

File Number:
HR11-D-H

RECEIVED NOV 08 2018

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
ATTORNEY
7393 HODGSON MEMORIAL DRIVE
STE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, November 05, 2018

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the
Case No.

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the
decision of the Office is set aside for the reasons set forth below.

The issue is whether the claimant sustained an emotional or stress-related condition in the performance
of duty.

On [redacted], the claimant, [redacted], born [redacted], filed a notice of traumatic
injury claiming that she suffered from stress/trauma in the course of her Nursing duties on [redacted].

The claimant stated that she was physically intimidated and yelled at by her co-worker who
entered her office while she was seated at her desk. The claimant stated that her co-worker refused to
leave her office and she asked another co-worker to call the supervisor. It was noted that a witness
statement was forthcoming. The agency supervisor, [redacted], marked that the claimed incident
did not occur in the performance of duty noting that an employee had requested a file. Supervisor
[redacted] marked that she did not agree with the claimant's account of the incident stating that there
were no raised voices and no harsh conversation heard by other employees in the area. She noted that
an investigation into the incident did not support the claimant's statement of events and advised that
there were two (2) fact findings done and the claimant's statement was unfounded. In a [redacted]
statement, the agency submitted comments challenging the claim. Various email correspondence, the
claimant's [redacted] Report of Contact (ROC) statement documentation regarding an EEO
complaint filed in [redacted], documentation regarding the claimant's complaints of incidents
occurring on [redacted] complaints, the claimant's affidavit regarding her EEO discrimination and
reprisal complaint (Case Number [redacted]), and an undated document entitled
"Reasonable Accommodation Request Audit/Chronology of Events - [redacted]", citing
events from [redacted] to [redacted], incidents investigation into the claimed events.

The District Office, in a [redacted] decision, denied the claim explaining that the claimant had failed to
provide sufficient evidence to establish the claimed events. The Office also advised that the claimant
had not submitted any medical evidence to containing a medical condition or diagnosis due to the
employment. The claimant disagreed with the decision and through her attorney requested a hearing
with an OWCP representative.

I find this case is not in posture for further review on appeal.

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.¹ On the other hand, the disability is not covered where

¹ 5 U.S.C. § 8101 et seq.; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

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.²

In its denial, the Office outlined the records received but explained that there was insufficient evidence to establish that eth claimed work event(s) occurred.

In cases involving emotional conditions, the Employees' Compensation Appeal Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, 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.³

The claimant has provided multiple records for review of the claimed work event. While the Office stated that the claimant had not provided evidence to consider the facts in the claim, the Office did not discuss the claimant's statements or records received other than indicating that records had been received. Prior to any further review of a work-related injury claim on appeal, the Office must review the evidence that was of record at the time of the denial and all documentation received subsequent to the decision, and make a determination of the record evidence in consideration of fact of injury and performance of duty.

In cases involving emotional conditions, the Employees' Compensation Appeal Board has held that, when working conditions are alleged as factors causing a condition or disability, the Office, 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.⁴

After preparing a finding of fact concerning the alleged event(s), allegation(s) or incident(s), and performing any other development deemed necessary, the Office should issue a *de novo* decision regarding fact of injury and a work-related injury or condition.

Consistent with the above findings, the District Office's decision is set aside and the case is remanded to the Office for further development and a *de novo* decision.

Issued:

Washington, D.C.

Hearing Representative
Branch of Hearings and Review
for
Director, Office of
Workers' Compensation Programs

² *Gregorio E. Conde*, 52 ECAB 410 (2001).

³ *Margaret Krzycki*, 43 ECAB 496, 502 (1992); See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁴ *Margaret Krzycki*, 43 ECAB 496, 502 (1992); See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).