*, 34 ECAB 1566 at 1567 (1983).

⁸ *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty on October 14, 2023, as alleged.

In her Form CA-1, appellant generally alleged that she sustained mental distress which had “something to do with” her participation in a firearms training class. On December 27, 2023 and January 24, 2024 OWCP advised her of the type of additional evidence needed, including a detailed description of the implicated work factors. It also provided a questionnaire for appellant’s completion. However, no response was received.

As appellant did not respond to OWCP’s development letter, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹⁰ As the evidence of record is insufficient to establish an emotional/stress-related condition in the performance of duty, the Board finds that appellant has not met her burden of proof.¹¹

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.¹²

Appellant may submit new evidence or argument 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.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty on October 14, 2023, as alleged.

¹⁰ See *K.C.*, Docket No. 24-0226 (issued July 17, 2024); *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *L.A.*, Docket No. 17-0138 (issued April 5, 2017); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹¹ See *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 556 (1991).

¹² *H.S.*, Docket No. 24-0375 (issued July 31, 2024); *T.B.*, Docket No. 23-0675 (issued June 24, 2024); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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