

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

C.F., Appellant	)	
	)	
and	)	<b>Docket No. 20-1070</b>
	)	<b>Issued: August 9, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Chicago, IL, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On April 20, 2020 appellant filed a timely appeal from a March 24, 2020 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 stress-related conditions in the performance of duty, as alleged.

**FACTUAL HISTORY**

On February 19, 2020 appellant, then a 53-year-old retail associate, filed an occupational disease claim (Form CA-2) alleging that due to factors of her federal employment, including a February 3, 2020 incident with customers. She asserted that she felt unsafe at work after receiving

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

verbal threats, resulting in stress-related headaches, backaches, and dizziness. Appellant also alleged that she was overworked and harassed by management. She noted that she first became aware of her condition and realized its relation to her federal employment on February 6, 2020. On the reverse side of the claim form, J.M., an employing establishment human resources specialist, indicated that on February 3, 2020 a customer complained about the way appellant had treated non-English speaking customers and posted her account of the incident on social media. She noted that appellant had filed a complaint with the U.S. Postal Inspection Service, which then performed an investigation regarding the customer's conduct, but found no credible threat. Appellant stopped work on February 18, 2020.

In a development letter dated February 19, 2020, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. In a separate development letter of even date, OWCP requested that the employing establishment provide details related to appellant's claim and indicate whether they concurred with her allegations. OWCP afforded both parties 30 days to respond.

Appellant alleged that management improperly denied her requests for leave. She also submitted an October 30, 2019 leave request for two hours on October 31, 2019, which was denied pending acceptable documentation. Appellant also submitted a leave request dated February 4, 2020, where she remarked "unsafe work environment -- customer threats," which was also denied.

Appellant asserted that her manager discriminated against her based on her age and sex. She submitted a November 11, 2019 letter from the employing establishment Equal Employment Opportunity (EEO) field office acknowledging receipt of her informal complaint of discrimination based on age and sex. The letter detailed an incident that occurred on October 24, 2019 when appellant's manager allegedly showed favoritism and embarrassed and demeaned her in front of younger employees.

In a February 12, 2020 statement, appellant alleged that she was being punished for carrying out the policies and procedures for which she was trained. She indicated that when she was hired, she was only required to speak English. Appellant reported that she attempted to help a non-English speaking customer and asked if others in line could interpret for her. As a result, she was criticized, defamed, verbally assaulted, and slandered, and her job and life were threatened.

In an e-mail dated February 5, 2020, appellant reported that, a disgruntled customer, E.G., threatened her on February 3, 2020. She alleged that E.G. called her a derogatory slur accused her of disliking Latinos, and contacted the news media and community at large who threatened her and protested outside her workplace.

On February 12, 2020 K.B., the station manager, performed an investigative interview relative to the customer-related incident that occurred on February 3, 2020. Appellant provided partially legible responses to a series of questions. She reported working for the employing establishment for 32 years. Appellant indicated that she received training for her position and treated everyone with respect. She noted that on February 3, 2020 she was threatened by a patron. Appellant indicated that there was no protocol at the station for servicing a customer who did not speak English. She indicated that on the day in question she tried helping a lady and asked other

customers in line to assist when another customer was disrespectful. Appellant asserted that she was the only one at the window every morning and asked for assistance, but was never provided help.

Appellant submitted a statement dated February 19, 2020, noting that she began working at the employing establishment facility on July 22, 2019. She indicated that on February 3, 2020 she was threatened by a disgruntled customer and feared that the employing establishment was trying to terminate her as a result of this incident. After the incident, management interrogated appellant and tarnished her character. In a statement dated February 20, 2020, appellant explained that on February 3, 2020 she provided service to a non-English speaking customer and asked others in line to help interpret for the woman. She asserted that she did not berate or discriminate against any customers.

In a witness statement dated February 5, 2020, received by OWCP on February 28, 2020, L.R., a coworker, reported that on February 3, 2020 appellant was at the finance window by herself and she overheard appellant saying to a customer: "I am sorry for the delay, but I do not speak Spanish, you are going to have to get someone to help you." She further related that appellant stated: "ma'am I do not appreciate you coming in here and being disrespectful. I am not a disrespectful person. I have not disrespected anyone, and I am not going to allow you to disrespect me, if you keep on I am going to have to call the police and have you escorted out and you will not be allowed to enter the building again." L.R. believed that there was a managerial problem and the station needed a bilingual speaking supervisor to better assist the customers. In an amended statement dated February 5, 2020, L.R. asserted that appellant did nothing wrong and that management disliked her because she had previously reported wrongdoing that occurred at the station.

In a statement dated February 20, 2020, appellant indicated that she developed anxiety as a result of the February 3, 2020 incident and feared physical harm. Likewise, in a statement received on March 2, 2020, she indicated that she was the only clerk present from 9:00 a.m. to 10:10 a.m. and requested additional assistance daily.

OWCP continued to receive medical evidence.

On March 2, 2020 OWCP received appellant's February 25, 2020 response to its development letter. Appellant indicated that her stress-related condition developed on February 3, 2020 after a customer verbally threatened her, disrespected her, and called her a derogatory slur. She explained that on February 4 and 5, 2020 she experienced anxiety and feared physical harm. Appellant requested emergency leave from February 6 through 11, 2020. She reported no stress in her personal or home life and that she had been happily married for 26 years.

On March 3, 2020 K.B. responded to OWCP's development letter on behalf of the employing establishment. He contended that there was no evidence that appellant was threatened on February 3, 2020. L.R., appellant's co-worker, provided a statement and indicated that she never heard anyone threaten or use profanity; rather, appellant informed a customer that she was being rude and she was going to call the police. An investigation by the U.S. Postal Inspection Service found no credible threat. K.B. also noted that, after the February 3, 2020 incident, the employing establishment accommodated appellant by giving her duties that did not require her to work with the public. K.B. provided a job description for a lead sales and service associate whose

functional purpose was to perform a variety of sales and customer support services for products with or without direct supervision, alone or as a working leader.

On March 6, 2020 OWCP received an Assault and Threat Specialty Report relating to an incident involving appellant, who was identified as the lead clerk at the employing establishment. Inspector D.M. interviewed appellant, who indicated that on February 3, 2020 a customer at her window was trying to get a passport photo, but did not speak English. Appellant reportedly asked other customers for assistance with translating the conversation. She described a woman who, after attempting to assist the customer without success, called appellant names. Appellant indicated that on February 4, 2020 news media outlets entered the workplace and tried to interview her regarding the incident. Inspector D.M found that no direct threats of violence were made against appellant, only name calling.

OWCP received medical evidence.

By decision dated March 24, 2020, OWCP denied appellant's emotional condition claim, finding that she failed to establish a compensable employment factor.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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>4</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) rationalized 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>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>6</sup> There are situations where an injury or an illness

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

<sup>3</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>4</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>5</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>6</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

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>7</sup> On the other hand, the disability is not covered when 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>8</sup>

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>9</sup> However, the Board has 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>10</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>11</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.<sup>12</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>13</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 compensable factors of employment and may not be considered.<sup>14</sup> If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.<sup>15</sup> If a compensable factor

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<sup>7</sup> *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>8</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</sup> See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>10</sup> See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *D.R.*, Docket No. 16-0605 (issued October 17, 2016); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>11</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>12</sup> *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>13</sup> *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>14</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> *Charles E. McAndrews*, 55 ECAB 711 (2004).

of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.<sup>16</sup>

### ANALYSIS

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

Appellant attributed her emotional condition, in part, to *Cutler*<sup>17</sup> factors. She alleged that her stress-related condition developed on February 3, 2020 after a confrontation with angry customers while performing her clerk duties. Pursuant to *Cutler*, an allegation constitutes a compensable employment factor if the appellant establishes that performance of his or her regular job duties or special assignment caused or contributed to an emotional condition.

OWCP received a witness statement from L.R., a coworker, dated February 5, 2020, who confirmed that on February 3, 2020 appellant was performing her clerk duties, addressing the complaints of angry customers.

The Board has held that conditions related to stress from situations in which an employee was performing her regular or specially assigned duties is compensable.<sup>18</sup> The evidence of record is sufficient to establish that appellant interacted with angry customers while performing her regular assigned duties. The verbal altercation combined with the attention of local news media outlets about the incident constitutes a compensable work factor. The employing establishment did not dispute that appellant interacted with an angry customer while performing her job duties, nor did they dispute the ensuing events. The Board thus finds that under *Cutler*,<sup>19</sup> appellant has established a compensable work factor.

The Board further finds that appellant's other allegations do not constitute compensable factors of employment.

Appellant also attributed her emotional condition, to being overworked and working in an understaffed environment on a daily basis as a window clerk. She contended that she was the only clerk present at the customer service window from approximately 9:00 a.m. to 10:10 a.m., Monday through Friday, and there were sometimes as many as nine customers in line. She requested additional help from M.B. on several occasions and he never provided assistance. Appellant related that her current work environment caused her stress and anxiety.

The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.<sup>20</sup> In

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<sup>16</sup> *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>17</sup> *Supra* note 10.

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

<sup>19</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 10.

<sup>20</sup> *See Bobbie D. Daly*, 53 ECAB 691 (2002); *T.M.*, Docket No. 15-1774 (issued January 20, 2016).

support of her claim, appellant submitted a witness statement dated February 5, 2020, from L.R., a coworker, who noted that she worked the window from 9:00 a.m. to 10:15 a.m. alone and requested assistance at the window, but received none. However, this general statement is insufficient to establish that appellant was overworked.<sup>21</sup> The job description for a lead sales and service associate was to perform a variety of sales and customer support services for products with or without direct supervision and indicated that they may work alone or as a working leader. While appellant asserts that she worked the customer service window alone from 9:00 a.m. to 10:10 a.m. this was consistent with her job description, and it did not demonstrate that she was overworked. She did not provide specific dates or other details to establish overwork.<sup>22</sup> Furthermore, the employing establishment has denied that appellant's regularly or specially assigned duties required additional assistance at the front desk in the mornings from 9:00 a.m. to 10:10 a.m. In a March 3, 2020 statement, K.B. a manager of customer service, indicated that appellant was able to generally perform the required duties of her job in accordance with expectations.<sup>23</sup>

Appellant also attributed her emotional condition to administrative and personnel actions. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not covered under FECA.<sup>24</sup> In *Thomas D. McEuen*,<sup>25</sup> the Board has held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of an employee. 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, such action will be considered a compensable employment factor.<sup>26</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>27</sup>

As an investigation was conducted by the U.S. Postal Inspector the manager was obliged to discuss the incident with appellant. The Board finds that appellant has not offered sufficient evidence to establish that the employing establishment acted unreasonably responding to these

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<sup>21</sup> See *A.L.*, Docket No. 17-0368 (issued June 20, 2018); *K.B.*, Docket No. 17-0277 (issued March 16, 2018).

<sup>22</sup> See *Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (the Board noted that a claimant did not provide the requisite detail regarding specific dates and the duties she performed, which allegedly overwhelmed her and caused her stress).

<sup>23</sup> See *A.L.*, *supra* note 21; *Bobbie D. Daly*, *supra* note 20.

<sup>24</sup> *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>25</sup> See *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>26</sup> *William H. Fortner*, 49 ECAB 324 (1998).

<sup>27</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

matters. Appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters.<sup>28</sup>

Appellant has alleged other incidents of error and abuse in administrative matters on the part of her manager, including denying leave on October 31, 2019 and February 4, 2020. The Board has held that disputes regarding the handling of leave requests and attendance,<sup>29</sup> are administrative functions of the employing establishment and, absent error or abuse, a claimant's disagreement or dislike of such a managerial action is not compensable. Appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters.<sup>30</sup>

Appellant also alleged that her manager K.B. harassed and discriminated against her, which further caused her stress and anxiety. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from the employee's performance of his or her regular duties, these may constitute compensable employment factors.<sup>31</sup> However, 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. Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>32</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>33</sup>

Appellant further contended that her supervisor, K.B. created a hostile working environment. She has not, however, provided corroborating evidence to substantiate her assertions of a hostile work environment or establish specific incidents of harassment.<sup>34</sup> The Board notes that general allegations of harassment are insufficient to establish a compensable factor of employment.<sup>35</sup> Appellant has not established allegations of harassment with probative and reliable evidence. The record does not contain witness statements corroborating her narrative statements regarding the allegedly harassing, bullying, or intimidating behavior. The Board finds, therefore, that there is no evidence substantiating appellant's contention that she was harassed by K.B. Appellant has, therefore, not met her burden of proof to establish her claim.

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<sup>28</sup> *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

<sup>29</sup> *See Judy Kahn*, 53 ECAB 321 (2002).

<sup>30</sup> *R.V.*, *supra* note 28.

<sup>31</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>32</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>33</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>34</sup> *See William P. George*, 43 ECAB 1159 (1992).

<sup>35</sup> *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

As noted above, the Board finds that appellant has established a compensable employment factor under *Cutler* with regard to her allegation of a confrontation with angry customers while performing her regular and specially assigned job duties. Accordingly, OWCP must analyze the medical evidence to determine whether she has sustained an emotional condition as a result of this compensable employment factor. The case will, therefore, be remanded to OWCP. 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 9, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board