United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 23-0007**
	)	**Issued: August 16, 2023**
DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICE, Phoenix, AZ, Employer	)	

Appearances:
Tiffany Danyel Snead, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2022 appellant, through counsel, filed a timely appeal from an April 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional/stress-related condition in the performance of duty.

FACTUAL HISTORY

On October 18, 2016 appellant, then a 62-year-old dietician, filed an occupational disease claim (Form CA-2) alleging that her stress, anxiety, sleepless, fatigue, depression, hypertension, and irritable bowel syndrome were due to factors of her federal employment. Specifically, she attributed her condition to lack of training, increased workload, patients served food that could make them ill, and inconsistent management direction. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on July 25, 2016.

In a statement dated September 8, 2016, appellant explained that during her first week of employment in August 3, 2009 she did not receive training in electronic health records or a password to access the records. She alleged that, since then, she had not received any accurate direction, mentoring, or training for her position. The lack of a password resulted in appellant's inability to access the records so that she could enter patient information, which led to a delay in care and placed patients at risk. She stated that the lack of training in using electronic health records set both her and patients up for failure and placed her at risk for malpractice. Furthermore, appellant stated that she was not provided yearly training in her field of practice despite a government mandate for such training. She alleged possible violations of Health Insurance Portability and Accountability Act (HIPAA) due to her working in an open workstation. Appellant also explained that she had to rush her patient appointments because patients were already waiting for over 30 minutes for their appointments, which made it difficult for her to provide proper nutrition information and advice. She alleged stress due to increased workload from staff shortages and high staff turnover led to her working through her lunch and skipping breaks to complete her duties. Every time a dietician quit, there would be a six-month to one-year delay before another dietician was hired. Appellant alleged inconsistent standards and directions from her supervisor which resulted in her not knowing what documentation was required for her patients. She described incidents of inappropriate diet incidents with patients involving being served raw plantains and sour milk and another incident occurred when a patient with a severe allergy to rice and oatmeal was served those items. Appellant also alleged that the nutrition staff were ordered to serve outdated food to patients. In addition, she alleged that wrong foods were served to patients due to oversights. Appellant related that on September 24, 2010 she intervened to prevent a 3-month old patient from being served food appropriate for an 8 to 11-month old patient instead of formula. She also alleged that on February 3, 2011 she clearly noted that a patient was not to have coffee or tea due to very strict fluid recommendations, which was ignored by another dietician who gave the patient coffee. This resulted in health issues for this patient and transportation on a helicopter for a higher level of care. Appellant related that, in March 2011, management ordered staff to use expired milk by including it in recipes with water until it was used up, which placed patients at risk of getting sick. She stated that she felt abandoned and hopelessness from management's total disregard of her and patients. As a result of these issues, appellant felt angry, stressed out, anxious, and was constantly preparing for a disaster. She also attributed her physical deterioration and weight gain to her unbearable work stress.

In a development letter dated December 9, 2016, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the allegations in appellant's narrative statement and the accompanying documentation. It afforded both parties 30 days to respond.

In a January 4, 2017 response, V.T., a supervisory dietician, contended that appellant received training from a clinical dietitian colleague when she started her job. She asserted that appellant did not complain about the lack of training or any other issue until she filed a FECA claim. Next, V.T. disagreed with appellant's allegations of inconsistent standards and directions from management. She noted that, resources are provided to employees, which included tools to assess patients and that all dieticians are required to adhere to guidelines and standards set by the Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), Academy of Nutrition and Dietetics, and Joint Commission. V.T. stated that appellant had been provided with department training, received continuous feedback during the performance year, never requested any additional training, and expressed no interest in using the scheduling template. She further contended that yearly food inspections found no issues and all food service employees were trained pursuant to USDA and FDA guidelines. V.T. stated that appellant has been counseled about working outside of her tour of duty and about the time she spends with patients. She related that appellant spends between 1½ to 2 hours with patients, with an average patient time of 45 minutes to 1½ hours, when the recommended time per innovative patient care is between 15 and 20 minutes. According to V.T., the average stay of dieticians or other providers is two years. She explained that turnover is common in isolated service units and that the staffing shortage did not impact appellant's workload or assigned duties. With regard to appellant's allegation of being moved to an open workstation and her allegation of a possible HIPAA violation, V.T. stated all dieticians counsel patients in a provided room and that appellant needed to be brief as other providers were seeing the patient. The only time there would be a HIPAA violation would be if appellant continued her long counseling outside the room. V.T. contended that the September 24, 2010 and February 3, and March 2011 incidents appellant alleged never occurred. She also disagreed with appellant's assertion that appellant's job was stressful, while acknowledging that appellant had numerous conflicts with employees and supervisors.

OWCP received a February 15, 2010 letter from D.R., Director of Quality Management, to R.H., Director of Professional Services, regarding patient care, conduct, and performance concerns brought to his attention by two dietary staff members who had expressed fear of retaliation. Several allegations were outlined regarding personal ethics violations by management. Allegations were also outlined regarding lack of staff member support, including scheduling patient interviews for 30 minutes instead of 60 minutes, scheduling changes, and improper patient diet orders.

In an April 22, 2011 e-mail to V.T., C.C. noted that every hour from 9:00 a.m. to 4:00 p.m. was booked for outpatient appointments. He advised that he was unable to visit the inpatient ward and to the inpatient consult that was requested to be serviced within 24 hours. C.C. suggested revisiting and revising the schedule as it seemed impossible for one registered dietician to see both inpatients and outpatients on Fridays when the outpatient schedule was completely booked.

OWCP also received Office of the Inspector General hotline complaints of mismanagement and an April 24, 2011 incident report, wherein appellant noted that on April 2, 2011 patients were given plantains instead of bananas for morning and afternoon snacks. An investigation was conducted and the incident was closed due to the lack of any evidence substantiating the allegation.

In a June 29, 2016 e-mail, V.T. advised that D.J. would take over outpatients that day to free up appellant with Infection Prevention and Control patients.

In a September 20, 2016 report, Sandra J., Brim, Ph.D., a licensed clinical psychologist, diagnosed post-traumatic stress disorder, severe major depressive disorder, and generalized anxiety disorder. She performed a psychological evaluation and attributed appellant's symptoms to excessive stress from her dietician/nutritionist work duties. Specifically, Dr. Brim related that appellant was not provided any training when she started her job and was expected to see patients without having access to the information necessary to perform her job. She also reported that appellant had a high workload as the result of staffing shortages and high staff turnover. Appellant also described incidents of poor and potentially fatal patient care.

In a January 5, 2017 statement, appellant further explained that she had requested WebEx training, but was unable to complete the training due to constant interruptions of seeing patients or performing other job-related tasks. Appellant also related an incident with a patient who had waited over a month for her appointment. During the appointment, she was unable to access the computer to obtain the patient's medical history, which included a recent diagnosis of kidney failure/hemodialysis. Appellant was unable to appropriately advise the patient on proper nutrition due her inability to review patient's medical history. She explained the importance of providing immediate medical nutrition therapy regarding protein intake for kidney failure/hemodialysis. This delay in providing appropriate medical nutrition therapy was devasting to appellant as she was unable to provide necessary tools and information to the patient and also put her at risk of being held professionally liable for this delay.

By decision dated September 8, 2017, OWCP denied appellant's claim, finding she failed to establish any compensable factors of employment.

On May 9, 2018 appellant, through counsel, requested reconsideration. Additional evidence was submitted in support of her request.

In a March 9, 2011 e-mail to V.T., appellant noted that, at 3:40 p.m. she finished with her last scheduled patient; however, she had three outstanding notes to complete, she was unable to take her lunch, and that she had only finished 30 minutes out of an 1½ Webex training.

In a March 30, 2011 response, V.T. apologized to appellant for her behavior on February 3, 2011.

A statement dated May 26, 2011 from M.A., a former dietary staffer, related that she started work on March 28, 2011 and her last day was May 26, 2011. She stated that she did not receive proper orientation when arriving at the Dietary Department as she was unaware who was in charge or from whom to seek direction. M.A. described events that she had while working at the employing establishment, but made no mention of appellant.

In a June 27, 2011 e-mail, V.T. asked appellant about covering Sundays during the month of July. V.T. informed her that since they were short staffed she would be covering Monday through Friday, noting that appellant was the outpatient dietician for that period.

In a July 30, 2014 e-mail to V.T., appellant noted receiving 172 nutrition consults. She advised that the longer the template was, the more time it would take to complete.

In an e-mail with an illegible date, V.T. informed staff that the dietary meeting schedule for January 15, 2015 was cancelled due to short staff participation and was rescheduled for March 29, 2015.

By decision dated January 16, 2019, OWCP denied modification.

On August 6, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a statement dated July 23, 2019, C.F., a coworker, reported that she was aware of appellant's lack of training and lack of access to the electronic health records during appellant's initial weeks of work. She was unaware of whether appellant was trained by V.T., but observed that V.T. was very difficult. C.F. described her interactions with V.T. to support this observation. She opined that V.T. was incapable of providing adequate training. C.F. noted yearly training was available for employees, which was easy to request, but difficult to access. In response to whether appellant's patients ever waited over 30 minutes, she responded "probably." Next, C.F. noted that there was a high turnover for dieticians resulting in appellant being the only dietician available to meet patient needs. This made it very difficult for one dietician to complete the workload of one or two other dieticians. C.F. stated that appellant told her about patients receiving incorrect food items. Lastly, appellant told C.F. that she worked without a break or lunch and was unsure if appellant worked overtime, but noted that it appeared she did.

In a statement dated July 24, 2019, C.C., related that she and appellant started work together in the summer of 2009. She advised that the government training system was frequently down, which adds stress to the everyday workload. C.C. noted that there was a lot of time lost between staff leaving and new staff arriving. She also indicted that there were numerous times appellant worked overtime and missed lunch.

In a July 30, 2019 statement, L.C., a coworker, responded to questions posed noting that she did not work directly with appellant. She agreed that appellant received no training on electronic health records due to appellant's supervisor being on leave. L.C. noted that dieticians would come aboard and leave unexpectedly. Appellant told L.C. about working through her break hours and lunch. L.C. recalled appellant was terrified of her supervisor who wrote her up for arriving 15 minutes before her schedule started.

By decision dated October 30, 2019, OWCP denied modification.

On October 28, 2020 appellant, through counsel, requested reconsideration.

By decision dated January 12, 2021, OWCP denied modification.

On January 11, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence.

Incident reports and surveys were received regarding meals served to inpatients.

Appellant, in e-mail correspondence dated April 29, 2011, noted that on that date M.M. had instructed appellant to file an Equal Employment Opportunity complaint against V.T. for a hostile work environment and other issues.

By decision dated April 11, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim,[4] including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5] 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.[6]

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the 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 the emotional condition is causally related to the identified compensable employment factors.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[8] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some

[3] *Id*.

[4] *L.N.*, Docket No. 22-0126 (issued June 15, 2023); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *L.N.*, *id*.; *S.S.*, *id*.; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 20 C.F.R. § 10.115; *R.S.*, Docket No. 20-1307 (issued June 29, 2012); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *R.A.*, Docket No. 21-0412 (issued January 10, 2023); *N.S.*, Docket No. 21-0355 (issued July 28, 2021); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

[8] 28 ECAB 125 (1976).

connection with the employment, but nevertheless does not come within coverage under FECA.[9] 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.[10]

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[11] Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[12] Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.[13]

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[14] Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.[15] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[16]

ANALYSIS

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

Appellant has attributed her emotional condition, in part, to overwork performing the regular or specially assigned duties of her position as a dietician. The Board has held that overwork, when substantiated by sufficient factual information to corroborate her account of events, may be a compensable factor of employment.[17] Appellant alleged that she was overworked as her duty station was chronically understaffed due to improper scheduling and high staff

[9] *R.A.*, *supra* note 7; *N.S.*, *supra* note 7; *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

[10] *R.A.*, *id.*; *N.S.*, *id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 8.

[11] *R.A.*, *id.*; *N.S.*, *id.*; *A.C.*, *id.*

[12] *R.A.*, *id.*; *N.S.*, *id.*; *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

[13] *R.A.*, *id.*; *N.S.*, *id.*; *A.C.*, *supra* note 10.

[14] *See P.B.*, Docket No. 19-1673 (issued December 1, 2021); *G.R.*, *supra* note 12; *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd d on recon.*, 42 ECAB 566 (1991).

[15] *P.B.*, *id.*; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen*, *id.*

[16] *Id.*

[17] *W.J.*, Docket 20-1226 (issued January 6, 2023); *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

turnover, therefore, she had to work through her lunch, and skip breaks to complete her duties. She also alleged that it was difficult to provide proper nutritional information and advice to her patients because she had to rush through her patient appointments. V.T., appellant's supervisor, related that appellant had been counseled about the time spent with patients and working outside her tour of duty. While she agreed that, high staff turnover was common in isolated services units, she stated that the staff shortage did not impact appellant's assigned duties or workload. However, in a June 27, 2011 e-mail, V.T. acknowledged that they were short staffed. Additionally, statements from C.F. and C.C. supported appellant's allegation of overwork due to a shortage of dieticians. C.F. stated that at times appellant performed the work of two dieticians due to the high turnover and shortage of dieticians. C.C. stated that there were numerous times appellant worked overtime and missed lunch. She also noted issues due to turnover time of staff leaving and new staff arriving. In light of appellant's description of her duties and responsibilities involving working as a dietician, as well as the corroboration by C.F., C.C., and V.T., the Board finds that appellant has established a compensable employment factor with respect to her allegation of overwork.[18]

Appellant also alleged that she had not received the necessary training to perform her work duties, particularly training on the use of electronic health records during her first week of employment or provided yearly training. The Board has held that an employee's emotional reaction to being made to perform duties without adequate training is compensable.[19] In support of her claim appellant submitted a statement from C.F., a coworker, who reported that she was aware of appellant's lack of training and lack of access to the electronic health records when appellant began her position. The record also contains a statement from L.C., who stated that appellant received no training on electronic health records, noting that appellant's supervisor was on leave. As appellant has submitted evidence substantiating that she was not provided with the requisite training to perform her job, she has established a compensable factor of employment under *Cutler* with respect to the lack of training.

The Board further finds, however, that appellant's additional allegations are not established as compensable employment factors. Appellant has raised allegations regarding administrative and personnel actions including working in an open workspace, patients being served food that could make them ill, and inconsistent management instruction. Administrative and personnel matters, although generally related to employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee. For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.[20] An employee's reaction to an administrative or personnel matter is not covered by FECA unless there is evidence that the employing

[18] *W.J.*, *id*.; *J.E.*, *id*.

[19] *P.B.*, Docket No. 19-1673 (issued December 1, 2021); *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *S.S.*, Docket No. 18-1519 (issued July 17, 2019); *C.T.*, Docket No. 09-1557 (issued August 12, 2010); *Donna J. Dibernardo*, 47 ECAB 700 (1996).

[20] *M.H.*, Docket No. 21-1297 (issued December 20, 2022); *Thomas D. McEuen*, *supra* note 14.

establishment acted unreasonably.[21] Appellant has not, however, provided any specific evidence that the employing establishment acted unreasonably in these matters.

As appellant has established compensable factors of employment with regard to overwork and lack of training, OWCP must base its decision on an analysis of the medical evidence. The case will, therefore, be remanded for OWCP to analyze and develop the medical evidence regarding the accepted factors of her employment.[22] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2022 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 16, 2023
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[21] *F.T.*, Docket No.21-0489 (issued September 8, 2022); *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *Linda Edwards-Delgado*, 55 ECAB 401 (2004); *see also Alfred Arts*, 45 ECAB 530 (1994).

[22] *W.J.*, *supra* note 17; *C.S.*, Docket No. 19-0116 (issued January 10, 2020); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019).