

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

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D.B., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
IMMIGRATION & CUSTOMS )  
ENFORCEMENT, Washington, DC, Employer )  
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**Docket No. 23-0858  
Issued: June 6, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On June 7, 2023 appellant filed a timely appeal from an April 5, 2023 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 his burden of proof to establish an emotional/stress-related 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 following the April 5, 2023 decision, appellant submitted additional evidence to OWCP and with his appeal to the Board. 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**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On December 5, 2022 appellant, then a 39-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that he sustained a stress-related condition due to factors of his federal employment. He claimed that he experienced tightness and muscle pain in his left arm in August 2022 because A.L., his section chief, confronted him while "seating [sic] down in my cube in my chair saying come on come on."<sup>4</sup> Appellant asserted that A.L. harassed him from August 2022 to the present. He also claimed that A.L. had "unrealistic demands concerning the [sales retention team (SRT)] mailing project due dates ... and provided me unrealistic due dates and no assistance until the last day which was [December 1, 2022]." Appellant advised that he first became aware of his condition on November 29, 2022 and realized its relationship to his federal employment on December 2, 2022.

Appellant submitted medical evidence, including a work excuse note dated December 4, 2022 from an unknown provider and a December 4, 2022 urgent care treatment note.

In an e-mail dated December 1, 2022, appellant informed A.L. that his whole left hand was numb when he woke up and that he intended to visit a doctor's office. OWCP received additional e-mails dated December 2 and 5, 2022 between appellant and his supervisors, regarding appellant's work restrictions, use of leave, and procedures for requesting leave.

In a development letter dated December 7, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to support his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor. It afforded both parties 30 days to submit the requested information.

In a memorandum dated January 5, 2023, A.L. indicated that he was responding to OWCP's request for additional information regarding appellant's claim. He alleged that since appellant began to work for the employing establishment on August 3, 2022, he had resisted and questioned his assignments because he thought they involved too much work, and he discussed August 8, August 17, September 13, and November 28, 2022 incidents when appellant resisted

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<sup>3</sup> Docket No. 23-0852 (issued February 16, 2024); Docket No. 23-0857 (issued February 7, 2024).

<sup>4</sup> Appellant has several previously-filed traumatic injury claims (Form CA-1). Under OWCP File No. xxxxxx708, he filed a Form CA-1 on December 11, 2019 alleging that on November 25, 2019 he experienced heavy breathing and shortness of breath after being threatened and harassed while in the performance of duty. Under OWCP File No. xxxxxx730, he filed a Form CA-1 on December 17, 2014 alleging that on August 25, 2014 he developed post-traumatic stress disorder (PTSD) and vertigo due to stress from a hostile work environment while in the performance of duty. Under OWCP File No. xxxxxx121, appellant filed a Form CA-1 on December 2, 2022, alleging that on November 29, 2022 he experienced numbness, tightness, and pain in his left hand when his supervisor confronted him while in the performance of duty. Under OWCP File No. xxxxxx881, he filed a Form CA-1 on January 27, 2023, alleging that on January 26, 2023 he developed numbness in his hand and fingers due to ongoing harassment from his supervisor while in the performance of duty. OWCP has administratively combined OWCP File Nos. xxxxxx122, xxxxxx708, xxxxxx730, xxxxxx881, and xxxxxx121, with the latter claim serving as the master file.

assigned work tasks. A.L. indicated that on November 28, 2022 appellant was instructed to distribute expensive radiation detectors to multiple field offices. He alleged that appellant spent a substantial amount of work time that morning trying to book a conference room for a personal meeting and then came to him with a copy of his previous work restrictions denoting a five-pound lifting restriction. A.L. indicated that he and a senior officer gave appellant refresher training to help him complete the task, including instruction regarding use of the United Parcel Service website, and that he provided additional training and guidance on November 30, 2022. He also reported that appellant provided an e-mail implying he still required limited-duty work, and that from November 28 through December 1, 2022 he made himself available to appellant and moved, shifted, lifted, and transported all the boxes and equipment related to that assignment. A.L. explained that on December 5, 2022 it was discovered that appellant had mailed the wrong number of radiation detectors to the wrong field offices and failed to document the proper serial numbers.

OWCP also received e-mails from appellant dated January 3 through 11, 2023 regarding his Equal Employment Opportunity (EEO) matter. In a January 9, 2023 e-mail, he alleged a stressful and hostile work environment and requested sick leave due to migraine headaches. In e-mails dated January 11, 2023, appellant asserted bias and conflict of interest in the EEO mediation process. He also alleged that he was being subjected to harassment and retaliation by A.L.

Appellant submitted additional medical evidence, including December 1 and 4, 2022 narrative reports, a December 14, 2022 duty status report (Form CA-17), and a January 10, 2023 work status note indicating that he could return to light-duty work on January 11, 2023 with a restriction of no lifting.

By decision dated January 11, 2023, OWCP denied appellant's emotional/stress-related condition claim, finding that the evidence of record was insufficient to establish that a compensable employment factor occurred as alleged. It noted that he had not submitted a detailed statement indicating the specific exposures or incident that he alleged to have caused his injury. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 13, 2023 appellant requested reconsideration.

In support thereof, appellant submitted an undated and unsigned statement with a chronological list of events from November 2022 through January 2023 of alleged harassment and hostility at work. He also submitted additional e-mail correspondence. In e-mails dated August 9, 2022, appellant requested clarification regarding his work assignments and expectations. OWCP also received e-mail correspondence dated September 19 and 26, 2022 between A.L. and appellant regarding new work assignments, additional instructions and discussions, proper regulations and guidelines, and training requirements. In e-mails dated August 9 and September 29, 2022, appellant alleged that A.L. made comments towards him that were biased, hostile, and disrespectful. In e-mail correspondence dated October 25 through 27, 2022, he alleged that T.M., an acting unit chief, had been rude and hostile towards him for the past three months and reported that he could not work in a hostile work environment. In a November 2, 2022 e-mail, A.L. informed appellant that he had SRT equipment that needed to be counted and prepared for shipping, and advised him to not exceed his limits or capabilities. He further advised appellant that the items to be moved were very lightweight and that he had provided him with a cart for ease of loading for transportation. A.L. explained to appellant that he could put as many items as he

could safely handle on the cart as needed. He reported that he would be available all month at the office. A.L. instructed appellant to come into work every day until the task was completed with a suspense date of November 11, 2022.

In a November 29, 2022 e-mail to D.W., an acting chief of staff, appellant alleged that A.L. and T.M. had created a hostile workplace for him since August 2022. He claimed that A.L. and T.M. complained about him taking leave, were demeaning to his doctors, gave a negative performance appraisal, made rude and unprofessional comments, and rescinded his telework rights due to a complaint that he filed against A.L. Appellant also asserted that on November 28, 2022 A.L. demanded that he pick up boxes which were over his five-pound lifting restriction and asked him to complete a mailing application for UPS without getting the proper training. He indicated that when he asked A.L. for help, he was told that he did not need training because he had done it in his previous agencies. Appellant further contended that he told A.L. that the project completion deadline was unrealistic and A.L. advised him to manage his time. He reported that A.L. kept coming to his desk and saying that he already did the training. Appellant alleged that on November 29, 2022 A.L. kept making comments to him to “come on come on come on” and asked him to lift over five pounds. He indicated that A.L. informed him that even if he put in sick leave, he was still expected to complete the project.

In an e-mail dated January 9, 2023, appellant indicated that he was “very stressed out” and had a severe migraine headache after his interaction with A.L. He asserted that he was not being properly trained and felt like he was being penalized when he asked for assistance. OWCP also received e-mail correspondence dated January 30 through February 10, 2023 regarding appellant’s EEO mediation process.

OWCP also received a performance appraisal review for the rating period August 1, 2021 through December 31, 2022, and a performance appraisal rating sheet for the performance period October 1 through December 31, 2021, which demonstrated that appellant received an unacceptable rating and refused to sign the appraisal. It also received his resume and application documents, a position description for a mission support specialist, a December 13, 2022 memorandum by M.F., deputy assistant director, regarding a cease and desist order, a January 5, 2023 notice of proposed suspension, timekeeper training records, and screenshots of text messages with appellant. In an undated letter, appellant explained that he did not feel safe around A.L. and T.M. because of the harassment and retaliation. He alleged that their presence triggered his PTSD and panic attacks. Appellant asserted that in November 2022 he was asked to come in and complete the original and second SRT projects and that A.L. demanded that he move faster to complete the second SRT project. He contended that he was asked to lift heavy boxes despite his work restrictions.

In a statement dated February 9, 2023, appellant asserted that the timekeeping system at the employing establishment was not the same as the timekeeping system he used at the federal agency where he previously worked. He further claimed that his position was a GS-9 trainee level, so he was required to be trained until he reached the GS-12 level. Appellant alleged that T.M. advised him not to file a workers’ compensation claim and that what he was experiencing from management did not constitute a hostile workplace. He contended that management was only challenging his claim because of his current EEO complaint. Appellant further alleged that in November 2022, during the “1 SRT and prior,” A.L. had informed him that he needed to find his own point of contact to do his assignments and that he did not need to take any training because of his prior work experience. He claimed that on November 29, 2022 A.L. made comments “come

on come on come on” and asked him to lift over five pounds. Appellant asserted that he had reached out to his whole chain of command over the last few months but had no resolution from management. He provided an individual complaint of employment discrimination dated February 21, 2023.

OWCP also received additional information from the employing establishment. In a memorandum dated February 3, 2023, T.M. asserted that all the e-mails provided by appellant were a fabricated perspective created by him and did not include the entire string of e-mails. He alleged that appellant had contested every assignment and set of instructions given to him by management. T.M. asserted that appellant continued to provide questionable medical evidence, make false claims of work injuries, and make false allegations of a hostile work environment. He reported that appellant had been served a seven-day suspension for multiple violations of the employing establishment code of conduct. T.M. asserted that, despite having specific instructions, appellant submitted a barrage of harassing, disruptive, and unnecessary e-mails and blatantly disregarded his instructions. He also disputed appellant’s allegation that he was not given any training. T.M. described the training that appellant was provided and also indicated that based on appellant’s resume and past experience, he should have been an expert in timekeeping and submitting payrolls.

By decision dated April 5, 2023, OWCP denied modification of its January 11, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

To establish an emotional condition in the performance of duty, appellant 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

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<sup>5</sup> *Supra* note 1.

<sup>6</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 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).

<sup>8</sup> *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).

evidence establishing that the identified compensable employment factors are causally related to the emotional condition.<sup>9</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>10</sup> In the case of *Lillian Cutler*,<sup>11</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage under FECA.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> Where, however, 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.<sup>15</sup>

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.<sup>16</sup> Mere perceptions of harassment are not compensable under FECA.<sup>17</sup>

### ANALYSIS

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

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<sup>9</sup> *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>10</sup> *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).

<sup>11</sup> 28 ECAB 125 (1976).

<sup>12</sup> *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

<sup>13</sup> *Lillian Cutler*, *supra* note 11; *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001).

<sup>14</sup> *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>15</sup> *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>16</sup> *See E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

<sup>17</sup> *Id.*

Appellant has alleged that he sustained an emotional/stress-related condition in the performance of duty. The Board must, therefore, initially review whether appellant's allegations establish compensable employment factors under the terms of FECA.<sup>18</sup> The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.<sup>19</sup> Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters. He also claimed that management subjected him to harassment and discrimination.

With respect to his claims regarding administrative/personnel matters, appellant asserted that A.L., his supervisor, imposed unrealistic due dates and demands for the SRT mailing project, and failed to provide him assistance until the last day of the project. He also asserted that on November 28, 2022 A.L. violated his work restrictions by directing him to pick up boxes weighing more than five pounds, and by asking him to complete the UPS application without getting proper training. Appellant further alleged that he was not given adequate training regarding timekeeping and that management committed wrongdoing with respect to work assignments in November 2022 when he was asked to complete the original and second SRT projects at an exceedingly rapid rate.

However, the employing establishment has refuted appellant's allegations with regard to these administrative/personnel matters. In a November 2, 2022 e-mail, A.L. clearly advised appellant not to exceed his limits or capabilities when he handled SRT equipment that needed to be counted and prepared for shipping. He further advised appellant that the items to be moved were very lightweight and that he had provided him with a cart for ease of loading. A.L. explained to appellant that he could put as many items as he could safely handle on the cart as needed. He informed appellant that he would be available all month at the office. Moreover, in a January 5, 2023 memorandum, A.L. indicated that on November 28, 2022 he and a senior officer gave appellant refresher training to help him complete an assignment regarding the shipment of radiation detectors *via* UPS, including instruction regarding use of the UPS website, and that he provided additional training and guidance on November 30, 2022. He further reported that appellant provided an e-mail implying he still required limited-duty work, and that from November 28 through December 1, 2022 he made himself available to appellant and moved, shifted, lifted, and transported all the boxes and equipment related to that assignment. In addition, in a February 3, 2023 memorandum, T.M., an acting unit chief, described the training that appellant was provided, and also indicated that based on appellant's resume and past experience, he should have been an expert in timekeeping and submitting payrolls. On February 6, 2023 A.L. submitted a list of training courses that appellant had completed and accompanying certificates of course completion. Accordingly, the Board finds that the evidence of record does not support appellant's contention that the employing establishment committed error or abuse with respect to administrative/personnel matters.

Appellant also alleged that he sustained a stress-related condition due to harassment and discrimination by his supervisors. He claimed that A.L. acted unfairly towards him by failing to accommodate his work restrictions, denying his valid sick and annual leave requests, neglecting to provide adequate instruction or training regarding his work duties, and using threats to pressure him to sign his performance appraisal. Appellant further alleged that A.L. subjected him to retaliatory actions based on bias against him, and acted towards him in a hostile and disrespectful

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<sup>18</sup> Y.W., Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>19</sup> See *Lillian Cutler*, *supra* note 11.

manner. He claimed that A.L. and T.M. had created a hostile workplace for him since August 2022 by complaining about him taking leave, being demeaning to his doctors, giving a negative performance appraisal, making rude and unprofessional comments, and rescinding his telework rights. Appellant also asserted that management harassed him regarding the speed of his work progress, including one occasion in late-November 2022 in which A.L. confronted him while “seating [sic] down in my cube in my chair saying come on come on.” He claimed that management had a conflict of interest and was biased against him with respect to the EEO mediation process. However, appellant did not submit a sufficiently-detailed description of the alleged incidents of harassment that he alleges took place, nor did he provide corroborative evidence in support of his allegations.<sup>20</sup> Therefore, the Board finds that appellant has not established a compensable employment factor with respect to the alleged harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>21</sup>

### CONCLUSION

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

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<sup>20</sup> See *G.W.*, Docket No. 22-1360 (issued May 4, 2023).

<sup>21</sup> 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 April 5, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board