

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

J.C., Appellant)

and)

DEPARTMENT OF DEFENSE, DEFENSE)
LOGISTICS AGENCY, Fort Belvoir, VA,)
Employer)
-----)

**Docket No. 24-0280
Issued: September 27, 2024**

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 January 26, 2024 appellant filed a timely appeal from November 9, 2023 and January 25, 2024 merit decisions 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 to consider the merits of this case.

ISSUE

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

FACTUAL HISTORY

On August 14, 2023 appellant, then a 56-year-old personnel management specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2023 he sustained severe anxiety,

¹ 5 U.S.C. § 8101 *et seq.*

a panic attack, reduced concentration, restlessness, insomnia, racing thoughts, hypertension, headache, and dizziness when he was “berated, belittled and verbally assaulted in a meeting with senior leaders” while in the performance of duty. He stopped work on August 7, 2023.

In a development letter dated August 15, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his 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 August 24, 2023 response, appellant explained that, during a meeting on August 1, 2023, the employing establishment’s Director questioned him about his slide-show presentation, and his questions “became aggressive and accusatory turning into a tirade.” He also attacked appellant’s character and asked what he did all day. The other senior managers present during the meeting failed to intervene. Appellant’s supervisor subsequently asked how appellant was doing and indicated that “she had never seen the Director that angry.” The next morning, appellant’s supervisor apologized to him for the incident and told him that “she thought the Director’s tone was rude and disrespectful.” Appellant explained that he became anxious when his supervisor told him he would still have to attend future meetings. He had a panic attack when the Deputy Director added his name to an all-person meeting.

A hospital record dated December 7, 1998 indicated that appellant was admitted on November 30, 1998 and was diagnosed with bipolar disorder. Appellant further submitted an August 17, 2023 report wherein Dr. John W. Ellis, a physician Board-certified in family medicine, noted his evaluation of appellant for anxiety, depression, panic attacks, and post-traumatic stress disorder (PTSD).

On August 28, 2023 OWCP again requested that the employing establishment review and discuss appellant’s allegations and provide information regarding the above-described exchange between appellant and his supervisor. It afforded the employing establishment 30 days to respond.

In a follow-up letter dated September 8, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence of record remained insufficient to establish his claim. It noted that he had 60 days from the August 15, 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. No additional evidence was received.

In a September 13, 2023 response, the employing establishment disagreed that a supervisor had acted abusively or harassed appellant. It further noted that appellant had a 100 percent service-connected disability rating based on an emotional condition.

In a statement dated August 22, 2023, J.C., a Deputy Director, related that appellant had been the lead briefer during a meeting on August 1, 2023, regarding the Human Capital Operating Plan (HCOP). Appellant’s supervisor, L.C., and J.J., a senior strategic adviser, also attended the

meeting. J.C. related that appellant had provided minimal updates not reflective of three months of work. D.H. questioned appellant in a normal tone about his efforts, and then asked, “more pointedly what he had been working on....” He then reminded appellant of his grade and long-standing work experience.

In a statement dated August 24, 2023, J.J. related that during an August 1, 2023 meeting appellant’s supervisor, L.C., requested that he provide an update on the status of the HCOP plan. Appellant went through slides, but had “difficulty clearly articulating and talking through how he came to those initiative categories.” D.H. asked questions that appellant tried to answer by flipping back and forth among slides. He also asked why some initiatives were not included and appellant “indicated he presented what he was provided.” D.H. suggested he should have known to focus on initiatives in the upcoming year and stopped the presentation. He asked that appellant and L.C. “revise the update and ensure the HCOP document is being developed as expected.”

The record contains an undated statement from L.C., who advised that she and appellant met with D.H., J.J., and J.C. to provide an update on the HCOP project. After the meeting, L.C. met with J.C. to express her frustrations. She told him that appellant was new to the HCOP project. J.C. responded that, as a senior employee, appellant should have reached out for help. L.C. met with appellant the next day, and he indicated that he felt that his integrity had been attacked. She told him J.C. had talked about what a good job he had done covering for her in the past, and explained that they would develop a plan to get the HCOP project completed. L.C. advised that she disagreed with appellant’s claim. She maintained that D.H. had questioned him because of the lack of work reflected by the HCOP update.

In an August 29, 2023 e-mail to the employing establishment’s human resources team, L.C. included a transcript of the conversation that she had with appellant after the August 1, 2023 MS Teams meeting. During that transcribed conversation, L.C. communicated to appellant that she was not expecting this, and he responded that he was not either. She asserted that she could not express her anger and that they would talk in the morning and determine a strategy for updating the project.

On September 14, 2023 the employing establishment referenced the above-noted witness statements, but maintained that appellant had not established his allegations with corroborating evidence.

In a September 26, 2023 statement, D.D., an Associate General Counsel, related that D.H. had calmly asked appellant pointed questions after the briefing about what he had worked on for the past three months because the product did not meet expectations. He denied that appellant was verbally assaulted by D.H. D.D. advised that the conversation between appellant and his supervisor was available on MS Teams and nothing had been deleted.

On October 11, 2023 appellant disputed the employing establishment’s contentions.

Appellant submitted a transcript of a telephone call between himself and his supervisor on August 2, 2023. He advised that he did not “appreciate my integrity and character being in question” and that it was bad leadership to ask him what he did all day. L.C. responded that she had spoken with J.C. after the meeting and told him that she believed that D.H. had been

“borderline rude,” knocked appellant down, and “drug him through the mud.” L.C. took responsibility for any problems with the update and advised that they had felt blindsided. She indicated that she was going to work with him on the project.

In an October 9, 2023 statement, appellant asserted that his performance on the work product was not the issue, but rather that he was subjected to verbal abuse on August 1, 2023. He argued that stress carrying out assigned duties was compensable. Appellant advised that evidence established that the alleged verbal abuse occurred, as evidenced by the conversation he had recorded with L.C. on August 2, 2023. He asserted that her comments supported that he was belittled and verbally abused rather than being “unjustly chastised for a mere work assignment.” Appellant related that J.C.’s comments regarding his work product were unverified and retaliatory in nature. He asserted that he had not been properly trained for the project and that the prior managers leading the effort were of a higher grade. Appellant related that he had conducted 15 other workshops during this period and was praised for his preparation.

On October 13, 2023 OWCP requested that the employing establishment review appellant’s statement that D.H. made inappropriate remarks and false statements on August 1, 2023. It afforded the employing establishment 30 days to submit the information.

On October 20, 2023 L.C. advised that the statements she made to appellant immediately after the August 1, 2023 meeting resulted from her frustration and did not represent her “considered opinion upon reflection.” She related, “After the passage of just a few days and after pondering the matter, I came to the conclusion that [D.H.’s] questions and comments were not inappropriate, were not intimidating and were, in fact, the natural result of a lack of preparedness on my part and [appellant’s] part.”

In a supplemental statement dated October 23, 2023, J.C. advised that he had attended the virtual meeting on August 1, 2023 and “witnessed nothing out of the ordinary course of business.” He related that D.H. did not raise his voice or threaten appellant. J.C. indicated that he was L.C.’s supervisor and that she often reacted emotionally. He maintained that D.H. acted professionally “in all circumstances” and that when performance fell short of expectations, he would ask questions and make recommendations.

In a November 2, 2023 supplemental statement, D.D. noted that the employing establishment did not have a transcript of the purported conversation that appellant recorded with one of its employees. Regarding appellant’s allegations, he related, “This was a virtual meeting. At worst [appellant] was asked ‘pointed’ questions and someone was ‘borderline’ rude to him. [L.C.] (by her own admission an emotional person) said it was as if [he] had been ‘dragged through the mud.’” D.D. noted that appellant was not assaulted or even touched, did not show trauma during the meeting, and “finished the meeting without incident.” He advised that it was not credible that the events that appellant reported caused his condition.

In a November 2, 2023 statement, D.H. related that a virtual meeting was held on August 1, 2023 regarding the HCOP. Those in attendance included himself, J.C., L.C., and J.J. After appellant’s update, D.H. asked him “very specific questions related to the topic. I was so surprised by the lack of progress that I thought it was possible that there were other things that precluded him from applying focus to this specific effort.” D.H. related that it became clear that appellant

had not obtained information or engaged with coworkers. He asserted that while disappointed he had stayed professional and asked questions “in a calm and rationale tone.” D.H. advised that when employees did not accomplish tasks satisfactorily, he did not “browbeat or intimidate,” but instead asked pointed questions to identify the reason for the failure and suggest solutions. He advised that appellant seemed agitated and defensive but not traumatized as he asked questions. D.H. noted that appellant was a long-time employee who had participated in similar projects.

On November 6, 2023 appellant asserted that the employing establishment submitted false statements, noting that OWCP had provided the employing establishment with a copy of the transcript. He maintained that it had failed to refute the contents of the transcript. Appellant related that he was not visible to D.H. during the meeting, and thus it was not possible for him to know if he seemed traumatized or fearful. He noted that after he stopped work it took six people working over two months to complete the project. Appellant submitted e-mails from L.C. thanking five other individuals for their work on the project over the prior month.

On November 6, 2023 OWCP requested that the employing establishment advise whether appellant had submitted an audio recording and asked whether it wished to comment on the transcript. It noted that he had alleged perjury by the employing establishment in its responses.

By decision dated November 9, 2023, OWCP denied appellant’s emotional condition claim. It found that he had not factually established the events occurred as alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 16, 2023 appellant requested reconsideration. He maintained that it was not relevant whether D.H. raised his voice as the verbal attack created a hostile work environment, as evidenced by L.C.’s statements. He noted that L.C. had removed him from briefing duties after the incident.

OWCP subsequently received evidence, including e-mails setting up the meeting regarding progress on the HCOP project.

By decision dated January 25, 2024, OWCP denied modification of its November 9, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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

² *Id.*

³ *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).

the employment injury.⁴ 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.⁵

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.⁶

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.⁷ 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.⁸

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.⁹ Where 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.¹⁰

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which establishes that the acts alleged or implicated by the employee did,

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125 (1976).

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

⁹ *See D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹⁰ *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kim Nguyen*, 53 ECAB 127 (2001); *William H. Fortner*, 49 ECAB 324 (1998). *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

in fact, occur.¹¹ Mere perceptions of harassment or discrimination are not compensable under FECA.¹² A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹³

ANALYSIS

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

The Board notes that appellant's allegations do not pertain to his regularly or specially assigned duties under *Cutler*.¹⁴ Rather, appellant attributed his condition to administrative or personnel matters.

Appellant alleged that he had received insufficient training for the HCOP project and that he received unwarranted criticism from D.H. In *Thomas D. McEuen*,¹⁵ the Board held that an employee's emotional reaction to administrative actions or personnel matters discharged by the employing establishment are 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.¹⁶

Regarding appellant's allegation that he did not receive sufficient training, the Board has held that an emotional reaction to being required to perform duties without adequate training is compensable.¹⁷ However, D.H. advised that appellant had worked on similar projects and was an experienced employee. As appellant has not submitted evidence supporting his allegation that he was not provided adequate training, he has not established error or abuse in this regard.¹⁸

¹¹ *D.F.*, Docket No. 24-0178 (issued April 5, 2024); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

¹² *D.F.*, *id.*; *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *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).

¹⁴ *See R.D.*, Docket No. 19-0877 (issued September 8, 2020); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 7.

¹⁵ *See Thomas D. McEuen*, *supra* note 10.

¹⁶ *M.B.*, Docket No. 29-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

¹⁷ *See P.B.*, Docket No. 19-1673 (issued December 1, 2021); *M.S.*, Docket No. 19-1589 (issued October 7, 2020).

¹⁸ *See J.C.*, Docket No. 22-0254 (issued November 29, 2022).

Appellant further alleged that D.H. committed error and abuse by criticizing his performance during a briefing on the HCOP project on August 1, 2023. He asserted that D.H. had questioned his character and integrity. The Board has long held that assessment of work performance is an administrative or personnel matter and can only be considered a compensable work factor if there is probative evidence of error or abuse.¹⁹ Appellant has not established that D.H.'s questioning of his performance during the August 1, 2023 meeting was unreasonable. Accordingly, the Board finds that the evidence does not support appellant's contention that the employing establishment committed error or abuse with respect to this administrative matter.²⁰

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

¹⁹ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *F.A.*, Docket No. 17-0315 (issued July 11, 2017); *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

²⁰ *See D.B.*, Docket No. 23-0858 (issued June 6, 2024); *C.J.*, Docket No. 22-0600 (issued November 10, 2022).

²¹ *See A.G.*, Docket No. 24-0113 (issued April 23, 2024); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2023 and January 25, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 27, 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