

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

S.F., Appellant	)	
	)	
and	)	<b>Docket No. 20-0249</b>
	)	<b>Issued: December 31, 2020</b>
U.S. POSTAL SERVICE, LOS ANGELES	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Los Angeles, CA, 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  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On November 13, 2019 appellant filed a timely appeal from an October 31, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On June 12, 2019 appellant, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she experienced anxiety and panic attacks due to workplace harassment by her coworkers and management. She explained that in the beginning of 2019 two

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

coworkers began stalking and harassing her. Appellant made complaints to management and the postal police and indicated that she was subsequently removed from the office on April 1, 2019 for her own safety. She reported that she was forced to return to a hostile work environment where she felt unsafe and that caused anxiety and panic attacks. Appellant indicated that she first became aware of her condition and first realized it was caused or aggravated by her federal employment on February 14, 2019. She did not stop work.

In a June 11, 2019 medical note, Dr. Tu Sang Om, Board-certified in family medicine, reported that he saw appellant on March 1 and June 11, 2019 due to an anxiety attack secondary to workplace stress.

In an undated statement, appellant explained that while working in a modified-duty position in an unsupervised office the environment was hostile and uncomfortable as she was harassed by coworkers, M.H. and R.H. She indicated that she was harassed, stalked, and discriminated against, which caused anxiety and panic attacks. Appellant alleged that in January 2019 M.H., would become angry and enraged while standing in the middle of the office screaming uncontrollably. She claimed that M.H. would refer to her as “stupid” or “pathetic” and also say things like “shut up and take your nappy neck back to Jamaica!” Appellant claimed that M.H. would refer to her as an “ugly demon” because she was not Christian and left bibles on her desk. She also alleged that M.H. would throw boxes at her and threaten to kill her, causing her to make several complaints to management.

Appellant further noted that in February 2019 R.H., started violating her personal space by staring at her angrily for hours and walking so close to her that he would almost touch her. She later noticed that R.H. would begin to follow her all over the post office and even into the restroom and would block doors with heavy containers, making it difficult to exit the room. Appellant also noticed that around this time there would be trash all over her desk and chair. On February 14, 2019 she began to panic when R.H. became hostile and confrontational over office equipment and feared being in the office alone with him. Appellant subsequently contacted management and the postal police, and made several written complaints. As a result of the conduct of R.H., she experienced crying spells, shortness of breath, painful breathing, and dizziness. On March 1, 2019 appellant went to visit her doctor as her symptoms became more frequent. She was diagnosed with anxiety and panic attacks. On April 1, 2019 management removed appellant from the office for her safety.

In an undated statement, J.B., an employing establishment manager, explained that an investigative interview with M.H. was held during which she explained that she had screamed uncontrollably to get appellant to stop talking about other employees and to turn down her loud music that used curse words. He believed that M.H.’s conduct walking around the room and laughing to herself was to get appellant to stop talking to her. J.B. indicated that he was unaware of any name calling or threats to kill appellant had been verified. However, M.H. was advised by management that her behavior was unacceptable and that she should contact her supervisor whenever she had issues on the workroom floor. She was given an administrative action for her behavior. J.B. noted that he was unaware of and was unable to verify any name calling or threats by M.H. as alleged by appellant. He further noted that statements concerning R.H. had also not been verified or confirmed. J.B explained that on April 1, 2019 appellant was removed from the office to allow management to investigate her concerns regarding M.H. After the investigation was completed, management instructed appellant to return to her office and placed her on the

opposite side of the unit away from M.H. and R.H. She refused to report to her unit and subsequently filed her Form CA-2.

In a development letter dated June 24, 2019, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It also requested a narrative medical report from appellant's treating physician regarding a diagnosis and opinion on causal relationship. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

In an undated statement, appellant noted a January 15, 2019 work incident in which she was listening to music at her desk when M.H. began to scream. She explained that M.H. did not appear to be in danger or hurt so she called her supervisor for assistance. When the supervisor arrived, M.H. told him that she was screaming because she "heard dogs barking and babies crying." Appellant reported that it was impossible to hear dogs or babies from inside the office and that she was concerned for M.H.'s mental health.

In a separate undated statement, appellant noted a February 7, 2019 work incident in which she noted M.H. walking around the office in an aggressive manner and having what appeared to be a hostile conversation with herself. She alleged that M.H. was arguing with voices on the radio, that she was not on the telephone, and that the two of them were the only ones in the office. From her vantage point, it appeared as if M.H. was having a mental breakdown. Appellant reported that this was not her first outburst and that when she called her supervisor, M.H. told her to "shut up your nappy neck and go back to Jamaica!"

In a February 18, 2019 statement, appellant described an incident with R.H. in which he began hiding all of the work supplies and blocking the entrance to the office. She reported that he also broke into her desk, hid her chair, and called her office from blocked numbers to hang up on her. Appellant indicated that R.H. also began following her around the office from one operation to the next and to the restroom with an angry look on his face. She called the postal police after he became confrontational over office equipment. Appellant asserted that she did not feel comfortable speaking to J.B. about the situation because she knew he and R.H. were close friends.

In a February 27, 2019 statement, appellant reported that around 4:45 p.m., while working in the office, she was told by R.H. that she could not use the office set up that the rest of the office used. She noted that two weeks prior she had to call the postal police after R.H. became confrontational over the same set up of postal equipment. Appellant alleged that R.H. made the work environment hostile and that she did not feel comfortable or safe working with him.

In a March 11, 2019 statement, appellant requested a detail to a new location due to the stress she experienced from the harassment she encountered from R.H. In a separate statement of even date, she indicated that since she made her original complaint she had noticed her desk and chair covered with food and trash as if someone had dumped the trash can over them.

In an April 1, 2019 statement, appellant described an incident in which M.H. began throwing boxes at her. She expressed that she had previously informed management that she did not feel safe in her work environment and that nothing had been done.

In an April 8, 2019 statement, appellant alleged that as she was greeting employees, M.H. began yelling loudly at her and calling her an “ugly demon,” attracting attention of other employees in the workroom.

In a May 13, 2019 statement, appellant expressed her concern that she had been the victim of discrimination from J.B. and G.J., a supervisor. She explained that she was removed from her modified-duty position and that she was no longer allowed to clock in early or work overtime although her coworkers were still allowed to do so. Appellant asserted that she was forced to be a part of the safety team at the front of the office even though she never agreed to do so and was not provided training. She indicated that not being allowed to work overtime and being forced to work at the front of the office had caused her to suffer stress, depression, and anxiety.

Appellant submitted a June 6, 2019 acceptance for investigation form from the postal service Equal Employment Opportunity (EEO) office acknowledging its receipt of her complaints of discrimination in the workplace. The EEO noted her complaints of hostile and threatening behavior from her coworkers since January 2019, her April 1, 2019 removal to a different assignment, as well as her restrictions on working overtime and her denied request to have her job offer changed.

Paul Schmitt, a licensed clinical social worker, confirmed in a July 1, 2019 note that appellant had been attending individual counseling regarding anxiety attacks due to workplace harassment since June 3, 2019.

On July 2, 2019 appellant was seen by James Loesch, a licensed marriage and family therapist. He requested that she be excused from work.

In a July 7, 2019 response to OWCP’s development questionnaire, appellant explained that she did not associate with M.H. outside of work and that she did not have sources of stress outside of her employment. She indicated that she had no prior emotional conditions before her current conditions and had never been hospitalized for any emotional conditions.

In a July 9, 2019 statement, appellant described her life outside of work as very happy. She had worked with M.H. and R.H. for two years and claimed to have never been friends with either of them. Appellant believed that the harassment began as an attempt to get her removed from the office and that the only reason her complaints were not handled properly was because J.B. had a close relationship with M.H. and R.H. She believed that J.B.’s statement was another attempt to protect M.H. and R.H. and mentioned an unwritten rule that if someone harasses or assaults you in the office with no witnesses, then it did not happen. Appellant explained that because she worked in an office alone with M.H. and R.H. there were no other witnesses to the events that took place in their workspace. She stated that she had not recorded anything on her telephone because she would lose her job and that J.B. refused to review the video footage from the office surveillance cameras. Appellant also claimed that J.B. put his investigation on hold while he went on a three week vacation and did not seek comments from witnesses until three months had passed. During this time, she learned that other members of management were not aware of her complaints. Appellant subsequently filed an EEO complaint against J.B.

On July 9, 2019 appellant was seen by Mr. Loesch and he requested that she be excused from work for the day.

In an August 2, 2019 development letter, OWCP requested comments from appellant's supervisors concerning the accuracy of the additional statements she provided. It afforded the employing establishment 30 days to respond.

In a July 30, 2019 medical note, Dr. Om advised that appellant would need accommodations at her workplace in order to attend psychological counseling sessions three times a week due to panic attacks secondary to work-related stress.

J.B., in an August 14, 2019 statement, reviewed appellant's claims of harassment in January and February 2019 by M.H. and R.H, respectively. He explained that M.H. had already been disciplined about her unacceptable conduct towards appellant. J.B. indicated that appellant's statement that M.H. called her an "ugly demon" and placed bibles around her desk was never confirmed by management. He also noted that the claims reported against R.H. were also never confirmed by management.

In a September 9, 2019 statement, G.J. explained that appellant was moved because it was easier to move one employee rather than moving two until an investigation could be completed. She claimed that appellant did not want to be placed in the front of the office because everyone could see her and she could not be on her telephone or watch movies like she did in her previous unit. G.J. also claimed that appellant did not need training for her altered position because her duties consisted of passing out flyers and sheets of papers.

In an undated statement, J.B. indicated that he would not comment on appellant's health, as he is not a doctor, and denied her claim that he would protect any employee from wrongdoing. He asserted that he has had to inform appellant multiple times that she could not record other employees in the office. J.B. explained that appellant, M.H. and R.H. all brought complaints against each other and that each one was taken seriously, but could not be verified.<sup>2</sup>

By decision dated October 31, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her medical condition arose during the course of employment and within the scope of compensable work factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>2</sup> In a September 18, 2019 medical note, Dr. Fabian Proano, Board-certified in anesthesiology, requested that appellant be excused from work for 24 to 48 hours due to a lumbar epidural procedure.

<sup>3</sup> *Id.*

employment injury.<sup>4</sup> 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.<sup>5</sup>

To establish an emotional condition causally related to factors of his or her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his or her condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his or her emotional condition is causally related to the identified compensable employment factors.<sup>6</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>7</sup> 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.<sup>8</sup> When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>9</sup> However, disability is not compensable when it results from factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>10</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>11</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>12</sup> A claimant must substantiate allegations of harassment or discrimination with probative

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<sup>4</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> 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).

<sup>6</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

<sup>8</sup> *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976). In the case of *Lillian Cutler*, the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. 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. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment, or by the nature of the work.<sup>9</sup> 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 or his or her frustration from not being permitted to work in a particular environment, unhappiness with doing work, or frustration in not given the work desired, or to hold a particular position, such injury or illness falls outside FECA's coverage because they are found not to have arisen out of employment.

<sup>10</sup> *Lillian Cutler, id.*

<sup>11</sup> *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

<sup>12</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

and reliable evidence.<sup>13</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>14</sup>

### ANALYSIS

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

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim because it found that she had not established that her conditions arose during the course of employment and within the scope of compensable work factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.<sup>15</sup> The Board notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*. Rather, appellant has alleged a hostile work environment, harassment, discrimination and error, and abuse by her coworkers and supervisors.

Appellant submitted a number of statements detailing her interactions with M.H. She described multiple incidents beginning in January 2019 in which M.H. would yell and scream uncontrollably, throw boxes at her, place bibles on her desk, and refer to her using derogatory terms. For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur.<sup>16</sup> While J.B. explained that management never verified that M.H. threw boxes at appellant, placed bibles on her desk, or referred to her using derogatory terms, he did acknowledge that M.H. had received disciplinary action for her unacceptable behavior and screaming at appellant. Verbal altercations and difficult relationships with coworkers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.<sup>17</sup> The Board therefore finds that appellant has provided reliable and probative evidence regarding M.H. screaming uncontrollably at her.<sup>18</sup> Thus, appellant has established a compensable employment factor with respect to these allegations of harassment by M.H.

The record also contains several statements from appellant, witnesses, and supervisors which reference management interviews and investigations, EEO investigations, and additional reports from the postal police. The record also establishes that on April 1, 2019 the employing establishment's management removed appellant from her workspace for her own safety. Appellant has also alleged that there were likely videos of the alleged employment interactions between her and M.H. and R.H. This suggests that the employing establishment should have additional

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<sup>13</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>14</sup> *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

<sup>15</sup> *Supra* note 11.

<sup>16</sup> *Supra* note 13. See *S.B.*, Docket No. 18-1113 (issued February 21, 2019); *Janet I. Jones*, 47 ECAB 345, 347 (1996).

<sup>17</sup> *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

<sup>18</sup> *Id.*

evidence concerning the circumstances of appellant's claim and the veracity of her claims of harassment and mismanagement. OWCP's procedures provide:

“If an employing [establishment] fails to respond to a request for comments on the claimant's allegations, the [claims examiner] may usually accept the claimant's statements as factual. However, acceptance of the claimant's statements as factual is not automatic in the absence of a reply from the [employing establishment], especially in instances where performance of duty is questionable. The Board has consistently held that allegations unsupported by probative evidence are not established.<sup>19</sup> The [claims examiner] should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination.”<sup>20</sup>

The Board finds that it is unable to make an informed decision in this case as the employing establishment did not adequately respond to the request for information and comment made by OWCP in the August 2, 2019 development letter. The only comments from the employing establishment were G.J.'s September 9, 2019 statement discussing the reason for appellant's workstation being moved and J.B.'s undated statements detailing his investigation of appellant's claims of harassment. These statements, along with appellant's additional statements, suggest that the employing establishment should possess documentation regarding the events in question and potentially video surveillance of the altercations. Further, appellant alleged that there were no contemporaneous statements from witnesses because J.B. was absent on a three-week vacation prior to commencement of an investigation into her allegations and that witnesses were not questioned for a period of three months. On remand, OWCP should determine whether a timely and complete investigation occurred.

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.<sup>21</sup> Since appellant's allegations and the statements from J.B. and G.J. indicate that the employing establishment would have in its possession evidence relevant to appellant's allegations of a hostile work environment, OWCP should obtain a response from the employing establishment to the allegations of a hostile work environment and any additional relevant evidence or argument.<sup>22</sup>

As the Board finds that appellant has established compensable employment factors with respect to her allegations of harassment, specifically that M.H. screamed and yelled uncontrollably at her, OWCP must base its decision on analysis of the medical opinion evidence with regard to

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<sup>19</sup> *James E. Norris*, 52 ECAB 93 (1999); *Michael Ewanichak*, 48 ECAB 364 (1997).

<sup>20</sup> See *R.A.*, Docket No. 17-1030 (issued April 16, 2018); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(d)(1) (June 2011).

<sup>21</sup> See *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No 15-1535 (issued September 23, 2016).

<sup>22</sup> *Id.*; see 20 C.F.R. § 10.117(a), which provides that an employing establishment that has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or any other relevant information.



causal relationship. Further, the case will accordingly be remanded to OWCP for further development of the evidence regarding appellant's allegation of harassment. OWCP shall request that the employing establishment provide a statement on and copies of any additional documents, video evidence, and any and all investigations regarding appellant's allegations. Following this and any such further development as deemed necessary it shall issue a *de novo* decision regarding appellant's claim.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: December 31, 2020  
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board