

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

L.Y., Appellant	)	
	)	
and	)	Docket No. 20-1108
	)	Issued: November 24, 2021
DEPARTMENT OF THE AIR FORCE, SPACE	)	
& MISSILE SYSTEMS CENTER,	)	
LOS ANGELES AIR FORCE BASE, CA,	)	
Employer	)	
	)	

*Appearances:*  
Toby Rubenstein, for the appellant<sup>1</sup>  
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 May 6, 2020 appellant, through her representative, filed a timely appeal from a November 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## 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 May 16, 2016 appellant, then a 59-year-old logistics management specialist, filed an occupational disease claim (Form CA-2) alleging that, due to factors of her federal employment, she sustained emotional conditions, including major depressive disorder (recurrent, severe episodes), headaches, nervous stomach, extreme fatigue, and neck/shoulder tenseness. She alleged that M.E., her immediate supervisor, told her that R.L., a manager, was not taking his recommendations for managing the Sonalysts contract, and that M.E. stated that he hated putting appellant “in the middle.” Appellant asserted that this and other projects she worked on took a toll on her mentally and physically. She noted that she first became aware of her claimed condition and its relation to her federal employment on April 21, 2016. Appellant stopped work on April 21, 2016.

Appellant submitted an April 21, 2016 report from Dr. Eugene Y. Kwon, a Board-certified internist, who diagnosed major depressive disorder (recurrent episode, severe) and noted that she was placed off work from April 21 through 26, 2016. In an April 26, 2016 report, Dr. Paul J. Jaffe, a Board-certified psychiatrist, diagnosed “occupational problems or work circumstances” and indicated that appellant was placed off work from May 9 through 16, 2016. Appellant also submitted an April 26, 2016 report of Ladan Alamdar, a marriage and family therapist, and an April 29, 2016 report of Josephine Lynch, a licensed clinical social worker, which placed the appellant off work.

In a development letter dated June 1, 2016, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and an explanation of any areas of disagreement. OWCP afforded both parties 30 days to respond.

In response, appellant submitted a June 28, 2016 statement in which she alleged that the development of her claimed conditions started when she was assigned to work on two very complicated global positioning system (GPS) projects starting in January 2016, *i.e.*, the Raytheon (OCX) and Sonalysts projects. She indicated that working on the two projects was time consuming and that having to be away from her desk for ongoing meetings and going on numerous trips to Colorado Springs, Colorado, became too much for her to handle.<sup>3</sup> Appellant asserted that she developed depression in the following months, which worsened when M.E. and R.L. added assignments to appellant’s workload without regard to the fact that she was already juggling more program issues than anybody else in her unit. She indicated that she told R.L. in April 2016 that she was becoming stressed and that, although he told her he would reassign somebody else to one

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<sup>3</sup> Appellant indicated that her travel to Colorado Springs included taking three trips in January, March, and April 2016, each lasting three days.

of her programs, he never did so. Appellant asserted that a number of aspects of the Sonalysts project caused stress including the fact that officials related to that project bombarded her with information to support their position on the project even though she did not have decisional authority. She claimed that this problem was caused by M.E. who did not take any responsibility for correcting the situation. M.E. distanced himself from the project and placed undue responsibilities on herself and on others. Appellant asserted that she was misled about the complexities of the Sonalysts contract when she was told that the acquisition and contingency operations program aspects of the project were “low maintenance.” She asserted that both programs had high visibility in that they were subject to congressional oversight and M.E. did not provide her with adequate support. Appellant claimed that she believed that she was being set up for failure. She indicated that she was the newest logistician in the unit with the least amount of logistics experience yet she was assigned two difficult programs despite the fact that no other person in her unit worked two systems. Appellant claimed that a coworker at a higher grade level did not have to work on any similar projects. She asserted that the contingency operations program was particularly demanding because it represented a new agency acquisition that needed its product support element items accounted for by September 2016.

Appellant asserted that the employing establishment engaged in discriminatory practices on the basis of race in the manner that it characterized the work experience of candidates for promotion. She asserted that E.K. and D.Z. made stereotypical comments on the basis of race and about the city where she lived, Compton, California, which made her uncomfortable and that profanity was used in the workplace. Appellant claimed that the employing establishment mishandled matters relating to telework, employee feedback surveys, allocation of travel funds, documentation of travel expenses, and employee privacy. She believed that management retaliated against her for not completing an employee feedback survey. Appellant claimed that in February 2016 she asked if a coworker could provide help on her two projects, but that R.L. opposed the idea. She asserted that in March 2016 R.L. tried to intimidate her by suggesting that he could take away a project from an employee for poor management of that project. Appellant asserted that management discriminated on the basis of sex and race in March 2016 with respect to the manner in which it assigned people to oversee projects and required identification. She claimed that in March 2013 R.L. violated chain of command protocol by failing to first contact M.E. Appellant asserted that R.L. intentionally shamed her during a meeting in April 2016 by referencing her failure to complete an employee feedback survey and that he unreasonably asked her to relay messages from him to J.C., a coworker.

Appellant submitted an undated statement from J.C., who indicated that appellant was “called out” several times for not completing an employee feedback survey. J.C. asserted that appellant was the only person in her unit who had to work on two high visibility projects and that she did not receive adequate support. She indicated that management allowed “profanity outburst and conversations with racial overtones” to occur in the workplace.

Appellant also submitted additional medical evidence in support of her claim, including reports of Dr. Jaffe.

In a June 30, 2016 statement, M.E. acknowledged that appellant was in fact working two separate projects, but she was assigned a contractor support member to assist her with the larger of the two projects and he did not think that the workload would be too much for her. He noted,

“[appellant] is a very intelligent, capable individual that has been known in the past to even ask for more work at times when she was already significantly tasked.” M.E. agreed that staff members were required to travel for work and noted that, although he never asked appellant to stay beyond working hours, he had awarded her travel compensation time on several occasions for travel beyond duty hours. He asserted that she never told him that she needed relief from her work projects and indicated that he provided her adequate support.

In a November 3, 2016 statement, M.E. acknowledged that an employee at a higher grade level than appellant did not have a comparable project to work on, but he indicated that the employee had just returned from the Middle East and management was still assessing how to best employ him in the office. He indicated that the Sonalysts project did become slightly busier after appellant began working on it, but he asserted that she had the skills to effectively work on the project. M.E. acknowledged that appellant had to take three work trips during a four-month period in 2016. He denied that she was subjected to discrimination on the basis of race or sex, or that she was harassed in a meeting or at any other time. M.E. indicated that he could not confirm the derogatory statements about the City of Compton alleged by appellant, but noted that when he heard the subject discussed it was not done so in a disrespectful manner. He acknowledged that he “hated putting [appellant] in the middle of an impasse where R.L. did not want to extend the Sonalysts contract,” but he emphasized that he did not blame her for the fact that the contract was not extended.

By decision dated January 11, 2017, OWCP denied appellant’s emotional condition claim because she did not establish any compensable employment factors. It found that she had not established her claims with respect to work duties, administrative matters, and harassment/discrimination.

On January 7, 2018 appellant, through counsel, requested reconsideration of her claim. Appellant submitted an additional statement from J.C. dated January 3, 2018, where she asserted that appellant’s work duties were very demanding and that she had more responsibilities than her similarly situated coworkers. She indicated that profanity was used in her presence in the workplace and that she was aware of instances when private information about employees other than she was improperly disseminated. J.C. discussed a conversation in the workplace about bringing appellant flowers, which she felt was derogatory towards the City of Compton.

Appellant also submitted copies of disciplinary actions and additional medical evidence in support of her claim.

By decision dated April 5, 2018, OWCP denied modification of the January 11, 2017 decision.

On April 4, 2019 appellant, through counsel, requested reconsideration of her claim. In an April 2, 2019 statement, appellant again indicated that she was overworked at the employing establishment and had a nervous breakdown in early-2016. She submitted a number of administrative documents relating to position openings, disciplinary actions, requests for reasonable accommodation of medical conditions, and a lawsuit she filed against the Kaiser Foundation Health Plan, as well as e-mails regarding her applications for jobs.

Appellant also submitted additional medical evidence in support of her claim.

By decision dated November 8, 2019, OWCP denied modification of the April 5, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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 employment injury.<sup>5</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>6</sup>

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 accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</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>7</sup> *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).

<sup>8</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

adversely affected by employment factors.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

### ANALYSIS

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

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at her place of work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA.<sup>14</sup> The Board notes that some of appellant's claims relate to her regular or specially assigned duties under *Lillian Cutler*.<sup>15</sup> In addition, appellant claimed that management committed error and abuse with respect to various administrative/personnel matters. She also claimed that managers and coworkers subjected her to harassment and discrimination.

The Board finds that appellant has established employment factors with respect to her allegation of overwork. Appellant has established that she was assigned and worked on two GPS acquisition and management projects starting in January 2016, *i.e.*, the Raytheon (OCX) and Sonalysts projects. Appellant's immediate supervisor, M.E., acknowledged appellant's work on the projects and the complexity of the work by noting that appellant was assigned a contractor support member to assist her with the larger of the two projects. M.E. noted that appellant took on extra responsibility "at times when [appellant] was already significantly tasked." The evidence of record reflects that the projects required coordination of tasks with coworkers and involved work travel, including three work trips that occurred within a four-month period in 2016.

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<sup>10</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>11</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>12</sup> *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>13</sup> *Id.*

<sup>14</sup> *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> *See supra* note 8.

With respect to administrative or personnel matters, appellant claimed that management officials mishandled matters relating to training, telework, employee feedback surveys, allocation of travel funds, documentation of travel expenses, and employee privacy. She claimed that supervisors mishandled work assignments and did not provide her adequate support when she encountered difficulties at work. The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>16</sup> However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>17</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>18</sup>

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant submitted documents that concerned some of these administrative/personnel matters, but they did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that she obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.<sup>19</sup> Although appellant expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.<sup>20</sup> She has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by managers and coworker. She asserted that she was discriminated against with respect to promotions and that discriminatory, stereotypical, and profane comments were made in the workplace. Appellant claimed that management embarrassed her in meetings and retaliated against her for not completing an employee feedback survey. She asserted that M.E. set her up for failure by overloading her with work. Appellant claimed that M.E. purposefully placed her "in the middle" of a stressful situation with another manager, R.L. She also asserted that R.L. tried to intimidate her by suggesting that he could take away a project from an employee for poor management of that project and that he unreasonably asked her to relay messages from him to J.C., a coworker. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.<sup>21</sup>

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<sup>16</sup> *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>17</sup> *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>18</sup> *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>19</sup> *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

<sup>20</sup> *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

<sup>21</sup> *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

The Board has held that unfounded perceptions of harassment do not constitute an employment factor.<sup>22</sup> Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.<sup>23</sup>

Appellant, however, did not submit sufficient corroborative evidence in support of her allegations regarding harassment and discrimination. Although she submitted several witness statements from a coworker, J.C., who asserted that she was subjected to harassing/discriminatory actions, these statements were unspecific and vague to establish appellant's claims. For example, J.C. indicated that appellant was "called out" several times for not completing an employee feedback survey and that management allowed profane and derogatory statements to occur in the workplace. However, J.C. did not provide any detailed description of specific instances of such conduct that occurred in appellant's presence.<sup>24</sup> Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

In the present case, appellant has established compensable employment factors with respect to overwork relating to two projects she worked on beginning in 2016. However, her burden of proof is not discharged by the fact that she has established employment factors, which may give rise to a compensable disability under FECA. To establish appellant's occupational disease claim for an emotional condition, she must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder, and that such disorder is causally related to an accepted compensable employment factor.<sup>25</sup>

As appellant has established compensable factors of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.<sup>26</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>22</sup> See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>23</sup> See *id.*

<sup>24</sup> See *B.S.*, *supra* note 10. J.C. discussed a conversation in the workplace about bringing appellant flowers, which she felt was derogatory towards the city of Compton. However, J.C. only provided a vague description of the conversation and appellant was not present when it occurred.

<sup>25</sup> See *supra* notes 7 and 13.

<sup>26</sup> See *M.D.*, Docket No. 15-1796 (issued September 7, 2016).



**ORDER**

**IT IS HEREBY ORDERED THAT** the November 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.

Issued: November 24, 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