

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

E.Z., Appellant	)	
	)	
and	)	<b>Docket No. 24-0826</b>
	)	<b>Issued: November 13, 2024</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Edison, NJ, Employer	)	
	)	

*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 10, 2024 appellant filed a timely appeal from a February 12, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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.<sup>3</sup>

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<sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued an August 26, 2024 decision which denied an August 10, 2024 request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see A.B.*, Docket No. 21-1170 (issued August 28, 2023); *J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Groom, Alternate Member, concurring in part, dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's August 26, 2024 decision is set aside as null and void.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 12, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

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

## FACTUAL HISTORY

On November 2, 2023 appellant, then a 45-year-old supervisor of customer services, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2023 he experienced anxiety, chest pain, left shoulder pain, and difficulty breathing due to stress while in the performance of duty. He stopped work on October 27, 2023.

In support of his claim, appellant provided a work release note dated October 27, 2023 containing an illegible signature.

In a development letter dated November 8, 2023, OWCP advised appellant of the deficiencies in his claim. It informed him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

Appellant subsequently submitted a November 8, 2023 narrative statement, wherein he explained that on October 27, 2023 the postmaster, J.P., called him to her office for a meeting that included managers R.S. and L.T. He described an argument with J.P. regarding his work schedule and payment for missing hours of work. J.P. then directed R.S. to issue appellant a seven-day suspension letter. Appellant experienced stress due to harassment and retaliation on the work floor with anxiety and chest pain. He reported his symptoms to his supervisors, but received no response. Appellant called an ambulance and sought treatment in a hospital emergency room.

On November 8, 2023 Dr. Emile F. Doss, a Board-certified cardiologist, completed a work release note.

In a November 15, 2023 letter, the employing establishment controverted the claim.

On November 21 and 27, 2024 Dr. Alexander R. Babayants, a Board-certified psychiatrist, prescribed medication. He completed a December 5, 2023 narrative report and asserted that on October 27, 2023, following an incident at work, appellant's mental health deteriorated significantly, with symptoms of persistent depression, insomnia, nightmares, and panic attacks. Dr. Babayants diagnosed post-traumatic stress disorder, chronic exacerbation, and opined that the current condition and diagnosis were a direct consequence of the October 27, 2023 work incident.

In an undated statement received by OWCP on December 16, 2023, appellant asserted that on June 20, 2023, J.P., deleted his work hours. In response to his queries, she related, "I don't pay for deviation." J.P. altered appellant's duty station and changed his work hours to include closing every day. Appellant felt that these actions constituted harassment and retaliation. He used 45 days of sick leave beginning July 14, 2023 but J.P. did not pay him even though he had submitted documentation. Appellant thus filed an Equal Employment Opportunity (EEO) complaint. During EEO mediation, J.P. agreed to pay for his sick leave and the hours that she had deleted, but she breached the agreement. She continued to systematically retaliate against appellant by changing his schedule, "talking down" to him, targeting him, and humiliating him thereby creating a hostile

work environment. On October 27, 2023 appellant reported to J.P.'s office and requested to rotate the closing shift with the other supervisors as he had a newborn infant and wished to go home early a few days a week. J.P. denied this request. R.S. informed appellant "you better start looking for another job" which he believed was a threat. J.P. requested that R.S. provide appellant with a seven-day suspension letter. When appellant received this letter, he felt overwhelmed and stressed, experienced chest pain radiating to his left shoulder, and had a panic attack. Neither J.P. nor R.S. responded to his request for an ambulance, so he called for one. Appellant related that every time he remembered J.P.'s actions, he experienced a panic attack.

In a December 19, 2023 development letter, OWCP requested that the employing establishment provide information, including comments from a knowledgeable supervisor on the accuracy of appellant's allegations. It afforded the employing establishment 30 days to respond.

In a December 19, 2023 follow up to its development letter, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to establish his claim as he had not established a diagnosed medical condition. It informed him that he had 60 days from the November 8, 2023 letter to submit the necessary information. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Subsequently, OWCP received a June 26, 2023 email, wherein J.P. instructed appellant regarding requests for travel and other work timekeeping procedures.

On September 18, 2023 the employing establishment issued a proposed letter of warning for failure to properly perform his duties and follow instructions on September 7, 2023.

In a December 21, 2023 statement, J.P. denied authorizing 12.5 hours of work on June 20, 2023. She noted that appellant related that he went to the plant on that date, but did not provide the required form confirming that he deviated to the plant. Regarding his work schedule, J.P. advised that his bid assignment had scheduled hours of Sunday through Wednesday from 10:00 a.m. until 7:00 p.m. She asserted that appellant left work at 1:00 p.m. on July 14, 2023 and did not provide acceptable medical documentation to support his absence from July 15 through August 12, 2023. Appellant used approved Family and Medical Leave Act (FMLA) protected time intermittently for the period July 15, 2023 through January 2024. J.P. related that she was unable to recall an EEO settlement, but had paid appellant for hours on July 14, 2023 based on a verbal agreement with the United Postmasters and Managers of America (UPMA) president. She advised that he had received disciplinary notices in September and October 2023. J.P. denied instructing appellant to start a search for a new job. She discussed with him the need for a position with an earlier start time. On October 27, 2023 appellant reported to work outside of his scheduled work hours without authorization. When questioned, he related that he would not be closing out as he reported to work at 8:00 a.m. J.P. related that if a coworker was willing to change their schedule to close out, that would not be a problem. Appellant then left work due to a medical issue and did not return.

OWCP continued to receive evidence. In e-mails dated July 1 through 14, 2023, appellant alleged errors in his recorded work hours, that J.P. and R.S. discriminated against him by not paying him, that they moved his work location, and that they favored other supervisors based on ethnicity and color. He asserted that R.S. did not properly record his work time.

An August 3, 2023 EEO settlement agreement required J.P. to consider requests for any unpaid hours submitted by appellant on the proper form within 14 days of the agreement and required appellant to provide a doctor's note with a diagnosis within 14 days. The parties further agreed to meet on or before October 1, 2023 to discuss available positions. The agreement included a statement that it should not be construed as an admission of discrimination or wrongdoing on behalf of the employing establishment.

On January 6, 2024 appellant responded to the development questionnaire and asserted that his claim was for a traumatic injury due to management threatening and humiliating him on October 27, 2023 and subsequently discriminating against him and giving him a letter of suspension. He related that he experienced chest pain, panic attacks, and difficulty breathing. Appellant again described the October 27, 2023 meeting regarding his work schedule during which R.S. and J.P. instructed him that he was required to "close" everyday as this was his assigned schedule. When appellant protested, J.P. laughed in a sarcastic way and replied "Okay, postmaster." J.P. instructed him to take lunch and then see R.S., who gave him a second letter of seven days' suspension.

Appellant alleged that J.S. did not want to pay her employees and complained to his union representative. J.S. then began to target him, by changing his schedule and his work location, and instructed him to close every day. Appellant alleged that he was not paid for the extra hours that he worked and had to "beg" for hours. He asserted that he filed an EEO complaint, that the settlement required J.P. to stop the harassment, to allow him to work from 10:00 a.m. to 7:00 p.m., and to pay him for all missing time including from July 14 to August 29, 2023. Appellant advised that J.S. singled him out by making him close every day, used a tone that humiliated him, and gave him two suspensions within a month.

In November 21 and December 12, 2023 and January 2, 2024 notes, Dr. Babayants described appellant's work-related stress and symptoms of insomnia, depression, nightmares, and panic attacks triggered by thoughts of his job. He also described employment events, noting that in June 2023 appellant was asked to work additional hours without compensation. Dr. Babayants indicated that, after appellant sought remediation, J.P. assigned an increased workload and issued disciplinary actions. He diagnosed PTSD, chronic exacerbated. In a separate January 2, 2024 narrative report, Dr. Babayants listed appellant's alleged workplace stressors of mistreatment, excessive workload, and fears of retaliation which culminated in chronic PTSD. He opined that appellant's emotional distress was closely linked to the aforementioned work-related stressors.

A January 26, 2024 EEO settlement agreement form provided that appellant would return to work after a clearance note from his physician and that J.P. would assign appellant to a different location for 60 days, with a start time of 8:30 a.m. After that date, he would return to his bid job. Management further agreed to merge appellant's two seven-day suspensions into one seven-day suspension, and to review his hours and pay him for time on agreed and approved dates. The agreement included a statement that it should not be construed as an admission of discrimination or wrongdoing on behalf of the employing establishment.

In a January 31, 2024 development letter, OWCP requested additional information from the employing establishment in response to appellant's statements. It afforded the employing establishment 30 days to respond. No response was received.

By decision dated February 12, 2024, OWCP denied appellant's emotional and stress-related claim. It found that he had not factually established his claim. OWCP further determined that appellant had not established a compensable employment factor, and thus had not established an injury in the performance of duty.

### 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 filed within the applicable time limitation of FECA,<sup>5</sup> 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>6</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>7</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>8</sup>

Workers' compensation law does not apply to 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>9</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>10</sup>

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *M.H.*, Docket No. 23-0467 (issued February 21, 2024); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *See C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>9</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125 (1975).

<sup>10</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

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>11</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>12</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>13</sup> Mere perceptions of harassment are not compensable under FECA.<sup>14</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.

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.<sup>15</sup> Instead, he primarily attributed his condition to matters related to the employing establishment's disciplinary actions and his work schedule.

Appellant alleged that J.P. failed to compensate him for his work hours, improperly issued disciplinary actions, and required him to work inconvenient hours. In support of his claim, he provided EEO settlement agreements. The EEO settlement agreements, however, specifically provided that the agreements should not be considered as admissions of discrimination or wrongdoing on behalf of the employing establishment.<sup>16</sup> The mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse on the part of the employing establishment.<sup>17</sup> Furthermore, the Board has long held that disputes regarding the handling of leave requests and attendance matters,<sup>18</sup> disciplinary matters,<sup>19</sup> and the assignment of

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<sup>11</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>12</sup> *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>13</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>14</sup> *Id.*

<sup>15</sup> *Supra* note 9.

<sup>16</sup> *M.C.*, Docket No. 18-0585 (issued February 13, 2019); *Lori A. Facey*, 55 ECAB 217 (2004); *Constance I. Galbreath*, 49 ECAB 401 (1998).

<sup>17</sup> *W.S.*, Docket No. 09-0558 (issued October 1, 2009); *Peter D. Butt, Jr.*, 56 ECAB 117 (2004); *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>18</sup> *P.T.*, Docket No. 20-0825 (issued September 23, 2022); *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>19</sup> *P.T., id.*; *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

work,<sup>20</sup> are administrative functions of the employing establishment and, absent error or abuse, are not compensable.<sup>21</sup> Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.<sup>22</sup> As appellant has not submitted evidence sufficient to establish error or abuse by management in these administrative and personnel matters, he has not established a compensable work factor in this regard.<sup>23</sup>

Appellant further alleged harassment and discrimination/retaliation by management. Specifically, he alleged that his supervisors, J.P. and R.S., harassed and retaliated against him through disciplinary actions and the suggestion by R.S. that he look for another job.

However, appellant provided no corroborative evidence in support of his allegations.<sup>24</sup> As he has not submitted evidence sufficient to supporting harassment, discrimination, or retaliation by J.P. or R.S., the Board finds that he has not met his burden of proof to establish a compensable work factor in this regard.<sup>25</sup>

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>26</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 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> *P.T., id.; M.C.*, Docket No. 18-0585 (issued February 13, 2019).

<sup>21</sup> *P.T., id.; G.G.*, Docket No. 18-0432 (issued February 12, 2019).

<sup>22</sup> *P.T., id.; see E.S.*, Docket No. 18-1493 (issued March 6, 2019).

<sup>23</sup> *D.F.*, Docket No. 24-0178 (issued April 5, 2024); *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

<sup>24</sup> *R.M.*, Docket No. 22-0472 (issued October 16, 2023).

<sup>25</sup> *See M.C., supra* note 20; *D.F., supra* note 23; *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *S.B.*, Docket No. 11-0766 (issued October 20, 2011).

<sup>26</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 February 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2024  
Washington, DC

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

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

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