



## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

## **FACTUAL HISTORY**

On May 18, 2023 appellant, then a 39-year-old mechanical engineer, filed an occupational disease claim (Form CA-2) alleging that he experienced mental and emotional abuse from his supervisor humiliating, berating, and harming him in the course of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on May 8, 2023. Appellant stopped work that same date.

In a development letter dated May 22, 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 development letter dated May 22, 2023, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations, and an explanation of his work activities. OWCP afforded the employing establishment 30 days to submit the necessary evidence.

Appellant subsequently submitted a May 11, 2023 attending physician's report (Form CA-20) from Dr. Melanie Powell, an osteopath, diagnosing generalized anxiety disorder and insomnia. She checked a box marked "Yes" indicating that these conditions were caused or aggravated by employment activities, adding that the employing establishment's hostility had severely and needlessly aggravated these diagnoses.

On June 6, 2023 the employing establishment responded to OWCP's development letter and provided documentation, including an October 6, 2022 reasonable accommodation in the form of a reduced work schedule through December 29, 2022.

In an e-mail dated November 22, 2022, appellant's supervisor, A.V., assigned him audits and reviews of utility accounts. He required him to complete a minimum of two audits a week and explained that priority should be given to accounts with the highest outstanding balance without an audit file in the invoice folder.

On November 28, 2022 appellant informed his supervisor that he would need to come to work late and leave early. A.V. asked the reason for the change in hours and expressed his concern that appellant would not be able to complete his work and meet deadlines. He informed A.V. at 9:58 a.m. on November 28, 2022 that he would not be able to come into the office for the entire day due to personal legal and medical reasons, and that he required medical leave on November 30 and December 5, 2022.

In a December 5, 2022 e-mail, appellant explained that he had not completed two audits within the two-week period as he had used leave for all but six or seven hours of that period.

In a December 14, 2022 e-mail, A.V. requested that appellant work on the reimbursable billing for natural gas and fuel oil for October and November, and provided him with this information. In a December 21, 2022 e-mail, he requested that appellant address the energy section of the Five-year Facilities/Infrastructure Action Plan Development. On January 9, 2023 A.V. provided a series of emails requesting that appellant complete work previously assigned in November and December 2022.

The employing establishment also provided January 11 and 12, 2023 e-mails regarding appellant's failure to complete his timecards.

In a January 23, 2023 e-mail, A.V. requested that appellant complete a minimum of eight audits per week. He asserted that these assignments should require only two to four hours each, and requested that appellant contact him regarding priorities if conflicts arose.

On January 13, 2023 appellant requested an extension of his reasonable accommodation request completed by Dr. Powell. The employing establishment denied this request on January 31, 2023. It noted that appellant had exhausted his Family Medical Leave Act (FMLA) entitlement as of August 2022. Appellant responded on February 6, 2023, and expressed his disagreement with the employing establishment's FMLA determination. In a February 8, 2023 memorandum, A.V. requested clarification from appellant regarding his requests for additional leave or for an alternative work schedule.

On February 16, 2023 the employing establishment provided appellant with a notice of proposed suspension for five days for disregard of directives, failure to complete time and attendance requirements, and failure to report to work on time. The employing establishment provided appellant's 2023 appraisal in which he was not rated. On May 16, 2023 it suspended him for five days without pay.

In a June 4, 2023 e-mail, A.V. explained that appellant was asked to be at work during regularly scheduled hours and to complete his assignments. He asserted that appellant was routinely tardy or absent with little or no notice to his supervisor, and that he did not complete his assigned work without direct oversight. A.V. alleged that appellant's position was not excessively stressful, and had no overtime, quotas, travel, or intense assignments. He further alleged that he had adjusted deadlines to aid appellant.

In a follow-up development letter dated June 21, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the May 22, 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.

OWCP subsequently received additional evidence. In a June 28, 2023 Form CA-20, Dr. Powell attributed the diagnosed conditions of generalized anxiety disorder and insomnia to employment activity. Robin Li, a licensed clinical psychologist, provided a psychological evaluation, diagnosing generalized anxiety disorder and major depressive disorder.

Appellant completed narrative statements on July 12, 2023 and alleged that the employing establishment and A.V. were abusive. He attributed his condition to the notice of proposed suspension and to actions of A.V., including false allegations regarding his work schedule in the week of February 2023. Appellant alleged that A.V. falsely found that he was late when he had

arrived within the two-hour grace period, that he falsely accused him of missing a teleconference when he was in fact on the call, and that he falsely accused him of forging his physician's signature on FMLA forms. He asserted that he had filed a claim with the Equal Employment Opportunity Commission (EEOC) but did not provide these materials. Appellant also maintained that A.V. followed him into a bathroom to verify he was there, and yelled at him to return to his desk, even though appellant had used leave during his lunch period, and thus did not need to work an extra 30 minutes.

On July 24, 2023 Dr. Powell reported that the environment at the employing establishment negatively impacted appellant's health and work performance.

By decision dated November 14, 2023, OWCP denied appellant's claim for an emotional condition, finding that he had not factually established the identified work factors. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

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

In a February 14, 2024 notice, OWCP's hearing representative informed appellant that an oral hearing was scheduled for March 15, 2024 at 12:45 p.m. Eastern Standard Time (EST). The toll-free telephone number and appropriate passcode were provided for access to the hearing. The hearing representative mailed the notice to his last known address of record. Appellant, however, neither appeared for the hearing nor requested postponement.

By decision dated March 29, 2024, OWCP found that appellant had abandoned his request for an oral hearing, as he had received written notification of the hearing 30 days in advance but failed to appear. It further noted that there was no indication in the record that he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim,<sup>4</sup> including that he or she is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability from work for which he or she claims compensation is causally related to

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

<sup>4</sup> *L.G.*, Docket No. 21-0690 (issued December 9, 2021); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

that employment injury.<sup>6</sup> 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>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 each and every injury or illness that is somehow related to an employee's employment.<sup>9</sup> There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>10</sup> On the other hand, the disability is not covered when it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>11</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>12</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>13</sup>

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<sup>6</sup> *L.G.*, *supra* note 4; *S.S.*, *supra* note 4; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>9</sup> *See T.G.*, Docket No. 19-0071 (issued May 28, 2019); *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>10</sup> *See S.K.*, *supra* note 8; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>11</sup> *See S.K.*, *id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>12</sup> *See R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, *supra* note 10.

<sup>13</sup> *H.S.*, Docket No. 24-0375 (issued July 31, 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>14</sup> Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.<sup>15</sup>

### ANALYSIS -- ISSUE 1

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

Appellant has not attributed his emotional condition to the performance of his regular or specially assigned duties arising under *Cutler*.<sup>16</sup> Rather he alleged that he sustained an emotional condition as a result of conduct by his immediate supervisor.

Appellant attributed his emotional condition to the notice of proposed suspension and its findings of his disregard of directives, his failure to complete time and attendance requirements, and his failure to report to work on time. As noted, matters involving administrative matters such as disciplinary actions<sup>17</sup> are administrative in nature, and fall outside the scope of FECA absent a finding of error or abuse.<sup>18</sup> A.V. provided documentation of the issues raised in the notice of proposed suspension in the series of e-mails submitted to OWCP on June 6, 2023 including appellant's leave usage on November 28, 2022, his explanation for his failure to complete work on December 5, 2022, and A.V.'s January 9, 2023 emails requesting that appellant complete work previously assigned in November and December 2022. The employing establishment also provided January 11 and 12, 2023 e-mails regarding appellant's failure to complete his timecards.

Appellant has not submitted any evidence demonstrating that the proposed letter of suspension, or the May 16, 2023 suspension for five days without pay, were erroneous or that the findings upon which they were based were erroneous. Absent evidence establishing error or abuse, a claimant's disagreement, or dislike of such a managerial action, is not a compensable factor of employment.<sup>19</sup>

Appellant additionally attributed his stress-related condition to harassment. He asserted that A.V. harassed him through false statements. 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>20</sup> However,

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<sup>14</sup> *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

<sup>15</sup> *Id.*; *B.K.*, Docket No. 23-0902 (issued November 29, 2023); *see also Kim Nguyen*, 53 ECAB 127 (2001).

<sup>16</sup> *L.N.*, Docket No. 22-0126 (issued June 15, 2023); *S.B.*, Docket No. 16-1522 (issued March 3, 2017); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 10.

<sup>17</sup> *L.N.*, *id.*; *C.J.*, Docket No. 19-1722 (issued February 19, 2021); *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *D.L.*, Docket No. 09-1103 (issued February 26, 2010).

<sup>18</sup> *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *C.T.*, Docket No. 09-1557 (issued August 12, 2010).

<sup>19</sup> *See D.F.*, Docket No. 24-0178 (issued April 5, 2024); *R.B.*, *id.*; *E.S.*, Docket No. 18-1493 (issued March 6, 2019).

<sup>20</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).

the Board has held that 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>21</sup> Appellant has not substantiated his allegations of harassment and discrimination with corroborative evidence. Consequently, he has not established a compensable employment factor.

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>22</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.

### **LEGAL PRECEDENT -- ISSUE 2**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>23</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>24</sup> OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.<sup>25</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>26</sup> The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>27</sup> Where it

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

<sup>22</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).

<sup>23</sup> 20 C.F.R. § 10.616(a).

<sup>24</sup> *Id.* at § 10.617(b).

<sup>25</sup> *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>26</sup> 20 C.F.R. § 10.622(f).

<sup>27</sup> *Id.*

has been determined that, a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision, finding that the claimant abandoned the request for a hearing.<sup>28</sup>

### *ANALYSIS -- ISSUE 2*

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's November 14, 2023 decision denying appellant's emotional condition claim, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a February 14, 2024 notice, OWCP's hearing representative informed appellant that an oral hearing was scheduled for March 15, 2024 at 12:45 p.m. EST. Appellant was provided with the toll-free telephone number and passcode for access to the hearing. The notice was mailed to appellant's last known address of record. The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.<sup>29</sup>

Appellant, however, failed to appear for the scheduled hearing at the prescribed time. Furthermore, he did not request a postponement or provide an explanation to OWCP for his failure to appear for the hearing within 10 days of the scheduled hearing. The Board, therefore, finds that OWCP properly determined that he abandoned his request for an oral hearing.<sup>30</sup>

### *CONCLUSION*

The Board finds that appellant has not met his burden of proof to establish an emotional condition in the performance of duty, as alleged. The Board further finds that OWCP properly determined that he abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

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<sup>28</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>29</sup> *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Kenneth E. Harris*, 54 ECAB 502 (2003).

<sup>30</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2023 and March 29, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 9, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board