

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

_____)	
T.B., Appellant)	
)	
and)	Docket No. 25-0018
)	Issued: November 4, 2024
U.S. POSTAL SERVICE, SUNNYSIDE POST)	
OFFICE, Sunnyside, WA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2024 appellant filed a timely appeal from an August 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty on May 22, 2024, as alleged.

FACTUAL HISTORY

On May 23, 2024 appellant, then a 47-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2024 she experienced extreme anxiety while working with V.M., a coworker, who had previously physically attacked her. She

¹ 5 U.S.C. § 8101 *et seq.*

asserted that management failed to prevent the two of them from working together even after a grievance settlement. Appellant stopped work on May 23, 2024. On the claim form, the employing establishment indicated that appellant had not sustained an injury in the performance of duty, noting that management was present when both employees were together, and at no time did they have inappropriate interaction or have an exchange of conversation during shifts. The grievance had found that the parties should be respectful and remain professional. It also questioned whether the claim was for an occupational disease rather than a traumatic injury.

In an e-mail dated June 10, 2022, appellant related that she was uncomfortable with V.M. being close to her and requested additional personal space and cameras on the workroom floor. In an e-mail dated May 31, 2023, she responded to allegations by V.M. that she had hit her on that date. Appellant asserted that V.M. had assaulted her on April 25, 2022.

A September 23, 2023 Step 3 grievance decision found that each employee should treat the other with respect, including with regard to personal spaces. It provided, "If possible, the employees are to be separated from working together. If this is not possible, the employees are to act in a professional manner while working with each other."

In a development letter dated May 28, 2024, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a May 30, 2024 report of work status (Form CA-3), the employing establishment advised that appellant had returned to her usual employment without restrictions on May 29, 2024.

In a development letter dated May 30, 2024, OWCP requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days for the submission of the requested information.

OWCP received a response from the employing establishment on June 20, 2024. It indicated that appellant had filed a grievance that was settled by finding that the employees should be separated from working together if possible. The employing establishment advised that when the employees worked together in the same building, a manager was always present and within sight of their work activities. It asserted that the employees only worked together when the needs of service required. The employing establishment indicated that appellant currently worked limited duty.

The employing establishment also submitted witness statements. In a May 30, 2024 statement, K.L., a coworker, advised that on May 22, 2024 appellant acted as a union steward and V.M. worked the window. She did not see any issue between the two and indicated that appellant worked in the back of the building while V.M. worked at the window. When K.L. went to get her lunch, appellant had gone to sit in her car.

In an undated statement, V.M. advised that on May 22, 2024 she covered the retail window when a coworker went to lunch. Appellant was in the back working. V.M. related that they were "under supervision the entire time and there was no contact between the two of us."

In a May 28, 2024 statement, R.A., a coworker, related that, “I feel like I’m walking on egg shells” at work and that appellant “will walk pass my casing area being a bit extra loud or obnoxious to get a reaction out of me.”

On July 26, 2024 appellant responded to R.A.’s statement, asserting that R.A. had tried to isolate her. She related that R.A. was upset on January 6, 2023 about the radio station that was playing in the work area even though it was part of a union settlement that it be on that station. On January 13, 2024 R.A. verbally abused appellant’s husband.

Appellant submitted a January 9, 2023 grievance regarding the radio being turned off by management, noting that 15 years ago it was decided that only a particular station would be listened to. She further provided statements regarding R.A.’s behavior.

In a response to OWCP’s development questionnaire, appellant described work events beginning in 2016. Regarding her traumatic injury claim, she maintained that she experienced an anxiety attack from a supervisor, A.R., having her work “in very close proximity” to V.M. Appellant noted that A.R. advised that it was to ensure proper staffing and informed her that the needs of the postal service had priority. She maintained that A.R. was in her office or on the telephone and “oblivious to watching” V.M. and appellant.

In a July 26, 2024 response to OWCP’s development questionnaire, appellant listed the relevant dates of her claim, beginning on April 25, 2022 when V.M. assaulted her at work. She asserted that when working together V.M. tried to get close to her and she had to walk away. Appellant filed a grievance that was settled with a finding that management should try to have them work apart. In response to the question of whether her claim was for a traumatic injury or an occupational disease, she advised that her anxiety only occurred when she was around V.M. and that she believes that “the condition is traumatic and at times occupational.” Appellant noted that each time she was around V.M. was traumatic but that there were other issues such as discrimination and that she may also have an occupational disease claim. She further advised that on May 22, 2024 she experienced anxiety when she saw V.M. enter the back door and asserted that she “stared and glared at me.”

By decision dated August 2, 2024, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish the occurrence of the claimed May 22, 2024 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

limitation of FECA,³ 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.⁴ 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.⁵

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁶

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*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage of FECA.⁸ 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.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

³ *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *L.N.*, Docket No. 22-0126 (issued July 15, 2023); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.D.*, Docket No. 23-0898 (issued July 13, 2023); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁷ 28 ECAB 125 (1976).

⁸ See *L.Y.*, Docket No. 21-0344 (issued June 15, 2023); *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

⁹ *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.

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).

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

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 on May 22, 2024, as alleged.

Appellant has not attributed her condition to the performance of her regularly or specially assigned duties under *Cutler*.¹⁵ Instead, she maintained that management erred by allowing V.M. to work with her on May 22, 2024. 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 filed a grievance against V.M., which was settled on September 23, 2023, with a finding that both employees should treat each other with respect and that, if possible, management should separate the employees from working together. It provided that, if separation was not possible, the employees were to act in a professional manner. On June 20, 2024 the employing establishment indicated that, based on the grievance settlement, appellant and V.M. only worked together when needs of the service so required and that a manager was always present and within sight of their work activities. In an undated statement, V.M. indicated that on May 22, 2024 she did not have any contact with appellant and that both were supervised. In a May 30, 2024 statement, K.L. advised that on May 22, 2024 appellant worked in the back of the building and V.M. at the window. She did not observe any issues between appellant and V.M. Appellant has not submitted any evidence demonstrating error or abuse by the employing establishment in scheduling her to work with V.M. on May 22, 2024. As she has not submitted the necessary

¹² *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

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 7.

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).

corroborating evidence to establish error or abuse by management in this personnel matter, she has not established a compensable work factor.¹⁸

Appellant also maintained that V.M. harassed her on May 22, 2024 by staring at her and glaring when she entered through the back door. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.¹⁹ However, the Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.²⁰ Mere perceptions are not compensable under FECA, and harassment or discrimination can constitute a factor of employment only if it is shown that the incidents constituting the claimed harassment or discrimination actually occurred.²¹

Although appellant alleged that V.M. harassed her on May 22, 2024, she provided no corroborating evidence in support of her allegation.²² She did not submit witness statements or other documentary evidence demonstrating harassment occurred as alleged.²³

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁴

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 on May 22, 2024, as alleged.

¹⁸ *L.E.*, *supra* note 9; *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

¹⁹ *S.K.*, Docket No. 23-0655 (issued September 18, 2023); *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783 (1991).

²⁰ *See C.C.*, Docket No. 21-0519 (issued September 22, 2023); *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²¹ *Id.*

²² *R.M.*, Docket No. 22-0472 (issued October 16, 2023).

²³ *See C.Y.*, Docket No. 22-0699 (issued June 2, 2023); *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²⁴ *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 August 2, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2024
Washington, DC

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

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

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