Complex Occupational Illness Cases
(Emotional Conditions)

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Objective

• Understand the importance of the Cutler Rule as it applies to emotional conditions.

• Understand the process to analyze emotional condition claims.

• Understand the requirements that satisfy Performance of Duty for emotional conditions.
Cutler Rule

• Claims for emotional conditions need to be evaluated to determine whether the condition was caused or aggravated by factors of employment or work-connected events that OWCP does not consider to have occurred in the course of employment or performance of duty.

• This distinction was brought about by the Employees’ Compensation Appeals Board (ECAB) decision in the case of Lillian Cutler, 28 ECAB 125. The principles set forth in this decision are known as the Cutler Rule and are used by Claims Examiners when adjudicating emotional/neuro-psychiatric claims.
Cutler Rule

Cutler Rule: “Workers’ compensation law does not apply to each and every illness that is somehow related to an employee’s employment…” *Lillian Cutler*, 28 ECAB 125

- Disability due to an emotional reaction to regular or especially assigned duties comes within the coverage of the Act.
- Disability is NOT covered where it results from frustration from not being permitted to work in a particular environment or to hold a particular position.
Analyzing Claims

• ICPAs can use a four-step process to aid in the analysis of emotional claims:
  
  • Identify the issues
  
  • Prioritize the issues
  
  • Collect relevant information
  
  • Clearly and concisely communicate information to OWCP
Analysis will be easier if the statements/allegations made by the employee are separated into general categories, such as:

- Statements that refer to the employee’s regularly or especially assigned duties
- Statements pertaining to administrative actions (appraisals, leave administration, disciplinary action, etc.)
- Statements pertaining to harassment and/or teasing from supervisor and/or co-workers
- Other work-connected events
Issues/statements that pertain to an employee’s regularly or specially assigned duties should be given a high priority, as these issues are directly linked to Performance of Duty and thus covered under FECA, e.g.:

“... our office was downsized so everyone was given more work to do. I wasn’t able to keep up with the added workload. I started worrying about it while I was at home. It got so bad that I would get physically ill when I drove in to work...”
Prioritizing the Issues

• Administrative actions are not compensable unless the claimant can show “error or abuse” on the part of the employing agency, e.g.:

  • “... my supervisor gave me my annual performance appraisal. I was given a satisfactory rating. I am the hardest worker in the shop and all I got was a crummy ‘satisfactory’. I was so upset I started feeling light-headed and shaky. I went to my family doctor and he said it was the result of stress on the job...”
Prioritizing the Issues

• Issues that deal with administrative actions where the employee provides corroborative or supporting information should also be given priority, as the information may demonstrate error or abuse on the part of the agency and should be addressed, e.g.:

  • “... Our agency is undergoing a workload review. I started worrying that we were going to lose our jobs. I couldn’t eat or sleep. I had to take sick leave because I could not go into the office without feeling ill. I went to a psychologist and was told that I had depression and that it was caused by my current work environment...”
Prioritizing the Issues

• Issues that deal with harassment or teasing where the employee provides corroborative or supporting information should also be given priority because if proven, harassment can bring an emotional claim within coverage of FECA, e.g.:

• “… my supervisor came out into the middle of the office where I was working and started accusing me of goofing off. He was yelling that it was taking way too long to finish this job and that if he were doing it, it would have been done hours ago. He was yelling obscenities and everyone in the office was listening to what was happening. I felt so humiliated I wanted to crawl under a rock…”
Prioritizing the Issues

- Statements from the employee that are unsubstantiated and uncorroborated can be addressed after the other issues.

- Perceptions of the employee are not sufficient to meet the burden of proof in these instances.
Collect Relevant Information

- Once the issues are identified and prioritized, the relevant facts surrounding these issues can be collected.

- Supervisor’s or management’s rebuttal to the claimant’s statements must be complete, factual, and accurate.

- Ensure that all issues or points raised by the claimant are addressed.
Communicating with OWCP

• State the agency’s position with regard to the claim in the first paragraph, e.g.:

  “This agency does not concur that Mr. X’s condition was caused while he was in the performance of duty and, therefore, does not believe Mr. X is entitled to compensation benefits under FECA.”
Communicating with OWCP

• Present agency responses to employee allegations succinctly (use bullet format when possible).

• Present the agency response to issues in the same order as they are presented in the employee’s statement.

• Number and refer to attachments if supporting information is provided.

• Ensure that an agency POC (with email address and phone number) is provided.
Communicating with OWCP

• Statements referring to administrative actions without corroboration can be addressed with a statement such as:

  “The employee’s statements regarding [...] refer to administrative actions taken by the agency. The employee has not provided any evidence to support that these actions were abusive or erroneous and therefore the agency does not believe these incidents afford the employee coverage under the Act.”
Occupational Illness cases can take up to 120 days to adjudicate due to the complexity involved in these cases.
Assessing Stress: Guidelines

- “Self-generated” disabilities are not compensable.

- Reassignments are generally not a factor of employment.

- Performance evaluations are not a factor of employment, unless it is shown that the agency erred or abused its discretion.

- Informal discussions on performance are also generally not covered.

- Fear of removal is generally not covered.
Assessing Stress - Harassment

• Administrative/Personnel Actions: not covered under FECA, unless evidence discloses error or abuse on the part of the employing establishment.

• Harassment: can be covered if it is shown that a claimant suffered a disabling reaction precipitated or aggravated by conditions of the employment.

  o Harassment by co-workers can be included.

  o Each allegation of harassment must be supported by reliable evidence. Mere perceptions of harassment are not compensable.
Assessing Stress - Harassment

• OWCP does not rule on harassment:
  
  • Each allegation is reviewed to determine whether it is compensable.

  • Each allegation must be substantiated.

  • Public scolding of an employee by a supervisor is in Performance of Duty.

  • Coworker harassment or teasing can be compensable provided the reasons for the harassment or teasing are not imported into the employment from the employee’s domestic or private life.
Not Considered to be in the Performance of Duty

- Reactions to demotions
- Reassignments to other positions or locations
- Failure to be promoted
- Lack of handicap parking
- Reaction to action/inaction of OWCP regarding claims
- Being downgraded or “RIF’ed”
- Being suspended or terminated
- Not being allowed to work overtime
Not Considered to be in the Performance of Duty

• Poor lighting
• Lack of attractiveness of work area
• Working in a dirty work area
• Temperature adjustments
• Frustration with having to work indoors
• Frustration with having to work outdoors
• Agency’s alteration of lunch or breaks
• Being separated from family or friends
Not Considered to be in the Performance of Duty

- Employee’s dissatisfaction with work underload
- Employee’s perception of poor management
- Frustration at not being assigned ‘meaningful’ work
- Changes to procedures or operations
- Frustration with tedious, boring, work
- Refusal to put employee in charge during supervisor’s absence
- Desire to change one’s work schedule
- Being sent home early due to lack of work
Assessing Stress - Assaults

• Assaults:
  
  • In the performance of duty if the assault *arose out of* an activity directly related to work or the work environment.

  • Not in the performance of duty if the assault is *imported* into the employment from the employee’s private life.

  • Verbal altercation involving supervisor and employee can be in the performance of duty; however, the extent of the employee’s involvement must be known.
Assessing Stress – Disciplinary Action

• Disciplinary actions are not in performance of duty unless overturned for agency error or abuse.

• Reduction of disciplinary action is not in the performance of duty.

• Anticipated disciplinary action is not in the performance of duty.

• Reaction to being terminated is not in the performance of duty.
Assessing Stress - Grievances

• A grievance that yields a settlement “without prejudice to any party” is not in the performance of duty.

• A grievance settlement that states a manager will act professionally is not in the performance of duty, unless there is evidence of agency “error or abuse.”

• However, if an agency requires an employee to prepare for an investigation or is given a special assignment to respond to charges, then it is in the performance of duty.
Assessing Stress - Leave

• Reaction to approval or denial of leave is not compensable.

• Amended leave is not a finding of error, and is not compensable.

• Frustration with an agency’s actions pertaining to leave requests is not compensable.

• Leave/attendance counseling is not performance of duty.
Assessing Stress – Performance Appraisals

• Performance appraisals are administrative functions of the employer.

• Performance appraisals are not a duty of the employee.

• An appraisal or evaluation, lacking “error or abuse” on the part of the employing agency, does not constitute performance of duty.
Assessing Stress

- Harmful effects from agency “health service program” such as periodic medical exams or inoculations are compensable.

- Reactions due to being ordered to undergo fitness for duty exams are generally not compensable.
Assessing Stress

- Fear of recurrence if the employee returns to work is not compensable.

- Emotional reaction to situations in which an employee is trying to meet his or her position requirements is compensable.
Several resources describing the provisions of the law are available on the DFEC home page at:  http://www.dol.gov/owcp/dfec/index.htm:

• The Federal Employees’ Compensation Act as amended, 5 U.S.C. 8101 et seq., is the source of entitlement to compensation benefits for Federal workers at:  
  https://www.dol.gov/owcp/dfec/regs/statutes/feca.htm

• The Code of Federal Regulations, 20 CFR Part 10, more fully describes the provisions of the law and it contains additional information about administration of the program at:  
  https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=20:1.0.1.2.2

• The Federal (FECA) Procedure Manual describes in detail procedures OWCP staff use to process claims, the section most likely to be useful to agency personnel is Part 2, Claims at:  

• Decisions of the Employees’ Compensation Appeals Board  
  Recent decisions are available online at:  http://dol.gov/ecab/decisions.htm

References