United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
	)	**Docket No. 21-0522**
and	)	**Issued: April 4, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Lexington, KY, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 18, 2021 appellant, through counsel, filed a timely appeal from a January 7, 2021 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.

ISSUE

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

[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.*

FACTUAL HISTORY

On April 18, 2017 appellant, then a 50-year-old supervisor of customer services, filed an occupational disease claim (Form CA-2) alleging that she suffered from anxiety, panic attacks, depression, and high blood pressure due to her current supervisor's refusal to honor her medical restrictions.[3]

In a May 20, 2017 narrative statement, appellant alleged that M.I., her immediate supervisor and manager, ignored her nonwork-related medical restrictions that were honored by her prior managers, K.A. and two other managers. She noted that on April 18, 2017 she received a text message from M.I. instructing her to report to work on April 19, 2017 for a route inspection. On April 19, 2017 appellant called in sick to work due to her emotional and physical reaction to M.I.'s text message. On that same day, M.I. sent her a text message regarding her work duties to be performed on April 20, 2017. Appellant claimed that M.I. again ignored her medical restrictions and also her physical therapy appointment scheduled on April 20, 2017 regarding her January 23, 2017 employment injury.

Appellant also alleged that on May 16, 2017 M.I. again directed her to perform a route inspection. M.I. told her that she could sit in the front of the van and the carrier driver could stop for her personal needs.

Appellant contended that, on May 16, 2017, she became overwhelmed from counting mail on two routes, and she informed M.I. that she was leaving work on approved sick leave under the Federal Medical Leave Act (FMLA).

Appellant submitted medical evidence in support of her claim.

In a May 24, 2017 statement, M.I. controverted appellant's claim, contending that she did not harass, intimidate, or mistreat appellant resulting in her emotional and physical conditions. She maintained that she honored appellant's personal medical restriction which involved frequent urination, and appellant's restriction of no driving a postal vehicle as a result of her January 23, 2017 employment injury. M.I. noted that, since appellant was restricted from driving a postal vehicle, appellant did not perform her assigned duties for several months. On April 18, 2017 appellant received a text message instructing her to perform a route inspection on April 19, 2017. M.I. contended that this assignment did not violate appellant's medical restrictions because appellant was going to be a passenger in a vehicle with a driver who appellant could signal for "management time" and take her to a bathroom. She noted that appellant called in sick on April 19, 2017 and did not perform the route inspection. On April 19, 2017 appellant received a text message to perform a route inspection on April 20, 2017. M.I. asserted that appellant did not inform her that appellant was unable to perform the assigned task, because she had a physical therapy appointment on April 20, 2017. She claimed that, if appellant had responded, she would have rescheduled the assignment. Appellant called off work

[3] OWCP assigned the present claim File No. xxxxxx428. Appellant subsequently filed a traumatic injury claim (Form CA-1) for an emotional condition sustained on January 26, 2017 under OWCP File No. xxxxxx143. OWCP has administratively combined OWCP File Nos. xxxxxx143 and xxxxxx428, with the latter serving as the master file.

from April 20 through 22, 2017 and she was scheduled to be off work on April 23 and 24, 2017. When she returned to work on April 25, 2017, she presented a physician's note indicating that she had to urinate frequently and required access to a bathroom. The note also indicated that appellant was claustrophobic, and she could not ride in the back of a vehicle where a supervisor rode on most route inspections. M.I. noted that on May 16, 2017 she instructed appellant to perform a route inspection on May 17, 2017, within her most recent work restrictions, including sitting in the front passenger seat of a vehicle. On May 17, 2017 she offered to assist appellant with her work duties before she was scheduled to leave to perform the route inspection. Appellant refused her offer, and subsequently informed her that she was not going to perform the route inspection. She related that she was using FMLA leave because she had an anxiety attack at work. M.I. texted appellant on May 19, 2017 regarding her upcoming work schedule. When appellant returned to work on May 22, 2017 M.I. offered her a limited-duty job that did not involve street duties. Later that, same day, she returned from a physician's appointment with a note clearing her to drive a postal vehicle. However, appellant refused the offered position on that day. M.I. noted that appellant subsequently agreed to perform a route inspection scheduled for May 25, 2017. She concluded that she simply adhered to, and accommodated, appellant's personal and work-related restrictions.

In a development letter dated June 21, 2017, 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. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of her allegations. It afforded both parties 30 days to respond.

OWCP received additional medical evidence.

In a July 19, 2017 statement, appellant contended that K.C., a supervisor, informed her that P.M., another supervisor, told him that she had refused to perform a route inspection and walked out of work. She maintained that only M.I. could have related this incident to P.M. Appellant filed an Equal Employment Opportunity Commission (EEOC) complaint against M.I. regarding her actions.

Appellant submitted witness statements dated April 26 and July 19, 2017, and an undated witness statement from K.A., a former manager, G.S., a supervisor, and K.C., respectively, who corroborated her accounts that management had previously accommodated her personal and work-related restrictions, and that P.M. related the May 17, 2017 incident to K.C. K.C. also noted that P.M. made disparaging comments regarding the veracity of appellant's restrictions and her January 23, 2017 employment injury. P.M. also believed that she was treated differently than appellant and blamed appellant for her problems at work.

In an undated statement, M.M., an employee, related that on May 17, 2017 he heard a loud outburst of profanity from P.M. who stated that she was sick of appellant.

OWCP continued to receive medical evidence.

In a September 25, 2017 email, M.I. again controverted appellant's claim, contending that management had accommodated her restrictions. She also contended that appellant rejected the employing establishment's modified-duty job offer, called in sick and applied for leave under FMLA in response to being instructed to perform her work duties, and she had performance issues although no disciplinary action was taken against her by management.

OWCP, by decision dated November 7, 2017, denied appellant's emotional condition claim, finding that she had not established a compensable employment factor.

On November 20, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 19, 2018.

Appellant, through counsel, subsequently submitted a May 16, 2018 letter in which she noted that following her January 23, 2017 employment injury she had work restrictions from January 24 through May 22, 2017. She explained why she rejected the employing establishment's May 22, 2017 modified-duty job offer. Appellant contended that the concerns and issues she raised about P.M. talking about her at work were ignored by M.I. She denied M.I.'s contentions that she was under several predisciplinary investigations, and that her work unit was the worst unit at the employing establishment. Appellant alleged that she submitted a daily report prior to leaving work as required by a June 2017 email sent to all supervisors by M.I. She noted, however, that no disciplinary action was taken against another supervisor who refused to perform the daily report assignment, and another supervisor who stopped performing the assignment.

Appellant submitted a June 15, 2017 email by M.I. regarding the requirement to submit a daily report, effective June 17, 2017.

Additionally, appellant submitted medical evidence.

By decision dated July 16, 2018, OWCP's hearing representative affirmed the November 17, 2017 decision, finding that appellant had not established a compensable employment factor.

On July 15, 2019 appellant, through counsel, requested reconsideration. In an undated statement, she contended that M.I. talked to her in a loud and confrontational voice. Appellant also contended that M.I. was not a physician and, thus, she could not make a medical diagnosis as to whether appellant suffered a panic attack due to their confrontation.

In a February 13, 2019 letter, appellant attributed her emotional condition to additional work incidents. She was questioned and made to feel inadequate daily by M.I., Acting Postmaster S.H., and other individuals because she and her employees failed to perform their work duties within the hours prescribed in the daily budget. Acting Postmaster S.H. called appellant on the speaker phone or came to her station to review a report line by line when she failed to complete using the "Pet Tool" program by 1:00 p.m. daily. Appellant explained that she was unable to timely complete the report because she had 32 routes to deliver daily, and she had to speak to 32 people for a minimum of one minute each about these routes. Acting Postmaster S.H. observed appellant help clerks by throwing parcels and "SPRs" so that mail carriers would not have to wait for the clerks to process the mail and they could maintain their

productivity, and no hours would be added to her daily operation. When he asked her what her base hours were for the day, she responded over 15 hours. Acting Postmaster S.H. responded that appellant needed to go on the street to get the 15 hours back. Appellant became upset and asked M.I. how to get the 15 hours back, but M.I. did not have an answer.

Appellant further alleged that M.I. assigned additional work duties to appellant although she had the largest unit of employees. She was required to make scans after the mail was processed. Appellant expressed her concern about her job and workload to M.I. who responded that she signed up for the job. She questioned M.I. as to why the mail for her carriers was brought up after the mail for zone 17 carriers on many occasions. M.I. responded that zone 17 carriers had less mail than her carriers.

M.I. changed the work schedules of appellant and the other supervisors. Initially, she changed their work hours, and later changed their days off work. On June 1, 2017 M.I. provided appellant with an opportunity to pick her new start time, but appellant was informed that P.M. had already picked the first available start time. Appellant contended that M.I. allowed supervisors to pick their new work schedule based on their seniority as a postal employee and not as a supervisor. She refused to make a selection, contending that M.I. was not allowed to give P.M. her bid job. Appellant contacted C.T., the union president, who informed M.I. that she could not remove appellant from her bid job. M.I. then informed appellant and P.M. that they would continue to start work at their normal times.

In a June 2017 email, M.I. requested that all supervisors submit a daily packet and complete an attached checklist prior to their departure from work each day, which added to their already overburdened workday. K.C. and C.H., supervisors, refused to submit the requested report. Appellant asked M.I. why she was the only supervisor required to submit the report, but she did not respond.

Appellant submitted correspondence and emails dated May 11, 2017 through January 18, 2019 between herself and the employing establishment that addressed the employing establishment's denial of her request for reasonable accommodation, her medical restrictions and work schedule, the assignment of work and the failure of herself and her carriers to completely perform their work assignments, and the filing of her Form CA-2.

On January 26, 2018 appellant did not like the manner in which M.I. spoke to her when she instructed appellant to leave her daily projection from the previous day on her desk for her replacement when she was going to be off work, to talk to T.B., an employee, about his performance on the previous day, and to meet with a union representative regarding her grievances. Following this incident, she did not return to work.

Appellant also submitted leave and earnings statements. Additionally, she submitted documents relating to the EEOC complaint she filed on March 21, 2018. A March 27, 2018 Equal Employment Opportunity (EEO) alternative dispute resolution specialist's (ADRS) inquiry report outlined appellant's allegations. The ADRS indicated that appellant contended that she had a tense discussion with M.I. regarding overtime grievances. Appellant requested FMLA sick leave approximately 10 minutes after arriving at work because she was upset. On February 14, 2018 the ADRS conducted an inquiry with M.I. M.I. related that appellant's zone

was the worst zone as it had poor recordkeeping and the employees were not held accountable for unscheduled leave and poor performance. The ADRS reiterated appellant's allegation regarding the January 26, 2018 incident. On February 13, 2018 the ADRS conducted an inquiry with D.K. D.K. related that Acting Postmaster S.H. wanted to move appellant from zone 2 to zone 17, a smaller zone, due to her poor work performance. Appellant rejected the offer and D.K. advised her to improve her work performance. Also, on February 13, 2018, the ADRS conducted an inquiry with Acting Postmaster S.H., who related that appellant received the same instructions as other supervisors. He also related that her work performance was poor because reports were not submitted, and her employees were not held accountable. Appellant refused his offer to move her to zone 17 which involved easier work.

A July 25, 2018 EEOC decision reversed the employing establishment's April 16, 2018 dismissal of appellant's complaint of age discrimination and reprisal. The claim was remanded to the employing establishment for continued processing.

Appellant submitted witness statements from her coworkers. J.L. advised that he and other employees were instructed to stop working on mail for zone 2, appellant's zone, and to get the mail up for zone 1. He also witnessed other zone supervisors arriving to work earlier than the zone 2 supervisor who had the largest zone and more responsibilities than the other supervisors. K.C. reiterated his account of the May 17, 2017 incident. T.B. advised that on May 17, 2017 appellant became flush in the face and experienced labored breathing due to work-related stress or anxiety. M.M. indicated that on May 17, 2017 he heard appellant state in a loud outburst with profanity that she was tired of P.M. D.S. related that on January 26, 2018 he heard appellant and M.I. talking in a confrontational manner. He noted, however, that he did not hear the context of their conversation. S.T. observed an argument between appellant and M.I. and that appellant was upset after the incident. He related that D.S. told him that appellant was shaking when she checked out of work following the incident.

Appellant submitted medical evidence.

In a January 31, 2018 letter, S.W., a human resources management specialist, challenged appellant's occupational disease claim, contending that she had not established compensable employment factors. Regarding appellant's reaction to being given a work assignment on January 26, 2018 she asserted that it was necessary for appellant to adapt to procedure changes at work. S.W. also asserted that the employing establishment acted reasonably and did not commit error or abuse in providing her work instructions. Additionally, she asserted that appellant had not submitted medical evidence to establish her emotional condition was causally related to the alleged employment-related factors.

By decision dated October 11, 2019, OWCP denied modification of the July 16, 2018 decision. It again found that appellant had not established a compensable factor of employment in connection with her emotional condition claim.

On October 11, 2020 counsel, on behalf of appellant, requested reconsideration.

OWCP received an August 16, 2019 EEOC hearing transcript. M.I. restated her contentions that the assignment of route inspections was within appellant's restrictions. She

denied harassing and raising her voice at appellant. M.I. explained that she spoke loudly due to a hearing issue in one ear.

OWCP, by decision dated January 7, 2021, denied modification of its October 11, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[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, 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.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. 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.[8] However, disability is not compensable when it results from factors such 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.[9]

[4] *Id.*

[5] *C.Y.*, Docket No. 21-0179 (issued September 30, 2021); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

[6] 20 C.F.R. § 10.115(e); *C.Y., id.*; *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).

[7] *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).

[8] *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Cutler, id.*

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[10] 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.[11] 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.[12]

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.[13] Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.[14]

ANALYSIS

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

Appellant attributed her stress-related conditions to harassment by employing establishment managers. A witness statement also confirmed that on May 17, 2017 in a loud outburst of profanity P.M. stated that she was sick of appellant. Witness statements further confirmed that P.M. made disparaging comments regarding the veracity of appellant's restrictions, and her January 23, 2017 alleged employment injury. To the extent that incidents alleged as constituting harassment or discrimination by a manager are established as occurring and arising from appellant's performance of her regular duties, these may constitute employment factors.[15] The Board finds that the evidence of record establishes that these incidents of harassment occurred.

As appellant has established harassment as a compensable employment factor, the case presents a medical question regarding whether her emotional condition resulted from the accepted compensable employment factor. OWCP determined that there were no compensable employment factors, and thus did not analyze or develop the medical evidence. The case shall, therefore, be remanded to OWCP for an evaluation of the medical evidence with regard to the

[10] *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).

[11] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen*, *id*.

[12] *Id*.

[13] *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

[14] *Id.*; *see also Kim Nguyen*, 53 ECAB 127 (2001).

[15] *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *F.C.*, Docket No. 18-0625 (issued November 15, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

issue of causal relationship to the accepted factor of employment.[16] After this, and other such further development as deemed necessary, it 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 January 7, 2021 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: April 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[16] *See L.Y., id.*; *J.F.*, Docket No. 20-1118 (issued September 2, 2022); *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *M.D.*, Docket No. 15-1796 (issued September 7, 2016).