

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

H.S., Appellant)	
)	
and)	Docket No. 24-0375
)	Issued: July 31, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
BOSTON HOME & COMMUNITY-BASED)	
SERVICES, BROCKTON CAMPUS,)	
Brockton, MA, Employer)	
)	

Appearances:
Marc J. Levy, Esq., 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 27, 2024 appellant, through counsel, filed a timely appeal from a February 20, 2024 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 to consider 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 condition in the performance of duty, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On October 7, 2020 appellant, then a 44-year-old pharmacy technician, filed an occupational disease claim (Form CA-2) alleging that she developed major depressive disorder with anxiety as a result of factors of her federal employment.⁴ She indicated that she first became aware of her condition on May 1, 2016, and first realized that her illness was caused or aggravated by her employment on September 22, 2020. Appellant attributed her emotional condition to bullying/harassment and unwanted touching by R.V., a coworker and former romantic partner. Appellant also attributed her condition to the actions of C.W., a supervisory pharmacist and a friend of R.V., who "made up hideous untruths and invalid claims." She did not stop work.

Appellant provided an accompanying statement with her claim form, attributing her emotional condition to harassment from R.V. She asserted that she had reported his harassing actions to the police, the employing establishment, and the Equal Employment Opportunity Commission (EEOC) but these entities had taken no action, which she believed was erroneous. Appellant explained that after she filed complaints against R.V., C.W. had retaliated against her by requiring her to repeatedly replicate medications, blaming her for missing notes, and incorrectly reporting her for intoxication at work and for making mistakes entering patient information. She was notified that R.V. would be working from home, but he remained at the employing establishment.

In a development letter dated October 20, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development

³ *Order Remanding Case*, Docket No. 22-1206 (issued December 5, 2023).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx840. Appellant previously filed a Form CA-2 for emotional condition claim on August 7, 2014 alleging that her supervisor, J.K. caused her anxiety and stress. By decision dated February 12, 2015, OWCP denied this claim finding that the evidence of record was insufficient to establish her allegations. It assigned that claim OWCP File No. xxxxxx787. On May 5, 2015 appellant filed an additional emotional condition claim and attributed her condition to the actions of J.K. and unspecified sexual harassment. By decision dated August 11, 2015, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish her allegations. It assigned that claim OWCP File No. xxxxxx784. On April 1, 2022 appellant filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2022 M.M., a coworker, shared a sexually vulgar and inappropriate joke with her. OWCP assigned OWCP File No. xxxxxx581. By decision dated May 16, 2022, it denied this claim finding that the evidence of record was insufficient to establish her allegations. Appellant, through counsel, requested reconsideration. By decision dated August 19, 2022, OWCP modified its prior decision finding that appellant had established a compensable factor of employment, but denied the claim as the medical evidence was insufficient to establish an injury as defined by FECA. On January 29, 2024 it administratively combined OWCP File Nos. xxxxxx787; xxxxxx784; xxxxxx581; and xxxxxx840, with the latter designated as the master file.

letter of even date, OWCP requested that the employing establishment provide additional information, including comments for a knowledgeable supervisor regarding the accuracy of appellant's statement. It afforded both parties 30 days to submit the necessary evidence.

On October 27, 2020 the employing establishment responded and denied that appellant was bullied or harassed by her coworkers. Its investigations concluded that her interpersonal conflicts were the result of a personal relationship imported into the workplace. The employing establishment found that after the personal relationship ended both parties were unable to engage productively in the workplace, but that the interactions did not constitute harassment. It provided appellant with reduced time in the pharmacy and reassignment of alternate tasks from December 2019 through January 2020, and again in October 2020. The employing establishment planned to separate the two employees by reassignment to a different work location.

Appellant responded to OWCP's October 20, 2020 development questionnaire and provided a series of e-mails beginning November 25, 2019 listing the actions of C.W. and R.V. which she believed constituted harassment or bullying. She alleged that in early August 2019, R.V. returned to the employing establishment premises and on October 21, 2019 he walked as close to her as possible in the hallway and said "boo." On September 6, 2019 R.V. made noises to get her attention and came to her duty station to cause "scenes." On November 25, 2019 he came to her workstation, accused her of being miserable, and maintained that he had done nothing to her. Appellant asserted that he was attempting to start an argument. She noted that she had prevented R.V. from messaging her on both private and employing establishment telephones and computers.

In January 2020, R.V. interrupted appellant's work in a conference room, where she had been relocated due to stress, by opening the door and standing in the doorway for a few seconds before closing the door and leaving. C.W. also came to the conference room door, opened the door, and stood in the doorway. On January 28, 2020 R.V. came to appellant's workstation and used the printer. Later that day, he stared at her in the hallway and walked in a large circle continuing to stare.

On April 24, 2020 R.V. texted a private joke to appellant's cell phone number and on April 27, 2020, while at work, asked if she had received it. On April 28, 2020 he came to her duty station, began to dance, and asked personal questions about her health. R.V. asked if appellant were pregnant and commented, "if [she] was pregnant that wouldn't be a good thing." On May 5, 2020 as he spoke to appellant as they were leaving the employing establishment they spoke and he placed his right hand on the back of her neck and gave a couple of squeezes.

Appellant reported these incidents to the employing establishment and/or the authorities *via* e-mails dated November 25, 2019 through October 26, 2020. She asserted that after R.V. was directed to leave the premises but continued to appear for months, including on October 26, 2020. On August 25 and September 28, 2020 appellant informed the employing establishment *via* e-mail that she believed that C.W. was targeting her.

In a November 9, 2020 report, Dr. Caru Patel, a Board-certified psychiatrist, diagnosed major depressive disorder, bipolar disorder, and general anxiety disorder. She opined that appellant had been traumatized significantly by the stalking behavior of a former boyfriend resulting in symptoms of post-traumatic stress disorder (PTSD) and major mood swings.

On November 17, 2020 the employing establishment responded to appellant's allegations and asserted that she had not provided evidence to substantiate the events alleged. It provided a fact-finding report dated September 23, 2020 which noted that appellant and R.V. had begun a personal relationship in 2018 and that ended in May 2019. This report was based on a series of e-mails and responses from appellant and R.V. and included her alleged incidents of harassment by R.V. from August 2019 through May 2020. R.V. asserted that appellant had initiated their personal relationship and continually pursued him. He further alleged that, since their personal relationship had ended, she alone initiated conversations and contact. R.V. denied touching appellant's neck or dancing in front of her and indicated that she had misinterpreted his conversations with others as concerning her.

A coworker, R.C., asserted that R.V. was petrified of appellant and that he accepted a key to use a different printer when R.C. offered. She further alleged that R.V. was "almost in tears" because he felt stalked by appellant. R.V.'s friend and coworker J.S., also supported his claims that appellant had initiated contact, including sitting outside of his home or on his street.

The fact-finding report indicated that both parties continued to engage in conversations that would not be typical of persons reporting fear and intimidation. It found, therefore, that it was unable to clearly establish that contact was unwelcome and resulted in bullying or harassment. The fact-finding report concluded that it was less than likely that R.V. engaged in bullying, verbal abuse, intimidation, or work interference. The report recommended separation of the parties at work.

The employing establishment police services provided a December 8, 2020 response and indicated that appellant had chosen to follow administrative rather than legal remedies.

On February 11, 2021 the employing establishment provided a summary of its findings and conclusions, including the responses of R.V. and C.W. to appellant's response to the development questionnaire. C.W. denied a personal relationship with R.V. She further denied witnessing him harass appellant, but alleged that appellant was harassing her and that she had a volatile personality, cursed, and made loud disruptive noises in the pharmacy. C.W. related that in 2018 she believed appellant was intoxicated at work and provided an e-mail dated January 31, 2018, in which she reported to supervisor, J.K., that appellant appeared to be under the influence of her anxiety medication and unable to function. She asserted that appellant made an inordinate number of mistakes, looked glazed over, and shuffled around listlessly. In June or July 2020, appellant tampered with a label on a prescription bag and failed to follow two notes regarding counseling a patient prior to dispensing a medication. C.W. asserted that she required appellant to repeat work when she prepared a prescription incorrectly or when she extravagantly decorated a patient's medical bag. She further asserted that anything appellant said or wrote about her was "vile and false."

R.V. denied initiating any contact or conversation with appellant, instead alleging that she had engaged him in conversation on multiple occasions, including when she walked into his office, closed the door, and asked about his family, when she requested a cigarette, and when she offered him coffee.

By decision dated March 2, 2022, OWCP denied the claim, finding that the factual evidence of record was insufficient to establish appellant's allegations. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 9, 2022 appellant, through counsel, requested reconsideration and provided a statement, her EEO testimony, and transcript of texts between C.W. and R.V. She also resubmitted e-mails. Appellant provided a portion of the March 28, 2022 EEO testimony of R.V. in which he denied attempting to contact her by telephone following the end of their personal relationship, but admitted to responding to a text from her. Appellant included an April 5, 2019 memorandum from the employing establishment reassigning R.V. from her duty station location to West Roxbury. She also provided additional medical evidence.

By decision dated July 27, 2022, OWCP denied modification of its March 2, 2022 decision.

On August 18, 2022 appellant appealed the July 27, 2022 decision to the Board.

By order dated December 5, 2023,⁵ the Board set aside OWCP's July 27, 2022 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx787, xxxxxx784 and xxxxxx581 with the current file and to issue a *de novo* decision on appellant's emotional condition claim.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx787, xxxxxx784 xxxxxx581, and xxxxxx840 with the latter serving as the master file.

By *de novo* decision dated February 20, 2024, OWCP denied the claim, finding that the factual evidence of record was insufficient to establish appellant's allegations. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ 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.⁸

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

⁵ *Supra* note 3.

⁶ *Supra* note 2.

⁷ *T.S.*, Docket No. 23-0839 (issued January 17, 2024); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ 20 C.F.R. § 10.115(e); *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).

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.⁹

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*,¹⁰ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.¹¹ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.¹² 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.¹³

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁴ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁵ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁶ A disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person's injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment, or to hold a particular position.¹⁷

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially

⁹ *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).

¹⁰ 28 ECAB 125 (1976).

¹¹ *Supra* note 2.

¹² *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005); *Robert W. Johns*, 51 ECAB 136 (1999).

¹³ *See D.C.*, Docket No. 23-1068 (issued March 15, 2024); *K.F.*, Docket No. 23-0278 (issued August 7, 2023); *D.I.*, Docket No. 19-0534 (issued November 7, 2019).

¹⁴ *See C.L.*, Docket No. 22-0499 (issued June 4, 2024); *B.O.*, Docket No. 17-1986 (issued January 18, 2019).

¹⁵ *Id.*

¹⁶ *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *M.R.*, Docket No. 18-0305 (issued October 18, 2018).

¹⁷ *See J.R.*, Docket No. 20-1382 (issued December 30, 2022); *Lillian Cutler*, *supra* note 10.

assigned work duties of the employee and are not covered under FECA.¹⁸ Where 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.¹⁹ A claimant must support his or her allegations with probative and reliable evidence.

To the extent that, disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.²⁰ 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.²¹ Mere perceptions of harassment are not compensable under FECA.²² A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding, which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.²⁴ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.²⁵

ANALYSIS

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

¹⁸ *L.E.*, *supra* note 16; *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Charles D. Edwards*, 55 ECAB 258 (2004).

¹⁹ *K.F.*, *supra* note 13; *Kim Nguyen*, 53 ECAB 127 (2001). *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

²⁰ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

²¹ *K.F.*, *supra* note 13; *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

²² *Id.*

²³ *See J.R.*, *supra* note 17; *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

²⁴ *L.J.* and *S.G.*, *id.*; *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²⁵ *L.J.* and *S.G.*, *id.*; *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.²⁶ Rather she has alleged that management committed error and abuse with respect to various administrative/personnel matters. In particular, appellant claimed that the employing establishment failed to properly respond to her complaints of harassment and retaliation, noting its failure to timely follow through on her complaints. However, appellant's allegation in this regard was general in nature, and she did not factually substantiate error or abuse by the employing establishment.²⁷ Appellant has not submitted evidence to factually corroborate these allegations.

Regarding appellant's allegations that C.W. required her to repeatedly replicate medications, blamed her for missing patient notes, incorrectly reported her for intoxication at work, and alleged she made mistakes in entering patient information, the record establishes that C.W. was a supervisor, that she was available for professional guidance when required, and that she had the authority to prioritize the sequence and timing of work as necessary. Although appellant expressed dissatisfaction with the actions of C.W. regarding these matters, 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.²⁸ There is no evidence of record to support any error or abuse regarding the monitoring of appellant's work product and her fitness to perform pharmacy technician work.

Appellant also attributed her emotional condition to alleged incidents of harassment by C.W. and R.V. She has not submitted corroborative evidence in support of her allegations regarding harassment. Appellant has not submitted witness statements or other documentary evidence demonstrating that the alleged harassment occurred.²⁹ 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.³⁰ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.³¹ A September 23, 2020 fact-finding report from the employing establishment found that it was less than likely that R.V. had engaged in bullying or harassment. The Board finds that appellant has not established, with corroborative evidence, that the claimed harassment occurred as alleged. Therefore, appellant has not established a compensable employment factor with regard to harassment.³²

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.³³

²⁶ *Supra* note 10.

²⁷ *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *L.S.*, Docket No. 18-1471 (issued February 26, 2020).

²⁸ *L.E., id.; T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²⁹ *D.B.*, Docket No. 23-0852 (issued February 16, 2024).

³⁰ *Supra* note 23.

³¹ *Id.*

³² *V.R.*, Docket No. 23-1075 (issued February 28, 2024).

³³ *See T.S.*, Docket No. 23-0213 (issued December 14, 2023); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

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, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 31, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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