

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

S.W., Appellant)	
)	
and)	Docket No. 24-0954
)	Issued: November 15, 2024
DEPARTMENT OF THE AIR FORCE, AIR)	
FORCE MATERIEL COMMAND, WRIGHT-)	
PATTERSON AIR FORCE BASE, OH,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 30, 2024 appellant filed a timely appeal from a June 24, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, a ppellant asserted that oral argument should be granted because she required guidance on how to proceed. The Board, in exercising its discretion, denies her request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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

On April 11, 2023 appellant, then a 56-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that on January 1, 2023 she experienced mental health issues while in the performance of duty. She attributed her condition to being placed on leave without pay (LWOP) by her employer without notification. Appellant advised that she was already off work on January 1, 2023 due to another injury. On the reverse side of the claim form, the employing establishment indicated that she had received workers' compensation since June 21, 2021.³

In a development letter dated April 14, 2023, 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. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate letter of even date, it requested information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

In an April 24, 2023 response to OWCP's development questionnaire, appellant related that she used January 1, 2023 as her date of injury as that was the date provided on her notification of personnel action (Standard Form (SF) 50). She attributed her mental health issues to OWCP informing her that it was terminating her wage-loss compensation and medical benefits. Appellant related that she saw on her SF 50 that the employing establishment had extended her LWOP until January 24, 2024 without providing her with a reason. She noted that she had been on LWOP since February 20, 2020 for an employment injury. Appellant asserted that OWCP's April 7, 2023 termination decision put her "over the edge" and that she was without fault for getting injured at work. She maintained that she had issues with a second opinion report under OWCP File No. xxxxxx905. Appellant advised that she had not spoken to her supervisor in a year and a half because of her ongoing Equal Employment Opportunity (EEO) case that she had filed due to her employment injury and OWCP terminating her benefits on April 7, 2023. She related that the employing establishment denied her requests for reasonable accommodation.

In a statement dated May 1, 2023, appellant's supervisor, A.I., disagreed with appellant's allegations. She related that appellant was placed on LWOP beginning January 18, 2022. A.I. noted that appellant's compensation was terminated by OWCP on April 7, 2023 but that she chose

³ OWCP assigned the present claim OWCP File No. xxxxxx760. It had previously accepted that appellant sustained a left medial meniscus tear, unilateral primary osteoarthritis of the left knee, and left knee myalgia/neuritis due to a November 8, 2019 employment injury under OWCP File No. xxxxxx905. OWCP paid her wage-loss compensation on the supplemental rolls beginning February 19, 2020, and on the periodic rolls beginning April 24, 2022. By decision dated April 7, 2023, it terminated appellant's wage-loss compensation and medical benefits for her accepted left knee injury under OWCP File No. xxxxxx905. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxx905 serving as the master file.

to remain on LWOP rather than returning to work or using annual leave. She advised that appellant's job was not stressful, that she did not work overtime, and that she had not recently traveled. A.I. indicated that appellant had worked four hours per day from April 2020 to June 2021 and received compensation from June 2021 until April 2023. She related that conflicts with coworkers "were infrequent and would have been several years ago," noting that appellant had not been in the office since February 2020, as she teleworked from February 2020 to June 2021. A.I. advised that appellant had filed an EEO complaint against her that was "awaiting trial." She asserted that the disability office tried to reassign her in accordance with her reasonable accommodation request, but she refused.

A.I. submitted a January 13, 2022 e-mail from appellant to R.M., a human resources (HR) specialist with the employing establishment. Appellant related that she had not been released to resume work and that she was scheduled for a second opinion evaluation. She asked what the work arrangements would be when she returned and requested that she be removed from LWOP and allowed to telework. In a response dated January 18, 2022, R.M. informed appellant that her LWOP status would remain unchanged until OWCP had addressed the second opinion report.

In a follow-up letter dated May 23, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the April 14, 2023 letter to submit the requested supporting evidence. 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.

Appellant subsequently submitted a June 2, 2023 psychological evaluation.

By decision dated July 26, 2023, OWCP converted appellant's claim to an occupational disease claim, but denied it finding that, as appellant had not established any compensable factors of employment, she had not sustained an emotional condition in the performance of duty.

On April 1, 2024 appellant requested reconsideration of OWCP's July 26, 2023 denial of her emotional condition claim. In an accompanying statement, she related that she had no mental health issues until her supervisor harassed her and denied her request to telework. Appellant also noted that OWCP had stopped her pay and health insurance in April 2023, which was subsequently overturned.

By decision dated June 24, 2024, OWCP denied modification of its July 26, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 2.

limitation of FECA,⁵ 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.⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰

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.¹¹ 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.¹²

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

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

¹¹ *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).

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

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.¹³ Mere perceptions of harassment are not compensable under FECA.¹⁴

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.

Appellant has not alleged that her emotional condition was due to the performance of her regularly or specially assigned duties under *Cutler*.¹⁵ Instead, she primarily attributed her condition to the employing establishment's failure to allow her to telework and extending her LWOP. In *Thomas D. McEuen*,¹⁶ 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 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. 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, such action will be considered a compensable employment factor.¹⁷

Appellant maintained that the employing establishment had extended her LWOP until January 24, 2024, without informing her of the reason. She noted that she had been on LWOP beginning February 20, 2020 for an employment injury. On April 1, 2024 appellant advised that her supervisor denied her request to telework. In a May 1, 2023 statement, A.I., appellant's supervisor, related that appellant chose to remain on LWOP after OWCP terminated her compensation on April 7, 2023 instead of returning to work or using annual leave. She noted that appellant had teleworked from February 2020 to June 2021 and that she had refused the disability office's attempt to reassign her as a part of a reasonable accommodation request. On January 13, 2022 appellant informed R.M., an HR specialist, that she had been scheduled by OWCP for a second opinion and asked if she could telework, rather than being on LWOP. He responded that she would remain on LWOP, pending action by OWCP. Appellant has not submitted any evidence supporting that the employing establishment erred in extending her LWOP or denying her request to telework. The handling of leave requests and attendance matters relates to administrative or personnel actions and are not compensable absent error or abuse by the employing establishment.¹⁸

¹³ 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).

¹⁴ *Id.*

¹⁵ *Supra* note 10.

¹⁶ See *Thomas D. McEuen*, *supra* note 11.

¹⁷ *M.B.*, Docket No. 29-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁸ *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).

As appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters, she has not established a compensable work factor.¹⁹

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁰

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.

¹⁹ See *Y.R.*, Docket No. 24-0612 (issued September 13, 2024); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

²⁰ See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (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 June 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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