

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

S.Z., Appellant)	
)	
and)	Docket No. 23-1086
)	Issued: April 1, 2024
U.S. POSTAL SERVICE, SAN LEANDRO POST)	
OFFICE, San Leandro, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 11, 2023 appellant filed a timely appeal from a May 30, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on March 24, 2023, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 30, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 25, 2023 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced difficulty breathing, dizziness, hand cramp, and increased heart rate when L.W., a city carrier and shop steward, used foul language towards her causing her to have a panic attack while in the performance of duty.³ She stopped work on March 24, 2023.

Appellant submitted an after-visit summary report and work status note dated March 24, 2023 by Dr. Marisa A. Zuluaga, a Board-certified emergency medicine physician.

In a development letter dated March 27, 2023, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's claim. It afforded her 60 days, and the employing establishment 30 days, respectively, to submit the necessary evidence.

Appellant submitted an after-visit summary report and work excuse note dated March 29, 2023 by Kimberly Wand, a physician assistant.

In an April 2, 2023 response to OWCP's development questionnaire, appellant explained that she regularly requested to be under observation to make sure that management understood that her route was not under time. She noted that she was brought into the supervisor's office with L.W. to speak about appellant's route. Appellant reported that L.W. mentioned that observers were not allowed to speak during observations. She indicated that on March 24, 2023, the observers mentioned something to her, so she was confused because L.W. had told her that observers were not allowed to speak during observations. Appellant noted that she informed L.W. that the observers were providing feedback during the observation, and L.W. told her that they were allowed to speak.

Appellant related that when she returned to the office for lunch, L.W. approached her. She indicated that she told L.W. that she did not want to speak to her because she felt like L.W. was never on her side, always opposing her. Appellant alleged that L.W. got upset, started cursing at her, screaming that she would get in trouble, and profusely screaming "F***." She reported that she felt extremely threatened and scared. Appellant related that she tried to report it to her supervisor, but he dismissed her. She explained that she tried to continue to work, but her anxiety and panic symptoms worsened, and she had to go to the hospital. Appellant asserted that there had been several instances when L.W. bullied her. She alleged that she developed high anxiety about going to work because of these incidents. Appellant contended that a carrier and clerk witnessed the incident, but the carrier said she could not hear anything.

³ In a statement dated May 12, 2023, appellant clarified that the coworker was L.W.

OWCP received an after-visit summary report and work excuse note dated April 4, 2023 by Dr. Richard Ho, a Board-certified internist, and an emergency department record dated March 24, 2023 by Dr. Zuluaga.

In a letter dated April 7, 2023, T.D., a customer service manager for the employing establishment, indicated that the employing establishment was challenging appellant's claim. He explained that, on March 24, 2023, at approximately 12:45 p.m., appellant returned from observations to the office for lunch. T.D. asserted that shortly afterwards, appellant "barged" into his office and informed him that when she went to ask the shop steward a question, the shop steward told her "to get F out of my face." He reported that he advised appellant to write a statement and continue with her lunch. T.D. alleged that when appellant returned to the route, she was in a state of duress and emotionally disturbed. Appellant indicated that she could not continue with her route, and was so upset that one of the supervisors drove her back to the office. T.D. noted that when appellant returned to the facility, she refused to get out of the government vehicle, and became increasingly irritable and distraught. He reported that he called 911 and the paramedics took appellant to the emergency room. T.D. explained that this was not the first time that appellant had conducted herself in this manner. He asserted that whenever she felt pressured or held accountable to something that she disagreed with, she would go into an emotional tantrum where she screamed and yelled out of control to the point that she became hyperactive. T.D. concluded that the claim should be denied because appellant had not met the third basic element of fact of injury.

The employing establishment provided an online interview transcript dated March 28, 2023 with L.W. L.W. indicated that she was in the building when appellant came back to the office for her lunch break on March 24, 2023. She reported that appellant told her that she did not represent her or protect her and she informed appellant that she must have miscommunicated what she told her. L.W. clarified that management could correct appellant "when doing a 3999." She indicated that appellant told her that she was a liar, and she told appellant that that was the end of the conversation. L.W. reported that she told appellant that the second time that appellant called her a liar, she would not talk to appellant anymore. In response to a question about whether L.W. used profound language or profanity directly at appellant on March 24, 2023 L.W. responded "No, I didn't."

In an e-mail dated April 7, 2023, T.D. indicated that he was providing comments in response to OWCP's development letter. He noted that from the onset appellant was not pleased to be observed and asked the supervisors to stop talking to her and giving her instructions. T.D. explained that supervisors were required to make observations and corrections as needed. He reported that appellant went to the union steward who confirmed that supervisors were allowed to talk to her. T.D. indicated that around 1:00 p.m., appellant returned to the office for her lunch break. He noted that shortly after, appellant "barged" into his office and directed him to call the employing establishment inspection service on the shop steward for cursing at her. Appellant alleged that the shop steward cursed at her and told her to get the "F" away from me. T.D. explained that when appellant returned to her route, the supervisor noticed that she was very distraught and upset. Appellant noted that she did not want to finish her route. T.D. reported that when appellant returned to the office, she refused to get out of the vehicle, was crying, screaming, and having a nervous breakdown. He explained that he called 911 and paramedics transported appellant to the emergency room. T.D. indicated that, to his knowledge, some animosity did exist

between appellant and L.W. due to past behavior. He reported that a “Just Cause Interview” was done of the alleged person who made the comment, and no charges were filed. T.D. noted that no witnesses were identified.

On April 25, 2023 appellant returned to full duty.

In a letter dated May 3, 2023, OWCP requested that the employing establishment provide additional details about the March 24, 2023 employment incident based on the evidence submitted. In a separate letter of even date, it also requested additional information from appellant.

In a statement dated May 12, 2023, appellant explained that she had reached out to two witnesses who were present at the time of the interaction between herself and L.W., but both witnesses were unwilling to provide a formal statement. She indicated that she continued to endure the adverse effects of anxiety and depression, resulting from L.W.’s actions.

By decision dated May 30, 2023, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that the March 24, 2023 incident occurred as alleged. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical 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

⁴ *Supra* note 3.

⁵ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁸ 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 employee's emotional reaction to his or her regular or specially assigned work duties, or to a requirement imposed by the employment, the disability is deemed compensable.⁹ 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.¹⁰

For harassment or discrimination to give rise to a compensable disability, there must be evidence, which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹¹ Mere perceptions of harassment are not compensable under FECA.¹² A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹³ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁴ The claim must be supported by probative evidence.¹⁵ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence, which has been submitted.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on March 24, 2023, as alleged.

⁸ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *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).

¹⁰ *Lillian Cutler, id.*

¹¹ *See R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹² *R.B., id.*; *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹³ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *C.W.*, 58 ECAB 137 (2006).

¹⁴ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ *Id.*

¹⁶ *See V.R.*, Docket No. 23-1075 (issued February 28, 2024); *S.Z.*, Docket No. 20-0106 (issued July 9, 2020); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of medical record.

The Board notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.¹⁷ Rather, she has alleged harassment and abuse by her coworker on March 24, 2023.

In her April 2, 2023 response to OWCP's development questionnaire, appellant indicated that on March 24, 2023 she returned to the office for lunch when L.W. approached her. She alleged that when she told L.W. that she did not want to speak to her, L.W. got upset, screaming that she would get in trouble, and profusely screaming "F***." Appellant reported that she felt extremely threatened and scared. As noted above, for harassment or discrimination to give rise to a compensable disability, there must be evidence, which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁸ The Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.¹⁹ Appellant did not, however, submit corroborative evidence in support of her allegations that L.W. yelled and used profanity towards her on March 24, 2023. She did not submit witness statements or other documentary evidence demonstrating that the verbal altercation on March 24, 2023 occurred as alleged.²⁰ On the contrary, the employing establishment has submitted a statement from L.W., which contradicts appellant's allegation that L.W. cursed and screamed at her. As such, the Board finds that she has not established a compensable factor of employment with respect to the claimed harassment.

As the Board finds that appellant has not met her burden of proof to establish a compensable employment factor, it is not necessary to consider the medical evidence of record.²¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty on March 24, 2023, as alleged.

¹⁷ *Supra* note 8.

¹⁸ *Supra* note 10.

¹⁹ *See M.E.*, Docket No. 21-1340 (issued February 1, 2023); *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁰ *B.S.*, Docket No. 19-0378 (issued July 10, 2018); *L.C.*, Docket No. 20-0461 (issued June 2, 2021); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

²¹ *See B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). *See also Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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