United States Department of Labor
Employees' Compensation Appeals Board

W.D., Appellant	)	
and	)	**Docket No. 19-1654**
	)	**Issued: February 19, 2021**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 1, 2019 appellant, through counsel, filed a timely appeal from a July 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On May 12, 2016 appellant, then a 57-year-old supervisory information technology specialist, filed an occupational disease claim (Form CA-2) alleging that he developed hypertension over the prior two years due to stress from having an excessive workload and unrealistic deadlines. He advised that he first became aware of his claimed condition on May 15, 2015 and realized its relation to his federal employment on April 1, 2016. On the reverse side of the form appellant's immediate supervisor, B.M., expressed his belief that appellant had not established causal relationship. Appellant stopped work on May 3, 2016.

Appellant submitted a May 6, 2016 statement in which he indicated that he began working as a supervisor for the joint information operations branch of the employing establishment on June 14, 2014. He noted that, in early2013, the branch had undergone a massive reorganization, which merged five different systems together with 20 employees. Appellant recounted that the branch conducted two major software installations per year prior to the reorganization, but conducted 12 to 15 major software installations per year thereafter, thereby causing chaos because the installations interfered with each other.[3] He asserted that the prior supervisor of the branch, C.J., did not like his positive progress supervising the branch and launched a campaign to undermine him by using false statements to get the Office of Inspector General to investigate him and by having upper management conduct an anonymous online survey in July 2015, entitled, "Speak up -- make a difference," which he believed focused on him. Appellant advised that there were four computer development branches at the employing establishment, but maintained that his branch had more incident tickets associated with software changes than the three other branches combined. He asserted that he had to report an employee in his branch as potentially being an active shooter in the workplace due to his erratic behavior. Appellant claimed that he did not have a prehypertension condition until his branch reorganized in 2013 and asserted that his hypertension was caused by "excessive workload, excessive workplace stress, completely unrealistic deadlines, and upper management constantly harassing me and impeding my workplace efforts for the last two years."

Appellant submitted an April 22, 2016 report from Dr. Thomas Minora, a Board-certified internist, who noted that appellant reported a correlation between stress from his job requirements and high blood pressure. Dr. Minora diagnosed generalized anxiety disorder and recommended that appellant take four weeks off work. On May 6, 2016 he indicated that he had treated appellant for borderline hypertension since 2013 and hypertension since 2015. Dr. Minora opined that appellant's blood pressure was aggravated by workplace stress.

[3] Appellant indicated that his branch also had to conduct software changes known as "incident reports" or "incident tickets."

In a May 11, 2016 letter received by OWCP on May 12, 2016, the employing establishment controverted appellant's claim on the basis that appellant had not established causal relationship between his claimed condition and his federal employment.

In a June 15, 2016 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the claimed employment factors caused or aggravated his hypertension condition. It provided him a questionnaire, which posed questions regarding his claimed employment factors, as well as his claimed medical condition and its relationship to those factors. OWCP afforded appellant 30 days to respond.

In separate June 15, 2016 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his emotional condition claim. It requested that various questions be answered, including whether there were aspects of his job that could be perceived as stressful (*e.g.*, overtime, deadlines, quotas, travel, intense assignments, any conflict between appellant and coworkers/supervisors, etc.); whether accommodations had been made to reduce stress (*e.g.*, reassignment, training, deadline adjustments, etc.); and whether there were staffing shortages or extra demands which affected appellant's workload. OWCP requested that the employing establishment indicate whether it concurred with appellant's claims and, if there were points of disagreement, to fully explain fully and provide appropriate supportive evidence. It afforded the employing establishment 30 days to respond.

In response, appellant submitted a July 1, 2016 statement in which he asserted that, since mid-2014, B.M. and another management official, J.C., created a hostile work environment and conducted a campaign of harassment against him, actions that ultimately led to B.M. improperly stripping him of handling the day-to-day operation of mid-tier applications commencing March 9, 2016. He maintained that B.M. and J.C. undermined him on a daily basis in which they assigned tasks and allocated resources/personnel impeded his ability to carry out his supervisory responsibilities, including engaging in travel duty and implementing training for both himself and his team members. Appellant asserted that the efforts to undermine him began when B.M. transferred B.F. into his branch without his knowledge or consent, despite his knowledge that B.F. was an employee with known problems. He claimed that on October 6, 2015 the fact that he orally admonished another employee for wasting government funds was "improperly leaked" to a private person and he was forced to apologize to the employee. As a result, the Office of Inspector General launched an investigation against him. Appellant asserted that J.C. improperly allowed another manager, D.G., to have unfettered access to employees of the four branches, an action which hampered his ability to manage his branch by making the best employees unavailable to receive assignments. He claimed that in 2015 he nominated five employees for performance awards, but none of them received the awards, thereby blocking his ability to provide positive rewards.

Appellant further alleged that, since he started his supervisory position in June 2014, his work branch had enormous problems with computer production servers, hardware, networks, and databases because they were administered by another organization. In particular, he indicated that production servers would run out of space for data and that the system designed to track workflow had configuration flaws, which were so significant that "virtually no one can determine the status of where a project is or how it was going." Appellant maintained that J.C. did not provide adequate

resources to address these circumstances, but rather blamed programmers and other employees for failing to fix problems beyond their control. He asserted that he advised B.M. and another manager, M.S., about problems with the workflow tracking system, but nothing was done about the problems and both individuals chastised him for bringing up the subject. Appellant indicated that production servers became unstable three times between February 2015 and January 2016 and that his team members uncovered several computers' problems, including production servers, which were running out of disc space and network load balancers that were sending all traffic to one server. He noted that, in June 2015, B.M. approved mandatory supervisory training classes for him, but that M.S. wrongly refused to sign the relevant paperwork and, as such, he was the only supervisor who was unable to take the classes. Appellant provided further details about the anonymous survey initiated by C.J., noting that results were sent by J.C. to other management officials on July 10, 2015. He maintained that C.J. lobbied his former supervisees to submit survey responses which were unfavorable to him and asserted that no others were subjected to such conduct.[4] Appellant claimed that, due to the survey responses, he had to temporarily switch jobs with another manager. He indicated that, due to the fact that he was improperly relieved of handling the day-to-day operation of mid-tier applications, commencing March 9, 2016, he was not invited to a March 31, 2016 meeting regarding these applications.

In a July 13, 2016 statement, appellant claimed that 12 to 14 software installations were conducted per year because the earlier installations were never ready as scheduled and supplemental installations had to be created "on the fly." He claimed that, at a June 26, 2014 meeting, J.C. screamed at the attending managers about their inability to complete a vendor system module (VSM) project. Appellant asserted that, after C.J. "stormed out" of the meeting, she never cooperated with him again and undermined him at every possible opportunity in the future. He indicated that, at an August 29, 2014 meeting, J.C. was "ranting and raving" about outages of the VSM and defense distribution system projects. Appellant asserted that, on that date, J.C. produced e-mails in which he indicated that system outages would have repercussions and admitted that the software bugs were caused by having too much work scheduled and by completing it too quickly. Between July and December 2014, many employees complained to appellant about B.F. not completing his assignments and appellant's efforts to improve B.F.'s performance, including a number of counseling sessions, were to no avail.[5] Appellant asserted that on September 10, 2014 J.C., angrily demanded that he produce a situation report due to a computer outage. He claimed that, in January and February 2015, he rated the performance of B.F. and another subordinate employee as partially successful, but asserted that management improperly changed the ratings for both to fully successful.

Appellant asserted that, in general, the complaints expressed by employees in the July 2015 anonymous survey were about the aggressive scheduling of work and procedures being "messed up" since the 2013 reorganization. He claimed that he learned that J.C. was "livid" during a meeting regarding the survey and had threatened to force him to discuss the matter in front of the meeting attendees. In response to J.C.'s question regarding whether he had too much work,

[4] Appellant also claimed that S.K., a friend of C.J., spent most of her free time harassing him.

[5] Appellant claimed that a legal department official wrongly denied him access to B.F.'s internet browser history, thereby frustrating his attempt to address B.F.'s improper use of the internet.

appellant responded that he had 140 active incident tickets while the other three programming managers (T.K, D.E., and M.L.) collectively had 70.[6] He asserted that, during an August 2015 investigation of B.F. for timecard fraud, J.C. and other managers "concocted a completely false and fraudulent narrative." Appellant indicated that, during an April 13, 2016 management meeting, he expressed his concern that B.F. might become an active shooter. He asserted that a manager told him that there was little that the human resources could do about B.F. unless he was making threats about harming himself or others.

Appellant submitted the position description for a supervisory information technology specialist, an agency organization chart, a handout from a July 15, 2015 "town hall" meeting, and 17 anonymous employee responses to questions from the survey entitled, "Speak up -- make a difference." A number of the employees who answered the survey asserted that the 2013 reorganization made communication among team members more difficult and that managers did not adequately respond to their concerns. One employee emphasized that there was too much work and that work deadlines were unreasonable.

Appellant submitted several e-mails documenting communications among management officials. In a February 2, 2016 e-mail, a manager of civilian information operations, R.J., expressed his opinion to J.C. that the increased number of "releases" conducted since the reorganization had led to "cutting corners" and a decrease in the quality of the releases. In a June 7, 2016 e-mail, B.M. asserted to J.C. and another manager that his March 9, 2016 relief of appellant from the day-to-day operation of mid-tier applications did not cause or contribute to a hostile work environment. Rather, he advised that appellant had a "very challenging set of duties" and that a GS-13 project manager was hired to assist him with his duties as he was "getting overloaded." B.M. noted that appellant had the largest number of employees to manage among the four branches. Regarding the change in appellant's duties, he indicated, "This had nothing to do with his abilities or skills or diligence in his position. It was simply to assist him with his duties in a very challenging situation that would overload any supervisor to at least some degree." B.M. asserted that he had nothing to do with B.F. being transferred into appellant's branch and that he did not undermine the disciplinary actions appellant made with respect to his employees.

Appellant submitted an Equal Employment Opportunity Commission (EEOC) document, signed on July 1, 2016, which effectuated his filing of a formal EEOC complaint. He also submitted additional medical evidence in support of his claim, including an April 1, 2016 report from Dr. Minora who diagnosed major depressive disorder (single episode).

In a July 13, 2016 letter, a human resources specialist for the employing establishment, J.B., advised that some stress comes with holding a GS-13 supervisory position, but asserted that appellant's stress would be "nothing out of the ordinary." She indicated that appellant never asked to work overtime and that it was rare for appellant's team members to ask to work overtime. Appellant travelled very rarely for work, if at all. J.B. further maintained that appellant did not have quotas/deadlines to meet and, although his team had deadlines, it was able to meet them

[6] Appellant attached an active incident tickets chart, dated July 22, 2015, which shows that he had 140 active incident tickets and that the other three managers he identified collectively had approximately 70. He asserted that this report was representative of the amount of work he was assigned relative to other managers throughout his tenure as a supervisor. Appellant later submitted another version of the July 22, 2015 chart with different graphics.

within normal working hours. She asserted that appellant's branch did the same work as the other three branches, although his branch had a few more people and required oversight of a more diverse group of systems. Because of these circumstances, appellant was the only supervisor in the four branches to have a GS-13 assistant to help with his workload. J.B. indicated that the assistant was hired many months prior to the May 2016 filing of appellant's claim and asserted that the assistant provided significant aid. She maintained that appellant was not required to perform duties outside of his job description and that he was not subject to any unusual work demands or staffing shortages. J.B. indicated that, although she had to counsel appellant for being a little abrupt and having conflicts with his team members regarding his management, he had been working to improve his work relationships. She indicated that appellant was generally able to perform his duties well.

By decision dated December 30, 2016, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish an emotional condition in the performance of duty, as alleged. It determined that he had not established a compensable employment factor with respect to the claimed instances of harassment/discrimination and wrongdoing regarding administrative matters.

On January 23, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. During the hearing held on June 30, 2017 he testified that from 2014 onwards he worked more than 40 hours per week about 75 percent of the time, but was not allowed to use overtime. Appellant claimed that he had to work as a supervisor for 19 weeks before being aided by the GS-13 assistant and that he received work-related telephone calls at home on weekends approximately 10 to 15 times per year. He claimed that he sustained hypertension, depression, and anxiety due to work-related stress.

After the hearing, appellant submitted a June 12, 2017 statement in which he asserted that, when he became supervisor of the joint information operations branch on June 14, 2014, he had to supervise up to 20 employees. He alleged that he and his supervisees had to deal with severe outage problems, which were outside the scope of their computer coding duties and that he lacked the equipment software and support to do his job. Appellant claimed that he and other employees were "under constant coercion" to provide computer support while off duty on weekends/holidays and while using annual leave, but that overtime and compensatory time were "virtually banned" to cover such time. Employees had to settle for credit time, which could not be accrued beyond 24 hours. Appellant asserted that in July 2012 he was forced to go on travel duty status to Portsmouth, Virginia, and had to work 17 straight days, 12 hours per day, as a warehouse worker and hazardous material handler in extremely hot temperatures. He claimed that on one occasion J.C. tasked him with a project that was supposed to be handled by someone else and that he and other employees routinely had to bring their laptops home to provide weekend support. Appellant alleged that his branch was chronically understaffed.

In a June 28, 2017 statement, appellant provided responses to the July 13, 2016 statement that J.B. provided on behalf of the employing establishment. He noted that, while it was technically true he did not have to meet a personal quota, there was a very aggressive schedule, which was greatly accelerated after the 2013 reorganization and which included having him work on additional unscheduled projects. Appellant asserted that he was overloaded with work for the 19 months he served as supervisor before the GS-13 assistant was hired in January 2016.

Moreover, the GS-13 assistant had already worked in her branch and her old position remained unfilled between the January 2016 promotion and April 2016, thereby leaving him short of an employee for that period. Appellant also contested J.B.'s assertion that the GS-13 assistant "was a very significant aid." He insisted that he was, in fact, understaffed in that three employees would not do any programming work and another employee was removed from his branch. Appellant asserted that, while J.B. acknowledged that he oversaw a more diverse group of systems than the other three branch managers, he managed six different types of computer systems while the other managers each managed two types. He claimed that B.M. improperly charged him with being absent without leave (AWOL) on September 26, 2014. Appellant also submitted a May 25, 2017 statement, which was similar to his previously submitted July 13, 2016 statement.

Appellant submitted an undated list of 20 employees which he identified as the employees he supervised. He also submitted several additional e-mails documenting communications between management officials. In an August 29, 2014 e-mail to several managers other than appellant, J.C. indicated that code was being tested on that date and that it looked like personnel would have to come in the next day, a Saturday, in order to finish the testing by September 2, 2014. In a July 3, 2015 e-mail, an information operations manager, A.K., advised appellant that most of the responses to the anonymous survey constituted complaints about the 2013 reorganization.

In a July 11, 2016 document, an EEOC counselor documented a June 7, 2016 interview he conducted with B.M. The counselor advised that B.M. denied discriminating against appellant or subjecting him to a hostile work environment. Regarding the relief of appellant from handling the day-to-day operation of mid-tier applications in March 2016, B.M. noted that appellant was assigned a GS-13 assistant because "he was getting overloaded." He advised that appellant had the largest number of employees to manage between the four branches and noted that "his duties would overload any supervisor to some degree." The counselor noted that B.M. maintained that the assignment of the day-to-day operation of mid-tier applications to another employee had nothing to do with appellant's abilities, skills, or diligence and he indicated that appellant retained supervisory authority over his branch after the reassignment of duties. B.M. explained that he did not invite appellant to a meeting about VSM applications because he wished to reduce his workload. He advised that he had nothing to do with B.F. being transferred into appellant's branch and asserted that he was within his rights as appellant's supervisor to oversee appellant's supervision of B.F. B.M. maintained that he had no control over the selection of employees for awards and that he had nothing to do with the nominations appellant made for his employees.

Appellant also submitted additional medical evidence in support of his claim, including a July 11, 2017 report of Dr. William S. Chase, a clinical psychologist, and a July 28, 2017 report of Dr. Minora.

By decision dated August 11, 2017, OWCP's hearing representative affirmed the December 30, 2016 decision.

On October 26, 2017 appellant, through counsel, requested reconsideration of the August 11, 2017 decision. In an accompanying brief, counsel summarized appellant's claims regarding the difficulties of carrying out his work duties and the claimed improper actions of management.

In an August 29, 2017 statement, appellant questioned why J.B., a human resources specialist, produced the July 13, 2016 letter responding to OWCP's June 15, 2016 development letter given that he had never met her and she had no direct knowledge of his work duties and conditions. He also discussed a number of the documents he was submitting in conjunction with his statement. These documents included leave and earnings statements and other documents, which show that he worked approximately 115 hours of overtime between mid-June and late-July 2012 when he was on travel duty status in Virginia. In two January 21, 2015 e-mails, appellant advised B.M. about issues with computers, including VSM production servers running out of disc space, problems with production server load balancing, the disappearance of mainframe profiles, and users losing connectively. In a March 24, 2015 e-mail, R.J. directed appellant and another manager to have their key analysts and programmers take their laptops home in order to address calls that might be made regarding a computer installation to be carried out over weekend.

In an undated statement received by OWCP on December 13, 2018, appellant argued that the employing establishment did not adequately respond to OWCP's directive in a June 15, 2016 development letter that a knowledgeable supervisor comment on his work duties and conditions in the context of his claimed employment factors. He asserted that the July 13, 2016 letter produced by J.B. did not answer all of the questions posed by OWCP.

By decision dated July 8, 2019, OWCP denied modification of the August 11, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish the essential elements of his or her claim, including the fact 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.[8] 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.[9]

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

[7] 5 U.S.C. § 8101 *et seq.*

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

[9] 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).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.[10]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[11] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction in force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[12]

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.[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 factors of employment and may not be considered.[15] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.[16]

[10] *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).

[11] *Lillian Cutler*, 28 ECAB 125 (1976).

[12] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[13] *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[16] *Id.*

ANALYSIS

The Board finds that appellant has established a compensable factor of employment with regard to appellant's allegations of overwork.

Appellant has alleged that he sustained an emotional condition as a result of a number of employment incidents and work conditions. OWCP denied his emotional condition claim finding that he had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the terms of FECA.[17]

The Board finds that appellant has established that several aspects of his regular work duties constitute overwork which the Board has found to be a compensable employment factor.[18] The case record contains evidence, particularly the statements of appellant's immediate supervisor, B.M., which demonstrate that, since June 2014, he had, in B.M.'s own words, a "very challenging set of duties," which would "overload any supervisor to some degree." It is further established that, given appellant's workload, a GS-13 project manager was hired in January 2016 to assist him (*i.e.*, approximately 19 months after appellant started his supervisory position). The Board further finds that the case record contains evidence showing that a major reorganization of computer functions occurred in 2013, which resulted in appellant having to deal with a deterioration in communication among the four computer development branches of the workplace in his role as a supervisor of one of the branches. In addition, the case record establishes that appellant had to supervise approximately 20 employees, which was the largest number among the supervisors of the four branches, and that, at times, he had to address such matters as problematic software downloads, servers running out of disc space, computer traffic inappropriately being sent to one server, computer profiles being deleted, and users losing connectivity. It is also established that on July 22, 2015 appellant had 140 active incident tickets he had to address, whereas the managers of the three other branches collectively had approximately 70. The case record also supports that appellant worked approximately 115 hours of overtime between mid-June and late-July 2012 when he was on travel duty status in Virginia. The Board thus finds that appellant has established a compensable employment factor of overwork. On remand OWCP shall consider the medical evidence with regard to whether appellant has established a diagnosed emotional condition casually related to this accepted employment factor of overwork.

With regard to appellant's additional allegations concerning administrative and personnel matters, and harassment/discrimination, the Board finds that further development is required.

In a June 15, 2016 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his emotional condition claim. It requested that the employing establishment

[17] *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[18] The Board has held that overwork, when substantiated by sufficient factual information to corroborate an employee's account of events, may be a compensable factor of employment. *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

indicate whether it concurred with appellant's claims and, if there were points of disagreement, to fully explain and provide appropriate supportive evidence. In response, the employing establishment provided a July 13, 2016 letter from a human resources specialist for the employing establishment, J.B. In addition to questions regarding whether J.B. would be considered a knowledgeable person who could appropriately respond to OWCP's development letter,[19] it is noted that J.B. did not adequately address appellant's multiple claimed employment factors. There is no indication that the employing establishment made an attempt to obtain a statement from appellant's immediate supervisor, B.M., or other knowledgeable management officials (such as J.C. and C.J.) concerning appellant's additional alleged employment factors of administrative and personnel and harassment/discrimination.[20]

While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[21]

For these reasons, the case shall be remanded to OWCP for further development of the factual evidence. This development should include an attempt to obtain a statement from appellant's immediate supervisor, B.M., and any other knowledgeable parties whose input would be deemed necessary to adequately consider each of appellant's additional claimed employment factors. If OWCP finds additional compensable employment factors in the course of its development of the factual evidence, it shall similarly evaluate the medical evidence and make a determination regarding whether appellant has established a diagnosed emotional condition casually related to the additional accepted compensable employment factors. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on this matter.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment. The case is therefore remanded for consideration of the medical evidence with regard to causal relationship. The Board further finds that the case is not in posture for decision with regard to appellant's additional alleged employment factors.

[19] Appellant has asserted that he has never met J.B. and that she had no direct knowledge of his work duties and conditions.

[20] It is noted that the above-referenced comments of B.M. were not solicited by the employing establishment as a response to OWCP's June 15, 2016 development letter. Rather, the comments were memorialized in a June 7, 2016 e-mail B.M. sent to J.C. and another manager, and a July 11, 2016 document in which an EEOC counselor detailed a June 7, 2016 interview with B.M.

[21] *See M.H.*, Docket No. 19-0930 (issued June 17, 2020); *L.L.*, Docket No. 12-194 (issued June 5, 2012); *N.S.*, 59 ECAB 422 (2008).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 19, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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