

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

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<b>R.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1316</b>
	)	<b>Issued: December 10, 2024</b>
<b>U.S. POSTAL SERVICE, BILLERICA POST</b>	)	
<b>OFFICE, Billerica, MA, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 7, 2022 appellant filed a timely appeal from a July 27, 2022 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a physical and/or emotional condition in the performance of duty, as alleged.

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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 May 14, 2021 appellant, then a 58-year-old sales/service distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury due to factors of her federal employment, including workplace assaults and harassment. She noted that she first became aware of her condition on January 23, 2020 and realized its relation to her federal employment on April 3, 2021.

In a January 25, 2020 statement, appellant alleged that, on Thursday, January 23, 2020, she was struck in the back and right side of her neck with a blunt object by a coworker, M.B., as M.B. walked past her. She further alleged that M.B. laughed at her and that she informed M.B. that she needed to be more careful and keep her distance. Appellant related that, despite being in pain, she tried to “shake it off.” She noted that she informed her supervisor, took 600 milligrams of pain medication, and tried to work with continued pain and a headache. Appellant alleged that her supervisor informed her that M.B. denied that anything had happened. She related that she was very upset because M.B. never asked if she was okay, she had to see a physician, and continued to experience pain and anxiety. Appellant noted that she hoped that M.B. would be moved to another tour so she would not have to look over her shoulder in fear of another assault.

In a May 14, 2021 statement, appellant again alleged that she was assaulted by M.B. on January 23, 2020. She noted that she began her current employment on January 22, 2020 and she had been warned by the postmaster that the dynamics of the morning crew were “toxic.” The next day, M.B. deliberately struck appellant in the back of her head with a heavy blunt object, and then laughed and looked around to see if anyone saw what she did. Appellant further noted that she spoke to her supervisor I.B. and informed him of the incident and that she needed to leave the floor to ice her neck and take pain medication. On January 25, 2020 she e-mailed a written statement to the postmaster regarding the incident, at his request.

Appellant further alleged that she was harassed by a different coworker in April 2020, when that coworker made a series of bizarre false claims against her in a meeting with a supervisor.

Appellant also alleged that a coworker deliberately assaulted her on April 3, 2021, when the coworker slammed an iron caster on wheels and full of mail into the postal container (postcon) where appellant was staging delivery point sequence (DPS) mail for carriers.

In an April 3, 2021 statement, K.M., a supervisor, indicated that he heard two people arguing on the floor and that appellant was crying and told him that her coworker had pushed a flats sequencing system (FSS) caster so hard it almost hit her hand. He noted that appellant clarified that she was not actually hit, but that she was shaken up. K.M. related that he spoke to B.R., the coworker, and she denied that she slammed the cart, he told her that she should not be aggressive with the equipment. He noted that appellant subsequently told him that she wanted to go home and was “sick of the harassment.” K.M. also noted that he would provide a statement from a coworker, K.J., who indicated that he heard the caster impact.

OWCP received a statement from a coworker, K.J., who “did n[o]t see what happened, but I heard a big bang of purple carts being hit. Then I heard [appellant] tell [B.R.] to watch out you almost took my fingers off. Then yelling started.”

In a report dated April 12, 2021, Dr. Rodrigo Rocha, an internist, noted that appellant had anxiety and depression due to work incidents.

OWCP received an April 15, 2021 Family and Medical Leave Act (FMLA) form, in which appellant alleged that she was the victim of an attempted assault by a coworker and had post-traumatic stress disorder (PTSD). It also received leave analysis forms and request for absence forms.

In an April 29, 2021 report, a licensed clinical social worker (LCSW) noted that appellant presented with symptoms of stress reactive to reported assault and harassment in the workplace. She diagnosed adjustment disorder with mixed anxiety and depressed mood, rule out PTSD.

OWCP received a May 14, 2021 note from Dr. Rocha. Dr. Rocha related that appellant was seen on January 23, 2020 for complaints of pain due to being struck behind the back/neck with a heavy blunt object by a coworker. The note also indicated that there was no evidence of bruising, hematoma, or fracture found on examination.

On May 14, 2021 OWCP received a copy of e-mails dated January 25, 2020 from appellant to P.B., the postmaster, relating to the alleged January 23, 2020 incident. The e-mail indicated that appellant was responding to his request for a statement and the statement alleged that, “[o]n Thursday, January 23, 2020 approximately between 7 a.m. and 7:15 a.m. I was struck on the right side of my neck while working by a coworker named [M.B.]” The statement further related that she continued to work, but experienced pain and a headache, that she was told that M.B. denied that anything had happened, that she hoped M.B. would be moved to another shift or station, and that she had to leave work early on January 25, 2020 due to pain and discomfort from the injury.

By letter dated May 19, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of the same date, the OWCP requested additional information from the employing establishment with regard to appellant’s allegations, including comments from a knowledgeable supervisor. OWCP afforded both parties 30 days to respond.

In an additional statement dated May 19, 2021, appellant alleged that a new incident occurred on March 9, 2021 when a personal item belonging to her was taken while she was helping to unload a truck at the dock. She related that she believed that the item was taken by coworkers to harass her and that she attempted to tell her supervisor, but the supervisor was busy. Appellant further related that her coworkers were advised during an all-employee meeting to return an item to the break room if they had mistakenly taken it as their own; however, it was never returned. She noted that the April 3, 2021 incident when a coworker slammed a cart into the postcon occurred less than a month later.

Appellant provided a May 20, 2021 e-mail to K.M. requesting that he provide a statement regarding the January 23, 2020 incident. She related that she was told that the employee involved in the January 23, 2020 incident had been disciplined, but she had no written confirmation and was told the information was confidential. Appellant noted that she had asked for documentation regarding an investigation, but was not provided anything. She related that she did not file a police report and did not know that she should have contacted the postal police. Appellant noted that she

saw a physician. She explained that she did not file a grievance, but would have if she had known that nothing would be done by the employing establishment.

Appellant's postmaster provided a brief e-mail response to the union in May 2021, indicating that no action had been taken regarding the alleged incidents as there were no findings to support the allegations.

In a May 24, 2021 report, Dr. Rocha noted that appellant was seen on January 23, 2020 regarding a reported assault to her back and neck by a coworker. The report indicated that appellant related that she experienced stress and anxiety due to the January 23, 2020 work incident and wanted the employing establishment to change her shift.

By letter dated May 26, 2021, K.M., an employing establishment management official, advised that appellant reported an incident on January 23, 2020, but did not seek medical treatment and an investigation did not establish that an event occurred. He noted that an investigation of the alleged April 3, 2021 incident failed to corroborate that the incident occurred. K.M. also indicated that appellant filed her CA-2 form after she was notified that she had no leave left, other than annual leave.

On June 5, 2021 OWCP received appellant's response to OWCP's development questionnaire dated May 19, 2021. Appellant reiterated her allegations. Regarding corroborating evidence, she indicated that her supervisor was currently out on FMLA and could not be contacted. Appellant further indicated that she was told repeatedly that no one from the employing establishment could provide any written statement. She noted that one coworker was no longer working at the employing establishment and she had no way of reaching him. Appellant related that, "I have requested directly to the Postmaster as well as by way of the Union, and the response back was NO REPORTS AT ALL CAN BE FOUND." (Emphasis in the original.) She further alleged that, "I've been lied to or someone is hiding something. BUT, they should have filed injury reports at a minimum and that was not done either so there is a real lack of responsibility and accountability on the part of the [employing establishment]." (Emphasis in the original.)

By decision dated September 14, 2021, OWCP denied the claim, finding that the evidence of record was insufficient to establish the implicated employment factors, as no corroborative evidence had been provided to establish that the events occurred in the manner alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA."

On August 23, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 10, 2022.

Appellant provided a September 22, 2021 statement regarding the alleged April 3, 2021 physical assault by a coworker. She related that she had no reason to make up or lie about this incident and that her former postmaster knew her character after four years of working with her. Appellant again alleged that the employing establishment had not properly documented her allegations.

During the hearing, appellant confirmed that she had not filed police reports for the January 2020 and April 3, 2021 incidents. She reiterated her prior assertions and argued that the employing establishment was responsible for addressing her harassment claims.

By decision dated July 27, 2022, OWCP's hearing representative affirmed the September 14, 2021 decision.

### **LEGAL PRECEDENT**

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

To establish that a physical condition was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a physical and/or emotional condition in the performance of duty, as alleged.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *G.G.*, Docket No. 18-0432 (issued February 12, 2019).

<sup>5</sup> *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

<sup>6</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *See C.R.*, Docket No. 21-0463 (issued April 28, 2023); *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).

Appellant alleged that she sustained physical and emotional conditions as a result of a several incidents of coworker assaults and harassment.

Appellant has alleged that on Thursday, January 23, 2020 she was struck in the back and right side of her neck with a blunt object by a coworker, M.B., as M.B. walked past her. She further alleged that she informed her supervisor and the postmaster regarding the incident and sought medical treatment. By letter dated May 26, 2021, K.M., an employing establishment management official, advised that appellant reported an incident on January 23, 2020. OWCP received a copy of e-mails dated January 25, 2020 from her to Postmaster P.B., relating to the alleged January 23, 2020 incident. It also received a May 14, 2021 note from Dr. Rocha. Dr. Rocha related that appellant was seen on January 23, 2020 for complaints of pain due to being struck behind the back/neck with a heavy blunt object by a coworker.

Appellant also alleged that a coworker deliberately attempted to assault her on April 3, 2021 when the coworker slammed an iron caster on wheels and full of mail into the postcon where appellant was staging DPS mail for carriers. In an April 3, 2021 statement, supervisor K.M. indicated that he heard two people arguing on the floor and that appellant told him that her coworker B.R. had pushed an FSS caster so hard it almost hit her hand. He noted that appellant clarified that she was not actually hit, but that she was shaken up. K.M. related that he spoke to B.R., the coworker, and she denied that she slammed the cart, he told her that she should not be aggressive with the equipment. OWCP received a statement from a coworker, K.J., who “did n[o]t see what happened, but I heard a big bang of purple carts being hit. Then I heard “appellant” tell B.R. to watch out you almost took my fingers off. OWCP also received an April 29, 2021 report from an LCSW. She noted that appellant presented with symptoms of stress reactive to reported assault and harassment in the workplace.

Appellant additionally alleged that on March 9, 2021 a personal item belonging to her was taken at work and that her coworkers were advised in an all employee meeting to return an item to the break room that they might have mistaken as their own, but it was not returned. She also alleged an April 2020 incident when she was called into an unscheduled meeting with a supervisor and a coworker who made a series of bizarre false statements about her.

The Board finds, however, that appellant has not submitted sufficient evidence to establish that these incidents of assault and harassment occurred, as alleged. Appellant did not submit any corroborating evidence that these incidents occurred, such as witness statements, police reports, or administrative decisions. As there is no corroborative factual evidence to support her allegations, she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a physical and/or emotional condition in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2024  
Washington, DC

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

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

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