

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 23-1001
)	Issued: July 2, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
JOHN. J. PERSHING VA MEDICAL CENTER,)	
Poplar Bluff, MO, Employer)	
_____)	

Appearances:
Scotty L. White, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 24, 2023 appellant, through her representative, filed a timely appeal from a July 3, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 an 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.*

³ The Board notes that, following the July 3, 2023 decision, OWCP received additional evidence. 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.*

ISSUE

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

FACTUAL HISTORY

On November 4, 2022 appellant, then a 56-year-old licensed practical nurse (LPN), filed an occupational disease claim (Form CA-2) alleging that she developed anxiety due to factors of her federal employment, including work-related stress, harassment, discrimination, loss of wages, and failure to provide reasonable accommodations for two and one-half years. She noted that she first became aware of her claimed condition and realized its relation to her federal employment on October 25, 2022. Appellant stopped work on November 2, 2022.

In a June 9, 2021 note, Minyo Ticer, a nurse practitioner, noted that appellant related a recent flare-up in psoriatic arthritis symptoms.

In a medical report dated June 16, 2021, Dr. Ryan J. Eaton, a Board-certified internist and rheumatologist, evaluated appellant's psoriatic arthritis and recommended immune-suppressant medications.

In a medical report dated July 8, 2021, Dr. Stephanie D. Miller, a Board-certified family medicine specialist, noted that appellant related complaints of a rash and requested a change or increase in her antidepressant medication due to increased stress at work and home.

Dr. Eaton, in a September 19, 2022 follow-up report, noted that appellant was taking several immune suppressant medications and that she related that she had recently been under increased stress.

Ms. Ticer, in a follow-up note dated October 25, 2022, noted that appellant related complaints of stress due to long hours at work and various health conditions, including an upper respiratory infection. She also noted that she related difficulty obtaining a response from the employing establishment regarding several requests for reasonable accommodations, that she was presented with a contract for much less pay and refused to sign it, that she had been working from home, and that she was concerned her position would be eliminated. Ms. Ticer performed a physical examination and diagnosed an upper respiratory infection, secondary fibromyalgia, psoriatic arthritis, and anxiety with depression. In a separate letter dated November 2, 2022, she outlined the same history and complaints and recommended that appellant remain off from work due to stress and health decline until she could see a counselor and psychiatrist.

In a November 14, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence needed, including a detailed description of the implicated work factors and copies of any grievance documents related to the claim, and provided a questionnaire for her completion. In a separate development letter of even date, OWCP also requested that the employing establishment provide information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In an undated response to OWCP's development questionnaire, appellant indicated that on November 20, 2020 and March 19, 2021, her physician, Dr. Jonathan Minor, requested a

reasonable accommodation because her immunosuppressant medications placed her at risk of serious illness if she was exposed to COVID-19. She noted that her supervisor, K.H., did not correctly process these requests. Appellant also related that on August 3, 2021, Dr. Eaton sent a third request, which was also not processed, so she contacted her union to file a grievance and an Equal Employment Opportunity (EEO) complaint.

In a December 16, 2022 response to OWCP's questionnaire, B.V., an employing establishment chief nurse, indicated that she was unable to respond to the entire accuracy of appellant's allegations as she had only been employed since August 9, 2021 and started as appellant's interim nurse manager on October 11, 2021. She indicated that she was not aware of prior requests for reasonable accommodations, but that beginning in November 2021, she worked on her most recent request with the reasonable accommodations department. B.V. commented that appellant's stress increased in January or February 2022 when she was offered a job in the call center. She noted that her union representatives provided differing answers as to whether she was entitled to a position with the same pay, and that another employee had reported her for fraudulently completing certain forms during the reasonable accommodations process.

In a January 18, 2023 follow-up note, Ms. Ticer noted that appellant felt her mental and physical health had worsened due to increased work stressors.

By decision dated January 31, 2023, OWCP found that appellant did not sustain an emotional condition in the performance of duty as the evidence did not support that she actually experienced the employment incidents, as alleged.

On February 4, 2023 appellant requested reconsideration of OWCP's January 31, 2023 decision.

OWCP thereafter received an additional undated statement by appellant, who indicated that her reasonable accommodations call center job was cancelled unfairly by L.N., an employing establishment reasonable accommodations staff member. Appellant noted that, on or about November 4, 2022, she was told via letter to return to her previous position of duty, which had already been advertised and filled. She indicated that she filed a "stress leave request" because she endured the reasonable accommodations process from August 3, 2021 until the present and was still without a position.

In an August 5, 2021 form report, appellant indicated that on August 3, 2021 her doctor had "requested reasonable accommodations to work from home while the COVID-19 virus is rising in our area" and that contracting COVID-19 could be fatal despite being vaccinated, due to her greatly weakened immune system.

In a November 1, 2021 email, S.B., an employing establishment HR specialist, noted that she received appellant's request for an accommodation and asked for updated medical records on September 10, 2021. Appellant provided the medical information on October 29, 2021, and S.B. advised that she was working with her supervisor to try to come up with an accommodation for her.

In email correspondence dated November 3, 2021 to union representatives, appellant outlined her requests to telework as a reasonable accommodation during the COVID-19 pandemic.

In an Employee Limitations on Reassignment Options form bearing a due date of December 16, 2021, appellant noted that she was willing to consider reassignment either at her current facility/within her commuting area, or outside her current facility/commuting area for a telework position. She also noted that she was open to any position that she may be qualified for; that she would accept a lower grade if no comparable position was available; and that she would accept a salary as low as \$48,000.00 per year.

In a March 9, 2022 email, C.S., an employing establishment HR specialist, advised appellant that her reassignment to the call center would be effective March 13, 2022 and her new position would be Grade 6, Step 5 with a salary of \$45,631.00.

In a June 29, 2022 investigation report, M.R., an EEO counselor, noted appellant's allegations. He also outlined the results of various interviews with appellant, S.B., an employing establishment HR specialist, R.F., an employing establishment chief nurse, S.S., an employing establishment call center specialist, and H.L, her union representative. M.R. noted that appellant related that she believed S.S. was retaliating against her in opposition to her reasonable accommodations request.

An August 29, 2022 Administrative Closure of Accommodation Request form indicated that appellant refused to accept accommodations and did not submit her reconsideration statement within the time frame allowed. The form was signed by M.S., a reasonable accommodations counselor and K.L, a national reasonable accommodations coordinator.

Employing establishment responses to appellant's allegations were noted in a December 12, 2022 copy of her EEO complaint. It outlined its attempts to secure medical information from appellant, the timing of its reassignment search, details regarding its offer of the call center position, and the closure of the matter on August 29, 2022.

OWCP also received undated texted messages from B.V. to appellant, suggesting that appellant try to build a case for social security disability.

On March 2, 2023 appellant, through her representative, requested reconsideration of OWCP's January 31, 2023 decision. In support thereof, she submitted a February 2, 2023 medical report by Juliana Jones, a nurse practitioner, who noted that appellant had a more than 30-year history of anxiety and depression for which she took various medications. She related that over the last two years, her anxiety and depression had worsened due to "issues at work" and "legal battles at work." Ms. Jones diagnosed major depressive disorder, recurrent episode, moderate with anxious distress and recommended medication changes and psychotherapy.

OWCP thereafter received a January 18, 2023 letter by Ms. Ticer, who noted that appellant was physically and mentally unable to return to work. In a subsequent report dated March 31, 2023, she released her to return to full-duty work as an LPN.

On May 1, 2023 OWCP notified the employing establishment of appellant's March 2, 2023 request for reconsideration and provided 20 days for comment.

In a May 4, 2023 response, B.V. noted that she participated in a fraud hearing relative to certain forms that appellant completed during the reasonable accommodations process, and that appellant responded "I do not recall" to all of the questions. She related that appellant advised her that she received a letter in November 2022 stating that her detail position had ended. B.V. noted

that as of February 2023, appellant notified her that she was ready to return to full-duty work as an LPN. On March 10, 2023 she started new employee orientation, and then stopped work for two days due to anxiety, after which a physician placed her out of work for one month.

In a May 8, 2023 letter, Ms. Ticer opined that stressors at work caused an increase in appellant's psoriatic arthritis and fibromyalgia symptoms. She noted that despite accommodations at work and full compliance with medication management, her condition worsened, and she was no longer able to perform her job functions.

In an undated narrative letter, Jami Obermann, a licensed clinical social worker and outpatient therapist, indicated that she had treated appellant since February 2022 for ongoing work stress due to difficulties obtaining and retaining accommodations due to her medical disabilities. She noted that her symptoms visibly increased when she discussed the ongoing difficulties with work.

On May 10, 2023 OWCP forwarded B.V.'s response to appellant for her review and comment. It thereafter received e-mails between B.V. and appellant's representative.

By decision dated July 3, 2023, OWCP denied modification of its January 31, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ 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.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁸

⁴ *Id.*

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

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*,⁹ 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 connection with the employment, but nevertheless does not come within coverage of FECA.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

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.¹² 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.¹³ 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.¹⁴

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.¹⁵ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.¹⁷ Rather she has alleged that she sustained an emotional

⁹ 28 ECAB 125 (1976).

¹⁰ *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *D.I.*, Docket No. 19-0534 (issued November 7, 2019); *T.G.*, Docket No. 19-0071 (issued May 28, 2019).

¹² 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).

¹³ 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).

¹⁴ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁵ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁶ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ *Supra* note 9.

condition as a result of a harassment, discrimination, and mishandling of her requests for reasonable accommodation. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.¹⁸

Appellant asserted that the employing establishment mishandled her reasonable accommodation requests. She indicated that physicians submitted requests for reasonable accommodations on November 20, 2020 and March 9 and August 3, 2021, which she claimed were not correctly processed. The Board has held that 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.¹⁹ 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.²⁰ While appellant submitted e-mails, forms, and statements which concerned administrative and personnel matters, these communications did not substantiate that her requests were in fact mishandled by the employing establishment. The Board finds no evidence to demonstrate that management's handling of this request for accommodations was arbitrary or unfair.²¹ Furthermore, although she expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²² The Board thus finds that appellant has not shown error or abuse by the employing establishment in the above-noted matter. Consequently, she has not established a compensable employment factor with respect to administrative or personnel matters.²³

Regarding appellant's allegations of harassment and discrimination, the Board finds that her allegations were vague and nonspecific, and therefore insufficient to establish a compensable employment factor.²⁴ She did not submit witness statements or other corroborative evidence demonstrating that harassment and/or discrimination occurred as alleged.²⁵ Therefore, appellant has not established a compensable employment factor with respect to these allegations.

¹⁸ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁹ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

²⁰ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

²¹ *See G.M.*, Docket No. 17-1469 (issued April 2, 2018).

²² *M.E.*, Docket No. 21-1340 (issued February 1, 2023); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²³ *Id.*

²⁴ *See generally T.G.*, Docket No. 19-1668 (issued December 7, 2020).

²⁵ *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

Accordingly, the Board finds that appellant has not established a compensable employment factor under FECA. Thus, she has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty.²⁶

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/stress-related condition in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁶ See *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).