

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

M.A., Appellant	)	
	)	
and	)	Docket No. 24-0507
	)	Issued: September 4, 2024
DEPARTMENT OF THE ARMY, NATIONAL	)	
GUARD BUREAU, Arlington, VA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 16, 2024 appellant filed a timely appeal from a March 1, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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 to consider the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because of procedural delays, misinformation, and misinterpretation of evidence. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the caserecord. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

## FACTUAL HISTORY

On November 21, 2022 appellant, then a 43-year-old information technology management specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained post-traumatic stress disorder (PTSD) causally related to factors of his federal employment. He stopped work on April 23, 2022.

By memorandum dated August 12, 2021, the Department of Defense (DOD) notified appellant of its intent to revoke his eligibility to access classified information. In an accompanying statement of reasons (SOR), DOD advised appellant that he had indicated on a questionnaire that he had been hospitalized around February 2012 for a mental health condition. Appellant subsequently confirmed during an interview that he had been involuntarily hospitalized for 72 hours due to an emotional/mental condition caused by anxiety related to stress. He received treatment from a psychologist from 2013 to 2018. DOD indicated that it had sent appellant a request for a medical evaluation on June 2 and October 21, 2020 to determine whether he had a condition that could affect his judgment or reliability, but had received no response.

A notification of personnel action, (Standard Form (SF) 50), indicated that appellant was transferred to the employing establishment, effective September 12, 2021.

In a September 20, 2021 psychiatric evaluation for security clearance, Dr. Brian Crowley, a Board-certified psychiatrist, noted that appellant had been hospitalized in 2012 with a discharge diagnosis of psychotic disorder “in a setting of severe marital tension.” He indicated, however, that appellant had not taken psychotropic medication for years. Dr. Crowley found that appellant’s current medical status was good, and that he had no behavior or symptoms of a condition that would impair his judgment or reliability. He concluded that appellant was “fully eligible to maintain his security clearance.”

On February 8, 2022 the employing establishment formally suspended appellant’s access to classified information due to his history of hospitalization at a psychiatric institution. It noted that it had requested a medical evaluation in June 2020 to determine if he had a condition that affected his judgment or reliability, but that had received no response to its request.

In a February 14, 2022 memorandum, the employing establishment advised appellant that it proposed to indefinitely suspend him from his position for failing to attain and/or maintain a Top-Secret/special sensitive clearance and access to classified systems and information, a condition of employment. It noted that his prior employer had issued a preliminary decision in August 2021 revoking his eligibility to access to classified information. The employing establishment indicated that appellant had begun working for the employing establishment on September 12, 2021 in a position that required a Top-Secret/special sensitive security clearance. It was not aware of the proposed suspension until after his hire. On February 8, 2022, the employing establishment suspended appellant’s access to classified systems and information.

On April 11, 2022 the employing establishment suspended appellant indefinitely without pay or duty status, effective April 24, 2022, as he had failed to attain and/or maintain a Top-Secret/special sensitive security clearance, a condition of his employment.

On June 6, 2022 appellant resigned his position with the employing establishment. He maintained that the employing establishment had discriminated against him, violated due process, and lied about his ability to obtain a security clearance.

On October 17, 2022 the Equal Employment Opportunity Commission (EEOC) dismissed appellant's complaints as they duplicated matters raised in a pending Merit Systems Protection Board (MSPB) case.

In a development letter dated December 8, 2022, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. In a separate letter of even date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded both parties 30 days to submit the necessary evidence.

In a December 9, 2022 response, appellant maintained that the employing establishment constructively terminated him from his position on June 6, 2022. He resigned due to the unlawful termination. Appellant advised that he had PTSD from the documented events. He asserted that he had provided medical evidence in September 2021 showing that he had no mental condition. Appellant maintained that "gaslighting, mobbing, marginalizing, shunning, devaluing, double binding, career blocking, counter accusing, and bullying" led to his PTSD.

Subsequently, OWCP received appellant's response to the August 12, 2021 SOR from the employing establishment suspending his security clearance. Appellant advised that he had been hospitalized for 72 hours in 2012. On September 11, 2012 and November 8, 2019, he received a secret clearance. On April 16, 2021, appellant received an interim Top-Secret security clearance. He accepted an offer of employment with the employing establishment on August 4, 2021. On August 13, 2021 appellant learned that his Top-Secret security clearance "fell off" and on August 17, 2021 he received a SOR.

On January 17, 2023 the employing establishment controverted appellant's claim, noting that he had been suspended from April 25, 2022 until his voluntary resignation on June 6, 2022. It asserted that it was fraudulent for him to have filed a claim for compensation (Form CA-7) as he no longer worked for the employing establishment and requested that OWCP advise him that he could be subject to administrative penalties and criminal prosecution for requesting compensation.

In a January 27, 2023 response to OWCP's development letter, appellant asserted that the employing establishment illegally suspended him with pay on February 14, 2022. He reported discrimination to an Equal Employment Opportunity (EEO) counselor on April 5, 2022, but management failed to respond to his allegations. The employing establishment suspended appellant without pay on April 24, 2022. A physician diagnosed generalized anxiety disorder and PTSD. Appellant resigned on June 6, 2022 as he was not receiving pay. He noted that in

February 2012 he had received treatment in a psychiatric unit for a psychotic episode resulting from marital stress. Appellant was unconditionally released and had no recurrence of psychosis. He noted that Dr. Crowley had cleared him for work. Appellant attributed his PTSD to bullying and gaslighting.

By decision dated March 8, 2023, OWCP denied appellant's emotional condition claim, finding that he had not factually established that the claimed work factors occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On March 9, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On March 14, 2023, he asserted that he had submitted a request to the employing establishment for a copy of the investigations related to his whistleblower activity. On March 22, 2023 appellant requested that OWCP issue a subpoena compelling the employing establishment to address his work duties, staffing shortages, and to provide any additional information about his allegations, including witness statements.

In a statement dated March 17, 2022, appellant advised that security at the employing establishment completed his new hire request and informed him that adjudication for a Top-Secret security clearance was in progress. He subsequently received a SOR on August 12, 2021. On September 8, 2021, appellant began working for the employing establishment. He did not report any prior or current mental health issues. The employing establishment received the SOR, and he met with an individual who advised that a mental health evaluation would be conducted. Appellant indicated that he wanted to use his own physician. On February 2, 2022 management suspended his clearance due to information in the SOR.

On March 22, 2023 appellant requested a subpoena for investigative reports and memorandum of interviews regarding any investigations.

On April 25, 2023 the DOD challenged appellant's claim. It advised that the employing establishment had joint staff from multiple branches of the military, and that appellant was part of a subcommand under the Department of the Army. The employing establishment related that appellant had received an unfavorable security determination on February 8, 2022, and thus failed to meet a condition of employment. It placed him on an indefinite suspension pending his obtaining or regaining a clearance, but he resigned effective June 6, 2022. DOD advised that all documents had been provided by the Department of the Army.

Following a preliminary review, by decision dated July 6, 2023, OWCP's hearing representative vacated the March 8, 2023 decision. The hearing representative found that OWCP had failed to sufficiently explain the deficiencies in the claim or determine whether the alleged work factors were compensable employment factors.

Appellant subsequently submitted a motion related to a claim before the Supreme Court of Nevada, and a document regarding his MSPB claim now before the U.S. Court of Appeals for the Federal Circuit.

By *de novo* decision dated September 13, 2023, OWCP denied appellant's emotional condition claim. It found that he had factually established that he was suspended indefinitely for

failure to maintain a Top-Secret security clearance, a condition of employment. OWCP further found, however, that appellant's reaction to the suspension was not a compensable employment factor.<sup>3</sup> It determined that he had not established any compensable employment factors and, thus, had not sustained an emotional condition in the performance of duty.

On September 14, 2023 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a February 28, 2022 letter from the Office of Special Counsel (OSC) terminating its inquiry into alleged prohibited personnel practices. It noted that appellant alleged retaliation, including the revocation of his clearance, after he reported that a reorganization at his prior workplace was unlawful. OSC indicated that appellant alleged that the retaliation continued after he began working for the employing establishment and "disclosed issues with a contractor providing services outside the scope of the contract." OSC advised that he could file an individual right of action from the MSPB.

On December 1, 2023 appellant requested a review of the written record in lieu of an oral hearing.

On January 19, 2024 appellant advised that he had not received a response to his workers' compensation claim from the employing establishment regarding OWCP's December 29, 2023 development letter.

By decision dated March 1, 2024, OWCP's hearing representative affirmed the September 13, 2023 decision. The hearing representative found that there were no accepted events that constituted compensable factors of employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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

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<sup>3</sup> OWCP, in its decision, indicated that appellant's suspension for failure to maintain a condition of employment was an accepted factor of employment; however, it subsequently explained that his reaction was not a compensable employment factor.

<sup>4</sup> *Supra* note 2.

<sup>5</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).

the employment injury.<sup>6</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>7</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>8</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>9</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>10</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>11</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>12</sup>

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<sup>6</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>7</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).

<sup>8</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>9</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125 (1975).

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

<sup>11</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>12</sup> *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.<sup>13</sup> Mere perceptions of harassment are not compensable under FECA.<sup>14</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>15</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>16</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty.

Appellant has not attributed his condition to the performance of his regularly or specially assigned duties under *Cutler*.<sup>17</sup> Instead, he primarily attributed his condition to being suspended indefinitely for failure to maintain a Top-Secret security clearance, a condition of employment. In *Thomas D. McEuen*,<sup>18</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>19</sup>

Appellant has not submitted any evidence demonstrating that the employing establishment erred in suspending him indefinitely for failure to maintain a security clearance. Disciplinary matters such as letters of warning and notices of suspension are administrative actions and, as discussed, are not compensable unless it is established that the employing establishment erred or

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<sup>13</sup> 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).

<sup>14</sup> *Id.*

<sup>15</sup> *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>16</sup> *O.G.*, *id.*

<sup>17</sup> *Supra* note 9.

<sup>18</sup> See *Thomas D. McEuen*, *supra* note 11.

<sup>19</sup> *M.B.*, Docket No. 29-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

acted abusively in its administrative capacity.<sup>20</sup> Appellant did not provide any corroborative evidence to support his allegation that the employing establishment committed error or abuse in suspending him indefinitely. On April 25, 2023 the DOD advised that on February 8, 2022 appellant had received an unfavorable determination of his security clearance, and thus had not met a condition of employment. It suspended him indefinitely pending his obtaining or regaining a clearance, but he resigned effective June 6, 2022. The Board finds that the evidence of record does not establish that the employing establishment acted unreasonably in issuing appellant's indefinite suspension.<sup>21</sup>

Appellant additionally attributed his condition to harassment and discrimination by the employing establishment, asserting that it had bullied, marginalized, shunned, and devalued him, causing him to experience PTSD.

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.<sup>22</sup> However, the Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.<sup>23</sup> 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.<sup>24</sup>

While appellant generally alleged harassment and discrimination, he provided no credible corroborating evidence in support of his allegation, such as witness statements or other documentary evidence.<sup>25</sup> He also has not submitted the final findings on any complaint or grievance that he filed, such as a final EEO or MSPB decision.<sup>26</sup> As appellant has not submitted any evidence supporting harassment or discrimination by the employing establishment, he has not met his burden of proof to establish a compensable employment factor with respect to these allegations.<sup>27</sup>

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<sup>20</sup> See *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Sherry L. McFall*, 51 ECAB 436, 440 (2000).

<sup>21</sup> *R.A.*, Docket No. 21-0412 (issued January 10, 2023); *A.G.*, Docket No. 16-1261 (issued November 17, 2016).

<sup>22</sup> *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).

<sup>23</sup> See *C.C.*, Docket No. 21-0519 (issued September 22, 2023); *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>24</sup> *Id.*

<sup>25</sup> *R.M.*, Docket No. 22-0472 (issued October 16, 2023).

<sup>26</sup> See *M.E.*, Docket No. 21-1340 (issued February 1, 2023); *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

<sup>27</sup> See *D.F.*, Docket No. 24-0178 (issued April 5, 2024); *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *S.B.*, Docket No. 11-0766 (issued October 20, 2011).



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>28</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 his burden of proof to establish an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 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

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<sup>28</sup> See *B.O.*, Docket No. 17-1986 (issued January 18, 2019). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).