

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

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| S.B., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0774 |
| |) | Issued: September 25, 2024 |
| U.S. POSTAL SERVICE, ST. LOUIS |) | |
| PROCESSING AND DISTRIBUTION |) | |
| CENTER, St. Louis, MO, Employer |) | |
| |) | |

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 July 18, 2024 appellant filed a timely appeal from a March 18, 2024 merit decision and an April 24, 2024 nonmerit 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.

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 on January 2, 2024, as alleged; and (2) whether OWCP properly denied his request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 9, 2024 appellant, then a 54-year-old maintenance operations manager, filed an occupational disease claim (Form CA-2) alleging that he sustained stress, anxiety, and post-traumatic stress disorder (PTSD) due to factors of his federal employment resulting from a January 2, 2024 incident in the men's locker room in the basement of the employing establishment facility. He described a physical assault by an employing establishment police officer (PPO) who had his hand on his gun and threatened appellant with violence.

OWCP received appellant's January 2, 2024 statement in which he described his participation in a scheduled locker check that day, which revealed approximately \$1,000.00 in cash. As his division did not have a secure location to store cash, he deferred to a postal inspector, who suggested that the local PPO handle the case. The PPO took the items and left, then returned with instructions from his sergeant not to accept responsibility for the money. Appellant again explained to the PPO that the maintenance division did not have a secure storage location for the cash. He and the PPO went "back and forth with each other in elevated tones[.]" The PPO then placed the cash in appellant's utility cart and stated that his sergeant instructed appellant to take responsibility. Appellant removed the container from the utility cart and reiterated that he would not take possession. The PPO instructed him to lock the cash in a locker, but he asserted he had no way to do that. The PPO then called him "incompetent," and issued instructions as though he "were in his chain of command or his child." Appellant then told the PPO that "he was a sorry motherf[***]er." The PPO then closed the distance between himself and appellant, such that his chest bumped appellant's chest, and backed him into a locker. Appellant alleged that while the PPO moved toward him, "he had his hand at his side (gun side) and asked what time [appellant] got off work." He asked the PPO to back up. A coworker then stood between appellant and the PPO, and the postal inspector "walked up to the side trying to calm the situation." Appellant then disengaged and returned to his office.

In a development letter dated January 11, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's allegations, with an explanation of any points of disagreement. OWCP afforded the employing establishment 30 days to respond.

OWCP received a March 5, 2024 medical report by Dr. Ernest Ayodele Gbadebo-Goyea, a Board-certified psychiatrist and neurologist, wherein he noted that appellant had a history of service-connected PTSD, which required medication. Appellant reported a difficult interaction with a PPO that exacerbated his symptoms and resulted in decompensation requiring the need for his medication to be adjusted upward.

By decision dated March 18, 2024, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the January 2, 2024 employment incident occurred, as alleged. It further found that it had "not received any medical evidence[.]" OWCP, therefore, concluded that the requirements had not been met to establish an injury as defined by FECA.

On April 18, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted additional evidence.

In a January 2, 2024 statement, E.B., a postal inspector, confirmed that the locker search that day revealed a small fireproof safe with money inside. The PPO took possession of the safe but was informed by his supervisor that maintenance should store the safe as it was not contraband. Appellant refused to take possession. E.B. recalled that the PPO and appellant exchanged words over who should take possession of the safe. Appellant criticized the employing establishment police force. The PPO then called appellant incompetent, and asked appellant when he got off work. The PPO and appellant "came face to face yelling at each other and pointing fingers." A union representative, shop steward, and E.B. stepped in between the two men to stop the argument.

In a January 2, 2024 statement, M.B., an employing establishment maintenance support manager, asserted that he had been asked to take over a locker search that morning. He asserted that as a result of the altercation between appellant and the PPO, the PPO "was placed on emergency suspension." M.B. noted that he witnessed conversations between appellant and responding employing establishment police and personnel of the Office of Inspector General "in which the three confirmed the incident took place, and that this would probably be the last day for" the PPO.²

By decision dated April 24, 2024, OWCP denied appellant's request for a review of the written record as untimely filed, finding that his request was not made within 30 days of the March 18, 2024 decision as it was dated and received *via* Employees' Compensation & Management Portal (ECOMP) on April 18, 2024 as verified by the scanned date. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP, along with the submission of new evidence supporting that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 1

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

² Appellant submitted a third January 2, 2024 witness statement that is illegible.

³ *Supra* note 1.

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).

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.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁷ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an employee's emotional reaction to his or her regular or specially assigned work duties, or to a requirement imposed by the employment, the disability is deemed compensable.⁸ 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.⁹

For harassment or discrimination to give rise to a compensable disability, there must be evidence, which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁰ Mere perceptions of harassment are not compensable under FECA.¹¹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹² Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹³ The claim must be supported by probative

⁶ 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).

⁷ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁸ See *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *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).

⁹ *Lillian Cutler, id.*

¹⁰ *S.Z.*, Docket No. 23-1086 (issued April 11, 2024); see *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹¹ *R.B., id.*; *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹² *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *C.W.*, 58 ECAB 137 (2006).

¹³ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland, supra* note 11.

evidence.¹⁴ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence, which has been submitted.¹⁵

ANALYSIS -- ISSUE 1

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

In the case of *William A. Couch*,¹⁶ the Board held that, when adjudicating a claim, OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP, before the final decision is issued.

On March 18, 2024 the same date that OWCP issued its initial denial, it received a March 5, 2024 report from Dr. Gbadebo-Goyea. However, OWCP did not consider and address this report in its March 18, 2024 decision. As such, it failed to follow its procedures by properly reviewing and discussing all of the evidence of record.¹⁷ It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.¹⁸ This principle applies with regard to evidence received by OWCP the same day a final decision is issued.¹⁹

The Board thus finds that this case is not in posture for a decision, as OWCP did not consider and address the evidence submitted by appellant in support of his claim for compensation.²⁰ On remand, OWCP shall review all evidence of record and, following any further development it deems necessary, it shall issue a *de novo* decision.²¹

¹⁴ *Id.*

¹⁵ See *V.R.*, Docket No. 23-1075 (issued February 28, 2024); *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁶ 41 ECAB 548 (1990).

¹⁷ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

¹⁸ *R.P.*, Docket No. 23-0536 (issued October 3, 2023); see also *A.D.*, Docket No. 22-0519 (issued January 11, 2023); *A.B.*, Docket No. 22-0179 (issued June 28, 2022); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 16.

¹⁹ See *T.B.*, Docket No. 21-0448 (issued September 27, 2021); *Order Remanding Case, S.S.*, Docket No. 19-1737 (issued April 7, 2020); *Order Remanding Case, J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision).

²⁰ See *R.P.*, *supra* note 18; *A.B.*, *supra* note 18; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

²¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2024 decision of the Office of Workers' Compensation is set aside, and the case is remanded for further proceedings consistent with this decision of the Board. The April 24, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: September 25, 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