

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

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S.M., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Santa Clarita, CA, Employer )

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**Docket No. 23-1196  
Issued: June 7, 2024**

*Appearances:*

*William H. Brawner, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On September 27, 2023 appellant, through counsel, filed a timely appeal from a July 26, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 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 on March 28, 2022, as alleged.

## FACTUAL HISTORY

On March 28, 2022 appellant, then a 50-year-old lead sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained mental anguish and was subjected to bullying, condescension, and a demeaning attitude from her superiors, while in the performance of duty, when she submitted paperwork requesting leave, as she was recovering from medical issues.<sup>3</sup>

A statement from C.H., a coworker, dated March 28, 2022, related that on that date appellant requested that C.H. obtain a Form 3971 (Request for or Notification of Absence) for her so that appellant could go home because she was in pain. After appellant completed the form, she requested that C.H. give the form to a supervisor. C.H. indicated that supervisor D.O. told C.H. that appellant, not C.H., needed to present the Form 3971 to a supervisor. Supervisor D.O. took the Form 3971 from C.H. In an April 10, 2022 statement, C.H. reiterated the March 28, 2022 interaction with appellant and D.O.

OWCP received a March 29, 2022 report of hazard, unsafe condition in which appellant alleged that she was bullied by station manager R.M. when she repeatedly asked for a high back chair and floor mat to help lessen her back strain. An employing establishment response indicated that no hazard had been identified, however a mat would be provided.

In a development letter dated April 5, 2022, 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, provided a questionnaire for her completion, and afforded appellant 30 days to respond.

OWCP received an April 6, 2022 occupational work status form and duty status report (Form CA-17) from a physician whose signature was illegible.

OWCP received a March 30, 2022 statement regarding a meeting during which appellant requested that R.M. sign a CA-1 form.

In an April 11, 2022 memorandum, appellant related that she had been employed by the employing establishment since 1999, and had maintained a good working relationship with management and her co-workers. However, during the past couple of years, the work environment changed to a toxic environment, and in 2019, her labor union created a committee to address the issue.

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<sup>3</sup> Appellant has an occupational disease claim (Form CA-2) in OWCP File No. xxxxxx671, alleging that she developed neck and low back conditions due to heavy lifting and pushing 12 hours per day, 6 days per week, and that she was not provided proper ergonomic equipment.

Appellant alleged that management constantly violated laws and policies put into place to protect employees. She alleged that the employing establishment did not file proper reports when she was hurt on the job. Appellant indicated that her chronic disease was exacerbated by working under conditions that violated the employing establishment's ergonomic policy. After she filed CA-1 and CA-2 claims, station manager, R.M. attempted to bully her into signing away her rights to pursue a workers' compensation claim, now or in the future. Instead, "R" wanted her to sign an accident report, but she was not provided with the form.

Appellant further alleged that R.M. and the acting postmaster L.D. called her names and made her feel stupid when she tried to express her concerns at two meetings, the first at the main office on Kearney Avenue in Modesto, and the second at Sylvan Avenue in Modesto on March 31, 2022. She alleged that she informed them that she was not comfortable having a meeting behind closed doors without representation; however, they told her to sit down and closed the door, which was illegal, and amounted to menacing or threatening behavior and implied intimidation. Appellant noted on April 5, 2022, her primary care physician told her that her cervical and back conditions were work related, but that he could not treat her. When she tried to check into occupational medicine, they told her that they could not see her for her neck and back without an authorization for examination and/or treatment (Form CA-16) for her CA-2 claim.

Appellant further alleged that on April 6, 2022 she was called in by the acting postmaster to transfer stamps. As she worked to transfer stamps, D.O. asked her why she was not issuing any books, she explained that she had informed R.M. that they were out. However, when she requested assistance from supervisor D.O. to order more, D.O. grabbed the mouse from her hand and told her that she did not need to do it right now. Appellant noted that D.O. returned with blank CA-16 and CA-17 forms, told her to sit on a stool that was "killing" her, which triggered a panic attack. D.O. continued to hover over her, and she had trouble breathing, D.O. told her she was creating a scene. Appellant asked if she could be rolled out in her chair to her husband who was waiting, she was told she had to walk out, and a co-worker helped her walk to her husband. She noted that the next day, she went in to get a CA-17 for her CA-1 and R.M. was rude to her husband and refused to fill it out until he reminded her that she had to fill it out. Appellant noted that she had a further incident on April 11, 2022, with regard to obtaining a Form CA-17, and that on April 12, 2022, she spoke with the local union president; however, she believed he was taking management's side.

On April 22, 2022 appellant provided a statement wherein she again alleged that she repeatedly asked for a high back chair and floor mat. She also related that she felt bullied and intimidated by R.M. who was constantly asking, "You know I'm your boss, right?"

OWCP received copies of two statements dated April 2, 2022 from appellant. In the first statement, appellant related that on March 29, 2022, L.D. and R.M. ambushed her with a third person, D.O., and ganged up on her in the postmaster's office, that the postmaster said that she did not need representation, that it was a one-sided conversation, and they did not listen to her concerns. In the second statement, appellant related that on March 30, 2022 she felt bullied by R.M. who tried to coerce her into signing away her rights.

OWCP received witness statements from C.H., dated March 30 and April 1, 2022, and from J.L. dated March 30, 2022. C.H. provided notes regarding an interaction between R.M. and appellant concerning filing Forms 3971 and CA-1. J.L. provided notes regarding appellant's

request that D.O. sign a Form CA-1 and D.O., indicating that she would take a copy of the CA-1 form.

OWCP received a May 6, 2022 report from Madeline Brener, a clinical psychologist, who noted that she had been treating appellant since April 27, 2022 for depression and anxiety. Appellant related that these conditions began as a result of verbal abuse and poor working conditions at her job. She indicated that appellant misperceived the cause of her emotional problems, and that the actual cause was simply overwork.

In a May 6, 2022 letter, R.M., the manager of customer service, controverted the claim. She explained that, on March 28, 2022, she was told that appellant had gone home. R.M. checked an attendance system, saw that appellant had left, and marked her absent without leave (AWOL). She related that 15 minutes later, appellant returned and indicated that, "I went home I'm not feeling well I left my [Form 3971] with [C.H.]." R.M. related that she advised appellant that the Form 3971 should have been left with management, not another window clerk, per postal regulations.

In a letter dated May 6, 2022, the employing establishment controverted the claim, and noted that appellant was reacting to administrative matters related to her leave request, being placed in AWOL status, and being given instructions regarding the proper procedures for requesting absence of leave.

By decision dated May 18, 2022, OWCP denied appellant's claim, finding that the evidence did not support that an injury occurred as alleged, and that, therefore, the requirements had not been met to establish an injury as defined by FECA.

On October 12, 2022 appellant, through counsel, requested reconsideration.

In a report dated October 2, 2022, Dr. Epstein noted that appellant's treating psychologist, Ms. Brener, had diagnosed generalized anxiety disorder and that she concurred. She referred to the work incident on March 28, 2022; however, she opined that, "I must strongly emphasize that the stress of working during the COVID crisis and the excessive overtime that [appellant] worked is more than sufficient to account for all of her psychiatric symptoms." Dr. Epstein further opined, "There is no valid medical reason to doubt the veracity of [appellant's] claims of managerial abuse. However, the veracity of such claims is medically irrelevant."

In a response dated November 2, 2022, the employing establishment noted that while appellant now claimed that her emotional condition was caused by overwork, she had voluntarily signed up for overtime, and provided overtime desired lists for the period April 2019 to March 2022.

By decision dated January 3, 2023, OWCP denied modification of the May 18, 2022 decision.

On April 28, 2023 appellant, through counsel, requested reconsideration. Counsel argued that appellant misperceived the March 28, 2022 work incident as the cause of her emotional condition, and that the actual cause was overwork. He alleged that for more than a year, appellant

was required to work 12 hours per day for 10 days straight before being allowed one day of rest between the 10-day work schedules.

In an April 25, 2023 report, Dr. Epstein indicated that the dispute over the March 28, 2022 work incident was medically irrelevant because, “[Appellant’s] psychosomatic illness is rooted in excessive overtime, not concerns about being marked fifteen minutes AWOL on any particular shift.” She noted that the employing establishment had responded that appellant voluntarily signed up for overtime and indicated that appellant “is claiming ‘overwork’ not ‘error or abuse’ by management.” Dr. Epstein attached a copy of a note from appellant to the employing establishment dated August 13, 2021, indicating that appellant wished to be removed from the overtime desired list, and a work schedule for December 23, 2021, with a handwritten note that, “All Clerks will work their days off and 12 hours.”

By decision dated July 26, 2023, OWCP denied modification of the prior decision. It found that appellant’s allegations related to disciplinary and personnel matters, which appellant had not established were in the performance of duty. OWCP further explained that the allegation of overwork was not relevant to the present claim for an emotional condition stemming from a work incident on March 28, 2022.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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 timely filed, 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>5</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</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>7</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *See R.B.*, Docket No. 21-0962 (issued February 23, 2023); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *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>7</sup> *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>8</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>9</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>10</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>11</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>12</sup> Mere perceptions of harassment are not compensable under FECA.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty on March 28, 2022, as alleged.

Appellant did not initially attribute her condition to the performance of her regularly or specially assigned duties under *Cutler*. However, counsel for appellant indicated on reconsideration that appellant mistakenly attributed her emotional condition to the alleged March 28, 2022 incident, and that appellant's condition was caused by overwork. Counsel's allegation of overwork attributed appellant's emotional condition to her regular assigned duties under the *Cutler* factors.<sup>14</sup> However, OWCP did not issue a final decision regarding a claim of overwork, but rather found that counsel's allegation of overwork was irrelevant to the present

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<sup>8</sup> See *A.M., id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>9</sup> *Lillian Cutler, id.*

<sup>10</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>11</sup> *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>12</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>13</sup> *Id.*

<sup>14</sup> 28 ECAB 125 (1976).

claim in which appellant alleged that she developed an emotional condition as a result of the mishandling of her Form 3971 on March 28, 2022.<sup>15</sup>

Appellant's allegations in the present claim relate to personnel matters. In *Thomas D. McEuen*,<sup>16</sup> the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA, absent a showing of error or abuse, as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>17</sup> However, the Board has also 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.<sup>18</sup> 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.<sup>19</sup>

Appellant alleged that her Form 3971 was mishandled by management on March 28, 2022. The employing establishment controverted the claim, and denied error or abuse. In a May 6, 2022 letter, R.M., explained that on March 28, 2022, she was told that appellant had gone home. R.M. checked an attendance system, saw that appellant had left, and marked her AWOL. She related that 15 minutes later, appellant returned and related that she has gone home because she was not feeling well, but that she had left her Form 3971 with C.H. R.M. related that she advised appellant that the Form 3971 should have been left with management, not another window clerk, per postal regulations. The handling of leave requests and attendance matters relates to administrative or personnel management actions.<sup>20</sup> 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.<sup>21</sup> In the instant case, the Board finds that appellant has not established error or abuse on the part of the employer with regard to the entry of AWOL status and the handling of appellant's Form 3971 on March 28, 2022. Therefore, appellant has not established a compensable employment factor with respect to these personnel matters.

Appellant made additional allegations regarding her supervisor's alleged wrongful handling of her CA-1 and CA-2 forms, as well as CA-16 and CA-17 forms. The Board has explained that the handling of a workers' compensation claims, are administrative functions of the

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<sup>15</sup> As noted, appellant has an occupational disease claim (Form CA-2) that included overwork in OWCP File No. xxxxxx671.

<sup>16</sup> *Supra* note 10. *See also R.C.*, Docket No. 22-1033 (issued August 17, 2023).

<sup>17</sup> *See C.J.*, Docket No. 19-1722 (issued February 29, 2021); *Helen Allen*, 47 ECAB 141 (1995).

<sup>18</sup> *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>19</sup> *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>20</sup> *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>21</sup> *F.W.*, Docket No. 19-0107 (issued June 10, 2020); *B.S.*, Docket No. 19-0378 (issued July 10, 2019).

employing establishment and, absent error or abuse, are not compensable.<sup>22</sup> However, there is no evidence of any error or abuse on behalf of the employing establishment in these personnel matters.

With regard to appellant's allegations of bullying, condescension, and a demeaning attitude, the Board has held that mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>23</sup> Appellant has alleged that on March 29, 2022 L.D. and R.M. ambushed her and ganged up on her in the postmaster's office, that the postmaster said that she did not need representation, that it was a one-sided conversation, and they did not listen to her concerns. In the second statement appellant related that on March 30, 2022, she felt bullied by R.M. who tried to coerce her into signing away her rights. In allegations regarding an incident with D.O., appellant alleged that on April 6, 2022, as she worked to transfer stamps, D.O. hovered over her, and told her to sit on a stool that was "killing" her, which triggered a panic attack. The Board finds that appellant has not established, with corroborative evidence, that the claimed harassment occurred as alleged. Therefore, she has not established a compensable employment factor with regard to those matters.

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>24</sup>

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 established that she sustained an emotional condition in the performance of duty, as alleged.

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<sup>22</sup> *L.D.*, Docket No. 15-0706 (issued May 9, 2016); *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>23</sup> *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>24</sup> See *T.S.*, Docket No. 23-0213 (issued December 14, 2023); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).



**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2024  
Washington, DC

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

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

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