

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

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| _____ )                               |                                   |
| W.K., Appellant )                     |                                   |
| and )                                 |                                   |
| DEPARTMENT OF HOMELAND SECURITY, )    | <b>Docket No. 22-0404</b>         |
| U.S. CUSTOMS AND BORDER PROTECTION, ) | <b>Issued: September 30, 2024</b> |
| San Francisco, CA, Employer )         |                                   |
| _____ )                               |                                   |

*Appearances:* *Case Submitted on the Record*  
*Stephanie N. Leet, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 26, 2022 appellant, through counsel, filed a timely appeal from a January 7, 2022 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 an 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, as alleged.

## FACTUAL HISTORY

On April 30, 2019 appellant, then a 53-year-old supervisory customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that she sustained depression, anxiety, and a stress disorder causally related to factors of her federal employment. She explained that she had received disparaging e-mails from management as a result of a whistleblowing incident. Appellant stopped work on March 14, 2019.

In a development letter dated May 9, 2019, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It afforded her 30 days to respond.

Subsequently, OWCP received an e-mail dated December 19, 2018 from appellant to Watch Commander F.B. and Chief A.C. Appellant related in the e-mail that she was unsure how testing had gotten behind, but noted that her location had only three officers and a supervisor. She maintained that the problem resulted from over targeting.

In a statement dated May 17, 2019, appellant related that she had transferred to a new duty station in October 2018. She sent an e-mail on December 5, 2018 to W.M., a fellow supervisor, and A.C., expressing concerns about targeting formulas and late holds placed by W.M. Beginning December 7, 2018, appellant became afraid to open e-mails from A.C. or F.B. She related that at times she arrived at work one to two hours early to have time to answer e-mails before beginning her regular duties. Appellant described her work duties, including answering e-mails, testing drugs in a laboratory for seizing, and maintaining inventory. After the December 5, 2018 e-mail, she alleged that W.M. came to her work location and listened to her officers' conversations without telling her that he was in the building. Appellant's subordinates complained so she bought door chimes for the office's front and back doors. F.B. instructed her to remove the chimes.

Appellant related that A.C. and W.M. explained to her that the late holds were part of a plan to circumvent a conspiracy to avoid inspection. She questioned why as a supervisor she had not been informed. Appellant asserted that she did not receive adequate training. She asked M.L., an officer, to assist her with computerized schedule keeping for a split schedule, but F.B. told him not to help her. W.M. overwhelmed appellant with targeting when she had only two officers on duty. She believed that she was being set up to fail. Appellant told A.C. that she had to balance performing administrative work and assisting the regular staff and overtime workers open boxes. A.C. responded that overtime officers complained that appellant was not helpful.

Appellant asserted that on January 7, 2019 she received an e-mail accusing her of sleeping while at work. She attributed the e-mail to her criticism of W.M., who was a favorite of F.B. At a meeting in mid-January 2019, F.B. told appellant that she was sending her to another location to receive training from W.M. She responded that she had received a hardship transfer to work in the current location.

On February 5, 2019 appellant began working in the new location. She indicated that she did not have a printer or computer monitor. F.B. and A.C. criticized appellant in front of other officers. On March 13, 2019 appellant began a muster at A.C.'s request. When she asked the officers if they had questions, A.C. yelled that they should be in training. Appellant maintained that she had been bullied and punished after sending the e-mail on December 5, 2018 because she had tried to resolve an issue. She asserted that she was moved to the new location so that she would give up.

In a May 13, 2019 response to OWCP's development letter, appellant advised that she experienced growing anxiety beginning on December 7, 2018. She related that her supervisor blamed her instead of W.M. for late targeting.

Appellant listed individuals that could be reached to verify her allegations of harassment. On May 20, 2019 she related that F.B. and A.C. had violated the employing establishment's harassment policy, resulting in an officer's resignation.

In a development letter dated September 20, 2019, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and description of aspects of her job considered stressful. It afforded 30 days for the submission of the requested information.

On October 16, 2019 the employing establishment requested an extension of time to respond. It also requested clarification of various issues. OWCP granted an extension until November 18, 2019.

In an e-mail dated October 24, 2019, A.C. requested additional medical documentation in support of appellant's request for continued leave without pay (LWOP).

By decision dated December 9, 2019, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable factors of employment.

On December 27, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on April 17, 2020. Appellant related that she had worked for the employing establishment since 1998. The employing establishment reassigned her in October 2018 to a Federal Express (FedEx) location as a supervisor overseeing operations. Appellant described her work duties, including targeting a certain number of packages from FedEx planes to search for contraband. Her supervisors wanted a daily total of 200 shipments targeted. Appellant supervised four officers, four enforcement officers, and one agricultural officer. In December 2018, three officers went out on leave, including one on extended sick leave. Appellant did not receive any help except for officers that come in overnight to pull shipments to add to the workload. She advised that her job duties were time sensitive as FedEx advertised overnight service. Appellant became stressed in December 2018 and January 2019 because she could not catch up with her job duties. On December 17, 2018 the usual number of 200 shipments to target increased to 301 even though it was only appellant and two trainees in the office. Appellant's unit fell behind because she had to spend time helping her trainees with the shipments instead of performing her supervisory duties. During this time, she became tired and worried that she could not complete her work because she had 200 shipments targeted and only half of her unit. Appellant

sought medical treatment and her physician took her off work on March 13, 2019. She maintained that she had not received adequate training for her new position. After December 5, 2018, appellant's subordinates complained about another supervisor overhearing their conversations and harassing them.

Counsel indicated that appellant had an excessive workload, was understaffed, and experienced a stressful environment from trying to complete time-sensitive duties that could threaten lives if she missed packages. She described how officers targeted items for inspection before the plane landed. They tested the shipments for drugs in a laboratory, wrote reports on and seized shipments positive for drugs, and shipped them off.

Appellant related that the criticism she and her senior officers received from management after December 5, 2018 was destructive rather than constructive. She maintained that, as a supervisor, it was part of her work duties to report harassment. Appellant indicated that she had received verbal complaints from her officers. She wrote a letter about harassment directed against her to upper management, but received no response. Appellant received letters threatening to fire her.

Subsequently, OWCP received a statement from appellant again describing the events that she maintained had caused her stress-related condition.

In a statement dated May 13, 2020, appellant's counsel related that she had attributed her stress-related condition to work incidents occurring in the performance of duty. She noted that on December 17, 2018 appellant had to review an additional 100 shipments without assistance. One of appellant's subordinates retired in January 2019. Appellant requested a replacement, but none was provided. She had to perform the duties of both an officer and a supervisor "as they were understaffed and overworked in a highly stressful environment scanning packages for contraband and other harmful materials in a time sensitive manner." Counsel noted that the employing establishment had not contested any of appellant's allegations and cited 20 C.F.R. § 10.117.

Subsequently, OWCP received an October 19, 2018 e-mail from A.C. to appellant indicating that the daily number of examinations should be above 150, with 200 as the standard. In an e-mail dated December 20, 2018, A.C. confirmed that 301 examinations were conducted the prior night. In an undated e-mail to A.B. and F.B., appellant indicated that she had put up door chimes for her officers' peace of mind.

In a March 26, 2019 letter to management, appellant described the work factors that she believed caused her stress, including harassment and mismanagement.

In a sworn statement dated December 23, 2019, A.R., a retired officer with the employing establishment, advised that he had worked at the FedEx location from 2017 until 2019 and that appellant was his supervisor. During this time, Supervisor W.M. would observe them unannounced and report if they missed targets. A.R. related that the micromanaging vastly increased their workload and created a hostile environment, so he retired.

By decision dated July 2, 2020, OWCP's hearing representative vacated the December 9, 2019 decision. She found that OWCP had not clearly explained why the work factors identified by appellant as causing her condition were not compensable. The hearing representative further noted that the employing establishment had failed to comment on the matter. She remanded the

case for OWCP to request comments from the employing establishment by a knowledgeable supervisor.

In a July 8, 2020 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It advised that it could accept appellant's allegations as factual absent a full response pursuant to 20 C.F.R. § 10.117(b). OWCP afforded 30 days for the submission of additional evidence.

In a statement dated August 6, 2020, W.M. related that the late holds he placed were no greater than those of other employees. He denied sneaking into FedEx and listening to conversations and advised that on November 9, 2018 he was assigned to provide training to appellant. W.M. maintained that he provided training to appellant on numerous occasions, but she avoided his training. He denied flooding FedEx with excess targeting on December 19, 2018, noting that he did not work overtime on that date.

In a statement dated August 7, 2020, H.B., Assistant Chief Counsel with the employing establishment, asserted that appellant's allegations of misconduct, training, her position, and instructions from superiors were not within the purview of FECA. She noted that the employing establishment disagreed with her "characterization of events, workflow, and [a]gency policies and procedures." H.B. advised that appellant received adequate training and that F.B. and A.C. had assisted her with her work.

In an August 7, 2020 statement, A.C. denied that F.B. had told appellant that W.M. would oversee operations at her location. He disagreed that holds should be placed on cargo only prior to an aircraft landing. A.C. advised that employees other than W.M. placed late holds on shipments and denied that W.M. had entered FedEx without anyone knowing. He asserted that appellant and her staff had received adequate training. He related that W.M. did not flood appellant's location with excess targeting on December 19, 2018. A.C. advised that as the only supervisor at FedEx, appellant had to balance her administrative duties and duties as an inspector. He indicated that she had five hours for daily administrative duties. A.C. instructed appellant to supervise nightly floor examinations, but staff reported that she was rarely seen. He denied accusing her of sleeping at work, instead noting that an e-mail advised that she should remove her reclining chair. A.C. maintained that appellant had not received a hardship transfer to the work location. He indicated that she did not have a printer or monitor when she began work on February 5, 2019 because the location had moved and there was insufficient equipment. A.C. related that at a muster on March 12, 2019 appellant had released employees for the daily duties, and he had to instruct officers to go to training instead.

In an August 7, 2020 statement, F.B. related that appellant began working as the only first-line supervisor at the FedEx facility on October 14, 2018. She trained appellant on the automated scheduling system. On December 14, 2018 appellant sent an e-mail requesting assistance on December 17, 2018, and five individuals were assigned to assist her. F.B. informed her that there were deficiencies in her location that needed to be addressed. She went to the facility on December 19, 2019. Appellant was upset that she had removed the door chimes because she wanted to know when W.M. came to the facility. F.B. decided that appellant needed to be in a facility with other managers present and moved her to another location. She had problems performing tasks, following instructions, and learning processes.

Subsequently, OWCP received heavily redacted memoranda and e-mails. In a December 5, 2018 e-mail, appellant requested that A.C. speak with W.M. about late targeting. In a separate e-mail of even date, she asked W.M. to ascertain whether the flights he targeted were still in flight. In a December 15, 2018 e-mail, appellant advised that she would be shorthanded on December 17, 2018 and that she would come in early. A.C. responded that she and others could help after their shift ended.

In a December 17, 2018 e-mail, F.B. questioned how appellant's location had gotten behind on testing and advised that she needed to review her operation and determine what was wrong. She noted that FedEx told her that some shipments had been there for days. F.B. informed appellant that she should also be testing shipments. She noted that she did not want another employee out as they were short-staffed and had more work than workers.

In a December 18, 2018 e-mail, F.B. advised appellant that her duties as a supervisor were both operational and administrative. She related that she was aware that appellant had limited staff and advised that she should notify A.C. if they could not target many shipments due to staffing. F.B. noted that appellant had two new employees who needed to be trained and asserted that the senior officers needed to help them to prevent "burn out." In a December 27, 2018 e-mail, F.B. provided appellant information about the budget spreadsheet, Outlook, leave, training, targeting, and system access. She advised that W.M. would continue to come to FedEx to assist with training and targeting. F.B. indicated that she, W.M., and A.C. would continue to visit the facility and noted that there was no expectation of privacy in the workspace.

In an e-mail dated January 10, 2019, A.C. related that staffing was a concern throughout the employing establishment and that appellant needed to work within the staffing levels. He noted that overtime was available to supplement her staff. A.C. informed appellant of shortcomings at her locations that she needed to correct. In a March 12, 2019 e-mail, A.C. requested that appellant provide a list of training that she required.

In a response dated March 10, 2021, F.B. indicated that, regarding targeting 200 shipments daily, she had advised appellant in writing that if there was justification it was acceptable to limit targeting. She related that appellant did not have to review 200 shipments within two to three hours per day. F.B. advised that it was the responsibility of FedEx to present packages for inspection and that examining packages was not stressful or time sensitive. Packages appeared throughout the shift rather than all at once. F.B. related that she could add overtime personnel if needed and that if they missed a shipment with contraband, it would not be discovered. She asserted that officers on overtime filled staffing gaps in December 2018. F.B. confirmed that two officers assigned to appellant's facility were out in December 2018. She maintained that appellant's tasks rarely involved short deadlines and that she waited until the last minute to perform assigned tasks. F.B. denied that the facility was inadequately staffed on December 17 and 18, 2018 and indicated that targeting 301 shipments was only for that day. She asserted that appellant had the responsibility to assign duties to officers and that her duties as a supervisor including performing inspections. F.B. advised that a coworker's retirement had occurred after appellant had been told of her reassignment to another facility. She informed appellant that employees had no expectation of privacy in the workspace and should not engage in private conversations. F.B. asserted that she had received adequate training on administrative systems.

F.B., in a letter dated March 25, 2021, reviewed appellant's request for reinstatement with reasonable accommodation. She described appellant's job duties and noted that to perform those duties she must "be able to complete work and tasks timely, sometimes with short deadlines, and handle situations that may be complicated and/or stressful in nature." F.B. found that no reasonable accommodation was available given appellant's limitations.

By decision dated August 30, 2021, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable employment factors.

In a notarized statement dated September 16, 2021, L.S., a retired officer with the employing establishment, advised that she had worked from 2015 to 2020 at the FedEx location. When employees retired they would be short staffed as replacements would not arrive until the next rotation. L.S. advised that overtime help left before the shift ended. She related that W.M. would hide in cubicles and spy on employees. L.S. asserted that being short-staffed put stress on her supervisor and that the environment was hostile.

On September 21, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an accompanying statement of even date, she asserted that management had retaliated and discriminated against her for "doing the right thing." Appellant related, "My officers begged me to get more officers to assist with the mounting seizures that were time sensitive." She maintained that management did not understand that the ratio of officers to targeted shipments was off. Appellant advised that her unit was unable to catch up after an additional 101 shipments were targeted on December 17, 2018. She advised that she was so busy that she had to eat before work or have no food. Appellant related, "The over targeting and spying tactics on my unit caused a great deal of stress, confusion, and anger amongst my officers." She noted that her reports became an issue only after she sent the December 5, 2018 e-mail about W.M. Appellant indicated that the employing establishment did not increase the ratio of officers to workload during the holiday season even though shipments spiked. She asserted that she and her staff sometimes worked 12- to 14-hour shifts to seize drugs and noted that during her time her officers seized more than 16 shipments of a date-rape drug. Appellant related that with reduced staff any abnormal targeting would send the "operation into a tailspin."

On September 29, 2021 counsel indicated that neither she nor appellant had received copies of the employing establishment's statements, but that, based on a review of OWCP's decision, it appeared that they had failed to comment on the "amount of work, work processes, staffing, and time constraints" as requested by OWCP's hearing representative. She asserted that appellant had two to three hours each day to review 200 daily shipments. On December 17, 2018 appellant was assigned an additional 100 files to review without help. One of appellant's subordinates retired in January 2019 and she requested, but did not receive, a replacement. Counsel related, "[Appellant] was forced to work as an officer and a supervisor as they were understaffed and overworked in a highly stressful environment scanning packages for contraband and other harmful materials in a time sensitive manner." She indicated that the employing establishment had not controverted appellant's description of her work duties. Counsel asserted that OWCP had not addressed her allegations that she worked under time constraints, was understaffed, and overworked. She noted that emotional reactions from an employee trying to meet the duties of his or her position was compensable.

By decision dated January 7, 2022, OWCP's hearing representative affirmed the August 30, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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, that an injury was sustained 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. 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.<sup>4</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>5</sup>

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>6</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>7</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>8</sup> Where, however, the evidence demonstrates that the employing establishment either erred or acted abusively in

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<sup>3</sup> *Id.*

<sup>4</sup> *M.H.*, Docket No. 21-1297 (issued December 20, 2022); *C.V.*, Docket No. 22-0078 (issued November 28, 2022); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</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>6</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>7</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>8</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).



discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>9</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>10</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>11</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>13</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant attributed her emotional condition, in part, to overwork performing the regular or specially assigned duties of her position as a customs and border patrol agent. The Board has held that overwork may be a compensable factor of employment if sufficient evidence substantiates the allegation.<sup>14</sup> Appellant described her time-sensitive work duties, including targeting items for inspection before planes landed, testing the shipments for drugs in a laboratory, and writing reports on seized shipments. She asserted that she had difficulty balancing her administrative work as a supervisor and performing work as an officer. In December 2018 multiple officers went on leave and the overnight help that she received pulling shipments increased the workload. Appellant maintained that on December 17, 2018 the number of shipments targeted increased from 200 to 301 even though only herself and two trainees were in the office. Her unit fell behind following December 17, 2018, and were unable to catch up.

The Board finds that appellant has submitted evidence corroborating her allegation of overwork. On December 15, 2018 appellant indicated that she would be shorthanded on December 17, 2018 and that she would arrive to the office early. In a December 17, 2018 e-mail,

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<sup>9</sup> See *C.J.*, Docket No. 19-1722 (issued February 19, 2021); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>10</sup> See *J.C.*, Docket No. 22-0254 (issued November 29, 2022); *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>11</sup> *A.E.*, *supra* note 7; *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>12</sup> *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

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

<sup>14</sup> *A.S.*, Docket No. 23-0007 (issued August 16, 2023); *W.J.*, Docket 20-1226 (issued January 6, 2023); *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *J.E.*, Docket No. 17-1799 (issued March 7, 2018).

F.B., a supervisor, told appellant that her office had fallen behind on testing. In a separate e-mail of even date, she informed appellant that she did not want another employee out as they were short-staffed and had too much work for the number of workers. On December 18, 2018 F.B. related that she knew that appellant had limited staff and two new employees to train. In a January 10, 2019 e-mail, A.C. acknowledged that staffing was a problem throughout the employing establishment and recommended overtime as a means to supplement staffing. On December 23, 2019 A.R., who worked at appellant's location from 2017 until 2019, related that micromanaging had resulted in a vastly increased workload. In an August 7, 2020 statement, F.B. noted that appellant was the only first-line supervisor at the FedEx facility beginning October 14, 2018. She provided five individuals to assist her on December 17, 2018 and noted that there were deficiencies at the location. In a March 10, 2021 statement, F.B. confirmed that 301 shipments had been targeted at appellant's location on December 2018 and that two officers assigned to appellant's facility were out in December 2018. In a letter dated March 25, 2021, she denied appellant's reasonable accommodation request as she had to "be able to complete work and tasks timely, sometimes with short deadlines, and handle situations that may be complicated and/or stressful in nature." On September 16, 2021 L.S., a retired officer who worked at the employing establishment during part of the same time as appellant, confirmed that there were staff shortages and that the workload created stress. She also related that overtime help would leave before the end of the shift and that being short-staffed had placed stress on appellant.

The evidence supports that appellant had reduced regular staff in December 2018, an increase in workload, and that she was unable to keep up with the work required. The evidence also supports that her work had short deadlines and she had to deal with complicated and stressful situations in a timely manner. The Board thus finds that appellant has established overwork as a compensable employment factor.<sup>15</sup>

Appellant further attributed her condition to administrative or personnel matters, specifically the employing establishment failing to provide her with adequate training and transferring her to a new work location in February 2019.

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 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.<sup>17</sup>

Regarding appellant's allegation that she did not receive sufficient training, the Board notes that an emotional reaction to performing duties without adequate training is compensable.<sup>18</sup>

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<sup>15</sup> *B.K.*, Docket No. 23-0679 (issued January 18, 2024); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *J.E.*, *id.*

<sup>16</sup> See *Thomas D. McEuen*, *supra* note 8.

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

<sup>18</sup> See *P.B.*, Docket No. 19-1673 (issued December 1, 2021); *M.S.*, Docket No. 19-1589 (issued October 7, 2020).

However, she has not submitted any evidence supporting her allegation that she was insufficiently trained. F.B. advised that she had trained appellant on the automated scheduling system on December 14, 2018. W.M. asserted that he was assigned to provide training to appellant. As appellant has not submitted any evidence supporting her allegation that she was not provided the requisite training to perform her job, she has failed to meet her burden of proof to establish error or abuse.<sup>19</sup>

Appellant further attributed her condition to being transferred to a new work location. The Board has held that an emotional condition resulting from an involuntary transfer is not compensable absent a showing of error or abuse.<sup>20</sup> In an August 7, 2020 statement, F.B. related that she had moved appellant to another facility so that she would have other managers present. Appellant has not submitted any evidence corroborating her allegations of error or abuse by the employing establishment in transferring her to a new location and, thus, has not established a compensable employment factor.<sup>21</sup>

Appellant further related that management harassed her after she sent an e-mail to W.M. and A.C. regarding late holds placed by W.M. She maintained that management accused her of sleeping at work. Appellant contended that W.M. came to her work location in secret and listened to her officers' conversations. When her officers complained, she put up door chimes, but F.B. told her to remove the chimes. After her transfer, appellant related that she did not have a printer or computer monitor. She contended that at the end of muster that she gave on March 13, 2019, she asked her officers if they had questions and A.C. yelled at her that the officers should be in training.

In an August 7, 2020 response, A.C. denied accusing appellant of sleeping at work. He advised that he had requested that she remove a reclining chair from her office. A.C. further related that appellant did not have a printer or monitor at the time she began work in the new location on February 5, 2019 because the location had recently relocated and there was insufficient equipment. He indicated that at the March 12, 2019 muster appellant had released her officers to their daily duties and he had to tell them to go to training. F.B., in a December 17, 2018 e-mail, told her that W.M. would continue to visit the facility and that she had no expectation of privacy.

The Board finds that appellant has not submitted any corroborative evidence to establish a factual basis for her harassment allegations. As noted above, for harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>22</sup> Mere perceptions of harassment or discrimination are not compensable under FECA. Based on the evidence of record, the Board

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<sup>19</sup> See *J.C.*, *supra* note 10.

<sup>20</sup> *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *Andrew J. Sheppard*, 53 ECAB 170 (2001).

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* note 8.

finds that appellant has not established, with corroborating evidence, that she was harassed by the employing establishment.<sup>23</sup>

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Thus, the Board will set aside OWCP's January 7, 2022 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factor of overwork.<sup>24</sup> After other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional condition claim.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 7, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 30, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>23</sup> *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *Y.B.*, Docket No. 16-0194 (issued July 24, 2018).

<sup>24</sup> *E.A.*, *id.*