



## ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on February 28, 2022, as alleged.

## FACTUAL HISTORY

On March 3, 2022 appellant, then a 29-year-old city carrier filed a traumatic injury claim (Form CA-1) alleging that she sustained stress, post-traumatic stress disorder (PTSD), and anxiety on February 28, 2022 when a customer threatened her with a gun while in the performance of duty. She stopped work on March 1, 2022. On the reverse of the claim form, appellant's supervisor, S.L., reported that a man known by appellant came up to her while she was parked at a restaurant for lunch, threatened her with a gun and then walked away. She contended that appellant was not injured in the performance of duty and asserted that the injury was caused by the employee's willful misconduct, intoxication, or intent to injure herself or another.

In support of her claim, appellant submitted a copy of a citizen's information card from a sheriff's office, which provided a case number and listed the offense as aggravated assault.

In a March 7, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. In a separate letter of even date, OWCP requested that the employing establishment provide copies of any investigative reports and information from a knowledgeable supervisor including whether appellant was engaged in any official duties at the time of the assault, and whether there was any animosity between her and the customer by reason of a personal association outside of work. It afforded both parties 30 days to respond.

In a March 7, 2022 response to OWCP's development questionnaire, appellant explained that she was eating lunch at a fast-food restaurant while on her route when a man walked by and pointed a gun at her. She contacted emergency services by telephoning 9-1-1 and was advised to remain at the location until a deputy arrived. Appellant also contacted her postmaster who sent a supervisor to her location. She related that she was scared, nervous, and anxious and experienced a panic attack as she waited for the deputy to arrive. Appellant noted that she had previously been diagnosed with anxiety.

The employing establishment provided a February 28, 2022 e-mail from R.W., appellant's postmaster, noting that appellant reported that J.J., a man known to her, threatened her with a gun. R.W. noted that J.J. and appellant had previously been involved in an altercation wherein she had alleged that he had slapped her. She asserted that appellant knew him personally as he was the ex-boyfriend of one of her friends.

In a February 28, 2022 statement, T.W., a coworker, noted that appellant had contacted her and reported that the same man who had slapped her a few months prior was next to her at a fast-food restaurant and that she was in fear for her life.

M.J., an employing establishment official, completed an undated e-mail and described the events of February 28, 2022 relating that appellant had telephoned him and asserted that the man

who had allegedly previously assaulted her, had threatened her with a gun on February 28, 2022 while she was parked at a fast food restaurant for lunch. He relayed that J.J. was someone that appellant knew personally as the ex-boyfriend of a friend. M.J. related that the event was not related to work, but due to personal animosity. He noted that the incident was under investigation by the police and the employing establishment inspection service and that there were no witnesses.

On February 28, 2022 S.L. completed an e-mail statement and reported that as appellant was sitting in her work vehicle at a fast food restaurant, a man exited a tractor-trailer parked in the lot, walked over to her, pulled out a gun and pointed it at her. He then smirked at her and walked away into the neighborhood behind the restaurant.

Appellant completed a February 28, 2022 statement and recounted that while she was sitting in her postal vehicle, J.J. left his truck, walked past her vehicle, stopped, and stared at her. He then returned to his truck and retrieved a gun which he pointed at her.

On March 17, 2022 Dr. Louis Train, a family practitioner, completed an authorization for examination and/or treatment (Form CA-16) related that a customer threatened appellant with a gun. He diagnosed PTSD and found that she was totally disabled from work. Dr. Train indicated by checking a box marked "Yes" that appellant's condition was caused or aggravated by the employment activity described.

By decision dated April 18, 2022, OWCP denied appellant's claim, finding that she had not substantiated that the events of February 28, 2022 occurred, as alleged. It further noted that the evidence of record established that she personally knew J.J. and had previously been assaulted by him, but that she had not explained their relationship and its connection to her federal employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 13, 2022 appellant requested reconsideration. She noted that investigations were ongoing, and she was attempting to obtain video evidence of the February 28, 2022 event. Appellant asserted that she had no personal relationship with J.J. and did not know the source of his animosity.

On April 19, 2022 Dr. George P. Grimes, a clinical psychologist, reported that on February 28, 2022, during her lunch break, a customer with whom she had a previous encounter threatened her with a gun. He had previously physically attacked her. Dr. Grimes diagnosed PTSD.

In a May 3, 2022 report, the sheriff's office indicated that an unknown offender had exhibited a deadly weapon during the commission of an assault.

By decision dated August 11, 2022, OWCP modified the April 18, 2022 decision, finding that the February 28, 2022 incident occurred, as alleged. However, it denied the claim, finding that appellant was not injured in the performance of duty.

On January 6, 2023 appellant, through her representative, requested reconsideration. He contended that the employing establishment deliberately put her in danger, as appellant had previously been assaulted by J.J. on December 2, 2021, which was reported to the police and the

employing establishment. As a result, for her safety, the employing establishment reassigned her to perform duties other than her assigned delivery route. He further related that J.J. lived on her mail route, that the employing establishment was aware of his proximity to her work, and that she was reassigned as a safety measure. On February 10, 2022 the employing establishment returned appellant to her regular duties thereby placing her where she could be located by J.J. Appellant's representative also admitted that she knew J.J. personally and not just as an employing establishment customer on her route. He included a copy of a December 2, 2021 postal inspection service report, indicating that she was physically assaulted on that date as the result of a personal dispute. The report further detailed that the perpetrator, J.J., was known to appellant through a former personal friend, and that he accused her of lying by reporting that he was stalking her on her route and threatened to come to her home as he knew where she lived since he had dropped off his ex-girlfriend, there. It related that the postmaster was aware that J.J. lived on her route and agreed to move her. The report concluded that there were no witnesses, no injuries, and would be no further investigation of the events of December 2, 2021.

By decision dated March 6, 2023, OWCP denied modification of its prior 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 an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>6</sup>

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*,<sup>7</sup> the Board explained

---

<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> 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).

<sup>6</sup> *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).

<sup>7</sup> 28 ECAB 125 (1976).

that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.<sup>8</sup> 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.<sup>9</sup>

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employing establishment, the disability is deemed compensable.<sup>10</sup> However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>11</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>12</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>13</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>14</sup> Mere perceptions of harassment are not compensable under FECA.<sup>15</sup>

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.<sup>16</sup> If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that

---

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *David Apgar*, 57 ECAB 137 (2005); *Robert W. Johns*, 51 ECAB 136 (1999).

<sup>10</sup> *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 7.

<sup>11</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>12</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>13</sup> *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>14</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>15</sup> *Id.*

<sup>16</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

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.<sup>17</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish compensable factors of employment.

Appellant attributed her emotional condition, in part, to *Cutler*<sup>18</sup> factors. She was in her mail truck on her route on February 28, 2022, when she was approached by the assailant, J.J., with a gun. Appellant reported this event to the police and the employing establishment. The Board finds that she was reasonably in fear of her safety while performing her letter carrier duties, as she was approached by an assailant with a gun.<sup>19</sup> The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.<sup>20</sup> Thus, appellant has established a compensable employment factor with regard to her emotional reaction resulting from the actions of the assailant on February 28, 2022.

Appellant also alleged error and abuse by the employing establishment with regard to administrative and personnel matters. Following a previous assault by J.J. on December 2, 2021, which was reported to the police and the employing establishment, the employing establishment reassigned her to perform duties other than her assigned delivery route to minimize the possibility of contact with J.J., as he lived on her delivery route. On February 10, 2022 the employing establishment returned appellant to her regular route where J.J., the assailant, resided. In determining whether the employing establishment erred or acted abusively, the Board must examine whether the employing establishment acted reasonably.<sup>21</sup> The Board finds that the employing establishment unreasonably returned appellant to her regular-duty location, thereby requiring her to work near the home of her established assailant without adequate concern for her continued safety.<sup>22</sup> A compensable employment factor has therefore been established.

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Accordingly, the Board will set aside OWCP's March 6, 2023 decision and remand the case for consideration of the medical evidence with regard to whether

---

<sup>17</sup> *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>18</sup> *B.K.*, Docket No. 23-079 (issued January 18, 2024); *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *VM.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>19</sup> *See M.D.*, Docket No. 21-0379 (issued May 11, 2022); *M.J.*, Docket No. 20-0953 (issued December 8, 2021). *See also T.D.*, Docket No. 20-0153 (issued October 8, 2021).

<sup>20</sup> *M.D.*, *id.*; *S.C.*, Docket No. 20-0603 (issued November 5, 2021); *S.S.*, Docket No. 21-0184 (issued July 14, 2021); *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *T.S.*, Docket No. 20-1194 (issued April 14, 2021); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 7.

<sup>21</sup> *K.W.*, Docket No. 20-0832 (issued June 21, 2022); *see B.S.*, Docket No. 19-0378 (issued July 10, 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).

<sup>22</sup> *M.M.*, Docket No. 23-0009 (issued December 15, 2023); *Y.L.*, Docket No. 20-1023 (issued December 14, 2022).

appellant has established an emotional condition in the performance of duty causally related to the compensable employment factors. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish compensable factors of employment. The Board further finds that the case is not in posture for decision as to whether appellant had established an emotional condition causally related to the accepted compensable employment factors.<sup>23</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2023 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 20, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

---

<sup>23</sup> The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *TH.*, Docket No. 23-0811 (issued February 13, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).