

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

A.M., Appellant	)	
	)	
and	)	<b>Docket No. 24-0287</b>
	)	<b>Issued: October 8, 2024</b>
	)	
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>IOWA CITY VA MEDICAL CENTER,</b>	)	
<b>Iowa City, IA, Employer</b>	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 29, 2024 appellant filed a timely appeal from a January 23, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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/stress-related condition in the performance of duty, as alleged.

**FACTUAL HISTORY**

On February 8, 2023 appellant, then a 40-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed extreme anxiety and post-traumatic stress disorder

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

(PTSD) causally related to factors of her federal employment. She related that her friend was admitted to the employing establishment hospital. Appellant's friend messaged her using a tablet provided by the employing establishment. She noted that he was never her patient. Appellant claimed that her conversation with her friend was monitored by the employing establishment even after his discharge from the hospital, which violated their privacy rights. She noted that due to this circumstance she went through union meetings, being floated off her unit, an ethics consult and a meeting with a privacy officer. Appellant noted that she first became aware of her conditions on March 15, 2022, and realized their relationship to her federal employment on July 11, 2022.

OWCP received medical evidence in support of appellant's claim.

In undated statements, appellant attributed her claimed emotional condition to several work incidents. On March 13, 2022 her friend was being treated for depression in the employing establishment's psychiatric ward, and was using an employing establishment tablet to post on social media about his dissatisfaction with his hospitalization and medical treatment. Appellant saw the message and responded to her friend. Subsequently, the tablet was taken from him by an employing establishment nurse, B.K., who saw that he was messaging appellant. Appellant's friend left the hospital against medical advice because he did not like the way that B.K. had handled the tablet incident. He then messaged appellant who apologized for B.K.'s behavior. The employing establishment kept the tablet open from March 13 through 22, 2022 and investigated the situation for a possible privacy violation and concern for unethical behavior. On March 14, 2022, appellant spoke to a union representative regarding this matter. On March 21, 2023 she received an e-mail regarding a "fact-finding" meeting that was cancelled two days later by e-mail dated March 23, 2023. On March 31, 2022 appellant was advised that her case had been closed, and nothing had been placed in her file. On March 28, 2022 she was given the option to work on another floor due to the readmission of her friend to her unit, but she chose to go home. On March 29, 2022 appellant was temporarily assigned to another unit, and subsequently resumed work at her normal duty location on April 5, 2022. She continued to be floated off her unit numerous times because her friend kept returning to her unit during a pending ethics investigation by the employing establishment. On April 8, 2022 P.B., an employing establishment administrator of inpatient mental health and medicine, sent e-mails to the entire mental health unit and other floor managers regarding the code of conduct and boundaries between employees and patients due to the alleged incident involving appellant and the friend. Appellant cited an employing establishment policy document, MCP-071, which described unethical relationships as: "Social, romantic, or business relationships between STAFF and PATIENTS that could reasonably be expected to INTERFERE with or NEGATIVELY impact on the patient, other patients, or other staff members or the ICVAHCS." (Emphasis in the original.) She alleged that her friend was never a patient of hers. On June 21, 2022 an employing establishment privacy officer informed appellant of the determination that no one had violated her or her friend's privacy. In October 2022, B.K. was rude to her. Another coworker responded to a veteran's question regarding the availability of an employing establishment tablet by stating that the tablets had been removed from the unit because some nurses were friends with patients. Upper management threatened to check appellant's cell phone if it was necessary during its investigation. Appellant noted her medical treatment and changes in her medications for her anxiety, depression, panic attacks, and PTSD.

P.B., in an April 8, 2022 e-mail, maintained that it was ethically inappropriate to retain an employee on unit 9W when there was an identified personal conflict involving a family/friend relationship. She related that in such a case, an employee was floated to another work area.

In a development letter dated February 10, 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. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to submit the necessary evidence.

On February 13, 2023 T.S., an employing establishment assistant nurse manager on unit 9W, responded to OWCP's February 10, 2023 development letter. She indicated that on March 15, 2022 F.C. was appellant's manager. T.S. noted that contrary to appellant's statement that her friend was never her patient, she was his nurse from August 6 through 9, 2022 based on multiple medical chart entries she made during that period. She explained that the employing establishment's mental health unit performed community-based nursing which meant that every nurse in the unit received a report on every patient in that unit. While each patient had a nurse per shift, every nurse provided care to all the patients in the unit. T.S. noted that on March 29, 2022 appellant requested a temporary assignment and was moved off the unit because the patient in question was on the unit. She also noted that no disciplinary actions had been taken against appellant.

In an undated statement received by OWCP on March 15, 2023, appellant related that her union representative suggested that she ask to be removed from her unit when her friend was on the unit. She only assumed care for her friend after the ethics consult proved that it was unethical for her to be removed from the unit. Appellant agreed with T.S. that no disciplinary actions were taken against her. She reiterated that the employing establishment kept the tablet open and monitored her conversations with her friend after his discharge from the hospital.

In an April 7, 2022 statement, F.C. indicated that a clinical ethical consultation regarding the alleged March 2022 incident, revealed that appellant was upfront in disclosing her social/friend relationship, and recused herself from providing/participating in his care or accessing his medical records. She noted that it was ethically acceptable for the nurse to remain on the 9W unit and provide care to other patients if boundaries, including not providing direct patient care, accessing the patient's medical record, interacting socially (though acknowledging the patient was acceptable), or contacting the patient *via* telephone/e-mail/social media during business hours, or using equipment issued by the employing establishment to contact the patient, were appropriately upheld.

In a development letter dated March 15, 2023, OWCP requested additional information from appellant and the employing establishment. In a March 27, 2023 letter, D.B., an employing establishment human resources specialist, responded to OWCP's development letter, and explained that appellant was removed from her unit due to concerns related to her actions that constituted a possible privacy violation and unethical behavior. She noted that appellant's friend was admitted to the hospital and used a government-owned tablet which revealed seven different interactions between the two of them from March 13 through 22, 2022. D.B. acknowledged that

an e-mail was sent to the entire mental health unit regarding the employing establishment's ethical behavior policy, but appellant was not identified in the e-mail. She maintained that the employing establishment was committed to ensuring that there were no privacy violations, conflicts of interest, or inappropriate relationships between patients and employees at work. The employing establishment had an obligation to investigate the matter due to appellant's actions, and perceived violation. D.B. contended that appellant had not established a compensable employment factor.

In undated statements, appellant denied the employing establishment's contention that she had seven different social interactions with her friend while he was in the hospital. She reiterated her contention that it was only after the ethics consult in June 2022 that she assumed care for her friend. Due to this ordeal, she left her unit and accepted a position on a different floor.

By decision dated May 16, 2023, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor and, therefore, had not sustained an injury in the performance of duty.

On May 19, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 29, 2023, an OWCP hearing representative vacated the May 16, 2023 decision, and remanded the case to OWCP for further development of the factual component of appellant's claim. The hearing representative instructed OWCP to refer all of appellant's statements to the employing establishment for review and comments, provide a detailed description of appellant's allegations, and explain whether she established any compensable employment factors.

In undated statements, appellant contended that P.B. forced her to leave her unit when her friend was admitted to the unit. She noted that the union filed a grievance on her behalf regarding her situation.

In a September 11, 2023 development letter, OWCP requested additional information from the employing establishment, including copies of records related to any investigation regarding the alleged March 2022 events.

In a June 21, 2022 letter, M.M., an employing establishment manager contended that the employing establishment did not violate the Privacy Act. She explained that the social media messages were not retrieved from an employing establishment system of record or stored. M.M. further determined that P.B. provided appropriate information to the unit managers who had a legitimate business need to know about her relationship with her friend after receiving her request for a temporary reassignment. She concluded that the incident involved a violation of the employing establishment's policy that did not result in the compromise of employing establishment data. M.M., therefore, found that no breach had occurred. She noted that because the investigation confirmed that the social media account on the employing establishment-owned device was not logged off, M.M. directed the removal of tablets from the unit so that information security safeguards and standard operating procedures could be reviewed. She noted that if the tablets were reintegrated into the unit, then staff and patients would be trained on appropriate access, use, and log off instructions.

An October 4, 2023 statement from B.G., an employing establishment human resources specialist, noted that the employing establishment responded to an ethics concern reported by a nurse who saw an interaction between appellant and a patient, who was appellant's friend. He asserted that the employing establishment had an obligation to investigate possible ethics violations, which involved the March 13, 2022 incident. B.G. referenced the employing establishment's policy regarding the making of unauthorized commitments or promises to bind the government. He denied appellant's allegation that the investigation violated her or her friend's privacy. B.G. denied that the employing establishment accessed the friend's social media page, and instead he maintained that it merely logged him off the employing establishment-owned tablet on March 22, 2022 after he had been discharged from the hospital. He further denied that it monitored appellant's communication with her friend after his discharge.

By *de novo* decision dated October 24, 2023, OWCP again denied appellant's emotional condition claim, finding that she had not established a compensable employment factor and, thus, had not sustained an injury in the performance of duty.

On October 26, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an undated statement, appellant noted that she was unable to obtain statements from her coworkers because they were afraid of repercussions as they still worked at the employing establishment.

Appellant submitted evidence reiterating her contentions. Following review of the written record, by decision dated January 23, 2024, an OWCP hearing representative affirmed the October 24, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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>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>

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<sup>2</sup> *Supra* note 1.

<sup>3</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>4</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>5</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).

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 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>7</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>8</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>9</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>10</sup>

To the extent that, disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.<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

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<sup>6</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>7</sup> *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>8</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</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>10</sup> *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>11</sup> *T.L.*, Docket No. 18-0100 (issued June 20, 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>12</sup> See *K.F.*, Docket No. 23-0278 (issued August 7, 2023); *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).

FECA.<sup>13</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.<sup>15</sup> Rather, she has alleged that management committed error and abuse with respect to various administrative/personnel matters. Appellant explained that the events surrounding this claim began on March 13, 2022 when a friend was admitted to the employing establishment's psychiatric ward, and began using an employing establishment tablet to post on social media about his dissatisfaction with his hospitalization and medical treatment. She saw the message and responded to her friend. Appellant alleged that her privacy had been violated by the employing establishment who monitored and investigated her conversations with her friend, even after his discharge from the employing establishment hospital. She further alleged that on March 28, 2022 she was given the option to work on another floor due to the readmission of her friend to her unit. Appellant was subsequently reassigned from her unit numerous times because her friend kept returning to her unit as a patient. Additionally, she alleged that on April 8, 2022 the employing establishment violated her privacy by sending an ethics advisory email to the entire mental health unit regarding the codes of conduct and boundaries between employees and patients who were family or friends. The Board has held that workplace investigations,<sup>16</sup> being monitored,<sup>17</sup> and assignment of work,<sup>18</sup> are administrative or personnel matters, and can only be considered compensable work factors if there is probative evidence of error or abuse.<sup>19</sup>

Regarding appellant's allegation that the employing establishment violated her privacy by improperly investigating her conversations with her friend, and sending an e-mail regarding this situation and reassigning her to other units when her friend was admitted to her unit, M.M., an employing establishment manager, contended that the employing establishment did not violate appellant's privacy. She explained that the social media messages were not retrieved from an

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

<sup>14</sup> See *J.R.*, Docket No. 20-1382 (issued December 30, 2022); *L.J.*, Docket No. 20-0998 (issued December 14, 2022); *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>15</sup> *Supra* note 8.

<sup>16</sup> *R.M.*, Docket No. 22-0472 (issued October 16, 2023); *F.R.*, Docket No. 20-0793 (issued December 13, 2022); *M.B.*, Docket No. 20-1407 (issued May 25, 2022); *J.T.*, Docket No. 20-0390 (issued April 2, 2021).

<sup>17</sup> See *D.C.*, Docket No. 23-1068 (issued March 15, 2024); *M.C.*, Docket No. 18-0585 (issued February 13, 2019).

<sup>18</sup> *C.L.*, Docket No. 22-0499 (issued June 4, 2024); *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

<sup>19</sup> See *supra* note 17.

employing establishment system of records. M.M. further explained that while appellant's actions violated the employing establishment's information security policy, there was no compromise of employing establishment data, and, thus, no breach had occurred. Additionally, M.M. explained that the e-mail sent by P.B. provided appropriate information to the unit managers who had a legitimate business need to know about appellant's relationship with her friend. D.B., an employing establishment human resources specialist, explained that the employing establishment had an obligation to investigate the conversations between appellant and her friend, on a government-owned tablet, due to a perceived violation of the employing establishment's ethical behavior policy. She maintained that the employing establishment was committed to ensuring that there were no privacy violations, conflicts of interest, or inappropriate relationships between patients and employees at work. While D.B. acknowledged that an e-mail was sent to the entire mental health unit regarding the employing establishment's ethical behavior policy, she maintained that appellant was not identified in the e-mail. B.G., an employing establishment human resources specialist, denied that the friend's social media page was accessed by the employing establishment, and it monitored appellant's communication with the veteran after his discharge. Rather, he maintained that it merely logged him off the tablet on March 22, 2022, after he had been discharged from the hospital. P.B., an employing establishment administrator of inpatient mental health and medicine, explained that appellant was floated to another work area because it was ethically inappropriate to retain an employee on unit 9W when there was an identified personal conflict involving a family/friend relationship. Further, although appellant claimed that her friend was never her patient, T.S., an assistant nurse manager on appellant's unit, noted that appellant was his nurse, and made multiple medical chart entries between August 6 and 9, 2022. F.C., appellant's manager, related that a clinical ethical consultation found that appellant voluntarily disclosed her social/friend relationship with her veteran friend, and recused herself from providing/participating in his medical care or accessing his medical records. T.S. noted that no disciplinary actions were taken against appellant. Based on the statements of M.M., B.G., D.B., P.B., T.S., and F.C., the Board finds that appellant has not submitted evidence of error or abuse by the employing establishment in these administrative 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>20</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 her burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

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<sup>20</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 January 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 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