United States Department of Labor
Employees' Compensation Appeals Board

P.K., Appellant	)	
and	)	**Docket No. 21-0967**
	)	**Issued: December 3, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Osceola Mills, PA, Employer	)	

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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 7, 2021 appellant filed a timely appeal from a January 25, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 25, 2021 decision, appellant submitted additional evidence to OWCP. However, 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.

FACTUAL HISTORY

On December 15, 2020 appellant, then a 61-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on August 11, 2020.

In an undated statement, appellant alleged that in October 2019 a rural carrier associate (RCA) in her employ transferred to another office and a regular carrier fell and hurt her knee and she was left short staffed with no one to deliver the rural route. On November 22, 2019 her city carrier associate (CCA) fell down the dock steps and sustained a severe head injury. Appellant indicated that the same day the new hire for RCA was sent for fingerprinting and she never heard back as to a start date until February 2020. She noted that, during the RCA's tenure, she had to find the RCA on her route, get someone to deliver the rest of her mail or deliver the mail herself, and pick up all outgoing mail. Appellant further noted that the RCA was unable to run the whole route and was terminated.

Appellant described being under constant pressure six days a week, wondering if all the mail was going to be delivered. She indicated that the regular carrier was disciplined for leaving the route one day while appellant was at a physician appointment. This same carrier took leave from May 13 through 27, 2020 because of COVID-19 and lack of a babysitter. During this time, appellant scrambled to find people to run the route and deliver packages and she reported running the route herself for several days to get the mail delivered.

Appellant indicated that she received text messages on three different Saturdays from the regular carrier who stated that she could not come to work and appellant had to deliver the route, which took appellant 12 hours. She reported that a RCA was exposed to a family member who tested positive for COVID-19 and she had to quarantine for 14 days. During this period, appellant had granted leave to a regular carrier from August 14 through 23, 2020 and she had to get someone to run the 63-mile route because she was not physically able to do it.

Appellant indicated that a regular city carrier retired after 36 years on August 31, 2020 and she did not have anyone to cover his route. She indicated that she was able to get a CCA to learn the route and was borrowing him one day a week so that the regular carrier could get a break, but when he was asked to work six or seven days a week due to deliveries from a large corporation, he quit. Appellant reported training another CCA; however, she had a chance to switch crafts and did so. Subsequently, she was granted an emergency hire who was sent for orientation and training, but resigned after her shadow day. Appellant noted that the CCA that she had been borrowing was hired for the job and was to work all week, but she had to have emergency surgery on August 14, 2020 and would be off work for at least six weeks.

Appellant alleged that the lack of personnel to do all the required jobs at her employing establishment caused her stress. She noted that her superiors informed her that it was her responsibility to make sure the routes were covered in a timely fashion, but that there was no one within her area to run them. Appellant indicated that it was her job to run the route if she could not find coverage, but she was not physically capable of delivering the routes. She indicated that

the stressful conditions start when she entered the employing establishment and sometimes with a text message as early as 6:45 a.m. because of a late truck or other late drop off.

Appellant further alleged that her long-life vehicle did not run as it should have and she had to request a substitute vehicle on several occasions. She noted being under more pressure to make sure the carriers were scanning packages correctly, which kept her at the office sometimes until 6:00 or 7:00 p.m. Appellant claimed that she worked 10 to 12 hours a day, six days a week.

Appellant submitted an August 24, 2020 note from Dr. Jane E. Rowe, a Board-certified dermatologist, who reported treating appellant for a skin condition and recommended she limit sun exposure during the months of April through October. Dr. Rowe also submitted a September 4, 2020 note from a healthcare provider whose signature was illegible, who treated appellant on August 14, 2020 for severe anxiety and panic attacks due to being overworked and understaffed at her job.

In a December 22, 2020 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the allegations in appellant's narrative statement and the accompanying documentation. It afforded both parties 30 days to respond. The employing establishment did not respond.

Appellant subsequently submitted additional evidence. She was treated by Julie Hillyer, a nurse practitioner, on August 14, 2020 for severe anxiety. Appellant also submitted verification of appointments with a counselor dated August 24 through December 2, 2020.

On January 25, 2021 OWCP received appellant's response to the development letter providing further details of the employment-related conditions or incidents believed to have contributed to her emotional condition. Also submitted was a January 18, 2021 witness statement from S.T., a clerk at the employing establishment, who observed high volumes of mail and packages, staff shortages, and the frequent incidences that appellant had to deliver complete mail routes weekly. She indicated that appellant performed several jobs as a single person, which required her to work long hours resulting in high levels of stress. OWCP received prescription notes from Dr. Richard A. Johnson, a Board-certified internist, dated August 14 and September 21, 2020, who noted that appellant would be off work until further notice. In a January 5, 2021 addendum report of a December 8, 2020 report, Dr. Johnson treated her for anxiety and stress secondary to her work environment and an increased workload. Appellant also submitted a facsimile (fax) and accompanying revised Form CA-2.

By decision dated January 25, 2021, OWCP denied appellant's emotional condition claim finding that she had not provided medical evidence of a diagnosed condition in connection with the alleged work incidents. It further found that she had not substantiated a compensable factor of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim,[4] 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 in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5] 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.[6]

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 identified compensable employment factors are causally related to the emotional condition.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.[8] In the case of *Lillian Cutler*,[9] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.[10] When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment.[11] On the other hand, when an injury or illness results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, his or her frustration from not being permitted to work in a particular environment or hold a particular

[3] *Id*.

[4] *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *O.G., id.*; *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 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).

[7] *O.G., supra* note 4; *George H. Clark*, 56 ECAB 162 (2004).

[8] *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

[9] 28 ECAB 125 (1976).

[10] *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

[11] *Cutler, supra* note 9; *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001).

position, unhappiness with doing work, or frustration in not given the work desired or hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.[12]

To the extent that, disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.[13] However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur. Mere perceptions of harassment are not compensable under FECA.[14]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.[15] If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.[16]

OWCP's regulations provide that an employer 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.[17] Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.[18]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[19] The nonadversarial policy of proceedings

[12] *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *see also B.S.*, Docket No. 19-0378 (issued July 10, 2019); *William E. Seare*, 47 ECAB 663 (1996).

[13] *T.L.*, *supra* note 8; *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[15] *B.S.*, *supra* note 12; *Dennis J. Balogh*, 52 ECAB 232 (2001).

[16] *O.G.*, *supra* note 4; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[17] 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

[19] *D.B.*, Docket No. 19-0443 (issued November 15, 2019); *K.S.*, Docket No. 18-0845 (issued October 26, 2018); *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

under FECA is reflected in OWCP's regulations at section 10.121.[20] Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner.[21]

ANALYSIS

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

Appellant alleged that she developed anxiety and stress due to being overworked, understaffed, and a general lack of personnel to do all the required jobs at her employing establishment. She asserted that she experienced emotional stress in carrying out her employment duties including attempting to meet management directives.

On December 22, 2020 OWCP requested that the employing establishment address the accuracy of appellant's allegations and claims. The employing establishment did not respond to the development letter. As discussed, OWCP's procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.[22]

Although it is a claimant's burden of proof to establish his or 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 or other government source.[23]

For these reasons, the case will be remanded to OWCP for further development of the evidence regarding appellant's allegations of overwork. On remand OWCP shall obtain a statement from the employing establishment addressing appellant's allegations. Specifically, the employing establishment should address the number of hours and days she worked as well as any management directives that she was unable to meet. Moreover, the employing establishment should provide any relevant information that is normally in its exclusive control (*e.g.*, time schedules, appropriate staff levels, and the time period, if any, during which appellant's duty station was fully staffed). OWCP's Federal (FECA) Procedure Manual provides that, if an employing establishment fails to respond to a request for comments on a claimant's allegations, OWCP's claims examiner may accept the claimant's statements as factual.[24] After such further development as deemed necessary, it shall issue a *de novo* decision.

[20] 20 C.F.R. § 10.121.

[21] *F.V.*, Docket No. 19-0006 (issued September 19, 2019).

[22] *Supra* note 18; *M.T.*, Docket No. 18-1104 (issued October 9, 2019).

[23] *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No 15-1535 (issued September 23, 2016) (remanding the case for further development by OWCP when the employing establishment did not provide an investigative memorandum in an emotional condition claim based on sexual harassment).

[24] *Supra* note 18 at Chapter 2.804.17(j) (July 1997); *see also S.L.*, Docket No. 17-1780 (issued March 14, 2018).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 25, 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: December 3, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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