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<b>A.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0849</b>
	)	<b>Issued: January 31, 2025</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. IMMIGRATION AND CUSTOMS</b>	)	
<b>ENFORCEMENT, Edinburg, TX, Employer</b>	)	
_____	)	

*Case Submitted on the Record*

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

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

related that while working for the employing establishment his civil rights were violated as he was “the target of workplace mobbing, harassment, emotional abuse, gaslighting, *etc.*” Appellant did not stop work.

In a development letter dated January 20, 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. In a separate letter of even date, OWCP requested information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It afforded both parties 30 days to respond.

On January 25, 2023 D.C., a supervisor, advised that he had become appellant’s supervisor on January 15, 2023, that there was an ongoing investigation regarding appellant’s allegations, and that E.A., his former supervisor, might have additional information.

In a separate statement dated January 25, 2023, E.A. related that he was unaware whether a determination had been made with respect to appellant’s allegations. He advised that appellant’s work was within expectations. E.A. provided e-mails from appellant requesting sick leave on various dates, primarily due to insomnia and issues related to anxiety.

In an Equal Employment Opportunity (EEO) investigative affidavit for compensatory damages form, appellant alleged health effects due to discrimination and harassment at work. He advised that the problems began in August 2021 “as a direct result of being targeted at work” and discriminatory acts. Appellant asserted that being forced to wear a face mask went against his “sincerely held religious beliefs” and made him feel as if he was “being forced to participate in Satanism and a Satanic ritual....” He also related that he had been discriminated against while working for Customs and Border Patrol (CBP), which was settled after he filed a formal complaint.

In a memorandum dated February 26, 2019, appellant related that on February 25, 2019 R.C., a senior officer, screamed and yelled at him when he asked if a coworker could be given more work. R.C. invaded appellant’s “personal space” and stood over him in a threatening way. He told R.C. that he felt threatened and to calm down, but he refused, so appellant yelled at him to get away. Appellant described other incidents with R.C.

On February 13, 2022 appellant accused a coworker, L.C., of misconduct on February 13, 2021.

On March 17, 2022 appellant requested a month of leave without pay (LWOP) due to feeling overwhelmed and the need to care for his elderly mother.

In a statement dated February 13, 2023, appellant advised that he worked for CBP at the employing establishment from 1999 until 2018, when he transferred to the employing establishment. He related that he had arrested “countless subjects,” some of whom had resisted arrested and were armed. Appellant indicated that he also saw many dead bodies along the Rio Grande River, including an infant. He maintained that those events profoundly affected him, but that it was part of the job. Appellant related that nothing had prepared him for “being discriminated against, targeted for harassment, bullied, mobbed (bullied by a group), blackballed, [and] retaliated against....” He advised that the bullying began in 2012 and that once it was known that

management was targeting him, he was mobbed at work. The bullying lasted until 2015 and included appellant receiving low ratings without justification based on his race. He filed an EEO complaint which was settled by the employing establishment and his appraisal amended to an exceeds expectations. After appellant filed the complaint, the harassment lessened but he failed to receive promotions due to retaliation and endured workplace mobbing. He thus left CBP and moved from Texas to California to take a job with the employing establishment. Appellant related that the work environment was better but there was still bullying and favoritism. He reported that management was manipulating a service to obtain the best travel destinations. The situation was remedied but the employees who had benefited were angry with him.

Appellant subsequently relocated back to Texas while still working for the employing establishment. He was assigned to a location where he worked with the same individuals against whom he had filed an EEO complaint while working for CBP. Appellant again experienced harassment and discrimination, including by a firearms instructor who falsified his firearms qualification score in November 2018. He filed an EEO complaint but had to drop it because he could not obtain representation. Appellant was almost involved in a physical altercation with R.C. Appellant composed official memorandum regarding the harassment. Management investigated in December 2019 but the individual conducting the inquiry was a friend of R.C., the subject of appellant's allegations. Appellant objected and was later notified that he was "being investigated for not cooperating with an official investigation."

In August 2021 a supervisor, A.M., and R.C. harassed and discriminated against him. Appellant felt traumatized due to the "alleged" pandemic. The employing establishment failed to respond to his requests to be allowed not to wear a face mask because of his religious beliefs. Appellant felt oppressed and like he was "being forced to participate in a Satanic ritual...." He submitted evidence documenting "the truth about viruses and about the dark occultists and Satanist who are running our institutions" but management failed to act. On February 13, 2022 appellant had an altercation with L.C., a coworker, who tried to physically assault him. Management attributed the coworker's action to a "bad day." He filed an EEO complaint and requested a month of LWOP. The employing establishment came to appellant's house on April 21, 2022 and took his badge and body armor and temporarily suspended him from carrying a firearm. He notified management that workplace issues were adversely affecting his health, but no one responded. Appellant advised that an EEO specialist lied in a report of investigation (ROI) and that the ROI was missing documents. On November 21, 2022 the employing establishment suspended his authority to carry a firearm and took his badges, baton, and spray.

On March 23, 2023 the employing establishment challenged appellant's claim, asserting that most of his allegations arose from when he worked at CBP. It further noted that allegations regarding the vaccination requirement resulted from a Presidential mandate and were administrative in nature.

In a development letter dated April 28, 2023, OWCP requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It requested the information within 30 days.

In a response dated May 15, 2023, C.D., with the employing establishment, related that appellant had not advised the agency that he did not want to work with certain employees from

CBP. On March 26, 2018 appellant requested a transfer to Texas, and he was reassigned on August 5, 2018. C.D. noted that the employing establishment employees frequently worked with CBP employees, which appellant knew when he requested the reassignment. She was unable to locate any EEO complaints filed by appellant against the employing establishment on or after 2018. C.D. advised that appellant had not passed his firearms training on November 7, 2018, and had to requalify. Appellant claimed that A.R. had manipulated the scoring. Management investigated and found that the scores recovered were accurate, but gave him credit for scores on the line. Appellant filed a complaint with the employing establishment's Joint Intake Center (JIC) about A.R. manipulating the scoring of his target practice but the JIC determined that the information presented did not meet the "threshold of administrative misconduct" required for an investigation.

C.D. further related that an investigation and report of findings on December 27, 2019 determined that appellant and R.C. had engaged in a verbal confrontation and that R.C. had encroached on his personal space. R.C. received a reprimand for unprofessional behavior on February 20, 2020. Appellant filed a memorandum on September 27, 2019 alleging harassment and retaliation, which was referred by JIC to a specialist, but the allegations did not rise to the level of administrative misconduct. On January 23, 2020 P.O. told JIC that appellant had not answered questions during a management inquiry about the complaint he had filed.

C.D. noted that on October 23, 2019 appellant alleged that management had retaliated against him by reassigning him to another location. P.O. investigated, but appellant claimed that he was not fair and impartial because he was friends with appellant's supervisor, so appellant "declined to answer questions" or provide evidence. Management explained to P.O. that appellant's time working at CBP was not used to determine seniority at the employing establishment and the union agreed that the reassignment did not violate the collective bargaining agreement. P.O. found no evidence of misconduct. An investigative report dated March 22, 2021 also found no employee misconduct.

C.D. advised that on August 16, 2021 A.M., appellant's supervisor, noted that he did not have on a mask even though it was required because he was in a federal facility. When she asked if he was aware of the mask mandate, he "replied in a loud and rude manner that he had a medical condition" and could not wear a mask. Appellant received written counseling for unprofessional conduct on August 23, 2021 as a result of this incident. A.M. requested medical documentation identifying the medical condition that prevented him from wearing a mask, which did not constitute a fitness-for-duty evaluation, as alleged by appellant.

C.D. further related that on September 23, 2021 R.C. had assigned appellant work to complete before leaving for the day. He responded that he did not have time and later reported that R.C. had yelled at him and discriminated against him on the basis of race. The anti-harassment unit investigated and determined that the allegation did not qualify as "misconduct that required action." C.D. noted that on November 9, 2021 appellant submitted a memorandum accusing the government of high crimes, terrorism, and crimes against humanity. On February 13, 2022 an incident occurred between appellant and L.C.; however, after an investigation and mediation both individuals advised that the incident was isolated and the result of a bad day. Both employees received verbal counseling. C.D. advised that it was common practice to temporarily suspend

authorization to carry a firearm and take away credentials for individuals on extended leave for a health or claimed mental condition.

By decision dated May 15, 2023, OWCP denied appellant's emotional condition claim. It found that he had not established that he experienced the alleged employment incidents and thus the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP received an email dated February 2, 2022 from D.C. regarding a verbal incident on February 13, 2022 between appellant and L.C. D.C. noted that it was "concluded that this was an isolated incident and extremely out of the ordinary" and that appellant related during a conversation with D.C. that he had no issues working with L.C. He advised appellant that if another incident occurred, he would need to take formal action and recommended that their conversation would serve as verbal counseling.

In a May 12, 2023 e-mail, P.M. denied lying on a ROI. She related that instead she found minor issues on the ROI, including typographical errors and the need for additional evidence.

In an Equal Employment Opportunity Commission (EEOC) settlement agreement dated May 16, 2023, appellant and the employing establishment agreed to resolve appellant's complaint of employment discrimination. Appellant agreed to withdraw his complaint and retire. The employing establishment approved paying compensatory damages of \$7,000.00 and recrediting 160 hours of annual leave. The agreement specified that it did not constitute an admission of wrongdoing by the employing establishment and provided that the employing establishment denied that it or its employees had discriminated, retaliated, or harassed appellant.

In a statement dated March 7, 2024, appellant reiterated his allegations that he had been bullied at work and targeted by upper management from 2012 to 2015, when he transferred from CBP to the employing establishment. He related that he reached a settlement agreement with CBP signed January 8, 2015. Appellant noted that, after his September 26, 2019 memorandum alleging abuse and harassment, R.C. received a reprimand for unprofessional behavior while he did not, which substantiated his claim. He described other memorandums alleging discrimination and harassment and again noted that the employee assigned to perform a management inquiry, P.O., was a friend of R.C. and so he refused to answer his questions. Appellant disagreed that the employing establishment was unaware of his complaints of abuse and discrimination, noting that he had filed four EEO complaints. He described his difficulty breathing through a mask and again asserted that he was sent for a fitness-for-duty examination as a result. Appellant advised of illegal activity and asserted that the ROI was doctored.

Thereafter, OWCP received a supplemental statement from appellant dated June 4, 2023. He asserted that he sustained PTSD due to 17.5 years working with CBP and 5 years working for the employing establishment. Appellant advised that in his early career he responded as backup for a coworker who found a deceased baby in a bush, a victim of a carjacking. The baby had died of heat exposure after struggling to get free from its car seat, which was traumatic to witness. Appellant related that he had arrested many subjects for illegal entry and alien smuggling, often at gunpoint and with the subjects resisting arrest. He noted that he often made arrests by himself at night, and that all these experiences caused trauma. Appellant asserted that during one arrest the subject tried to take his gun, and he had to spray him with oleoresin capsicum (OC) spray. Since

that time, he had nightmares about a subject getting his gun and killing him. Appellant described other incidents arresting armed alien smugglers. He noted that he had also encountered many drowned bodies in the Rio Grande, including one drug smuggler who tried to flee into the river but ended up screaming for help. Appellant wanted to try to save him, but his supervisor refused because of the current in the river. He felt traumatized listening to the man screaming and being unable to save him. Appellant also experienced trauma seeing a dead man hanging from a bridge who had been beaten and hanged, with the theory being that he was an informant killed by the cartel and left on the bridge to send CBP a message.

Appellant further related that in 2018 he worked for the employing establishment at the detention center that kept “children in large cages made of chain-link fencing.” He related that it was traumatic seeing the children and that there were “feces everywhere.” Appellant advised that a teenager died of an infection that was not treated. He related, “Processing the never-ending stream of undocumented immigrants flooding the country with no end in sight while countless children cry and scream endlessly” was extremely traumatic. Appellant asserted that being forced to wear a mask during the pandemic violated his religious beliefs.

On March 17, 2024 appellant requested reconsideration. In support of his request, he submitted evidence regarding his EEO investigative complaints about discrimination at the employing establishment, matters involving his requests for LWOP and the temporary suspension of his ability to carry firearm, matters regarding the mask and vaccine requirement, and allegations of misconduct by coworkers. OWCP also received a November 20, 2022 notice from the employing establishment temporarily suspending his ability to carry firearms and assigning him to administrative duties.

By decision dated June 3, 2024, OWCP modified its May 15, 2023 decision to reflect that appellant had established the alleged incidents but denied his claim as he had not established a compensable employment factor. Thus, he failed to establish an injury in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,<sup>3</sup> that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *M.H.*, Docket No. 23-0467 (issued February 21, 2024); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019);

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>6</sup>

Workers' compensation law does not apply to every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>7</sup> However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>8</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>9</sup> Where, however, the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>10</sup>

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>11</sup> Mere perceptions of harassment are not compensable under FECA.<sup>12</sup>

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that

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*Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> See *C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

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

<sup>9</sup> See *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

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

<sup>11</sup> 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>12</sup> *Id.*

position.<sup>13</sup> Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.<sup>14</sup>

### ANALYSIS

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

Appellant attributed his condition, in part, to employment incidents that, if established, would constitute compensable factors of employment under *Cutler*.<sup>15</sup> He related that during his work from 1999 until 2018 with CBP, he experienced stress and trauma due to his work duties, including acting as back up to a coworker who found a dead baby abandoned by a carjacker, arresting subjects for illegal entry and smuggling, including those who resisted arrest and were armed, spraying a subject who tried to take his gun during an arrest with OC, seeing dead bodies in the Rio Grande, watching a drug smuggler who tried to flee struggling in the river and being unable to help, and seeing a beaten and dead man hanging from a bridge, possibly left as a warning from a cartel to CBP. Additionally, appellant attributed his condition to employment factors at the employing establishment beginning in 2018, including working in a detention center that kept children in cages, and processing endless undocumented immigrants while children cried and screamed.

The Board has held that conditions related to stress from situations in which an employee was performing his regular or specially assigned duties constitute compensable employment factors.<sup>16</sup> OWCP, however, failed to contact CBP and obtain comments from a knowledgeable supervisor on the accuracy of the allegations and any additional information such as witness statements. The employing establishment further failed to address his allegations that he processed immigrations while children cried and screamed. The Board thus finds that it is unable to make an informed decision on these allegations as OWCP did not request information from CBP, the agency where appellant worked at the time the alleged incidents prior to 2018 occurred, or obtain a statement addressing the above allegations beginning in 2018 from the employing establishment.<sup>17</sup> As discussed, OWCP's procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.<sup>18</sup>

Although it is a claimant's burden of proof to establish his claim, OWCP is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence,

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<sup>13</sup> 20 C.F.R. § 10.117(a); *G.K.*, *id.*; *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

<sup>14</sup> Federal (FECA) Procedure Manual, Chapter 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7a(2) (June 2011) and Part 2 -- Claims, *Fact of Injury*, Chapters 2.803.4a(1)(b) and 2.803.7a (November 2023).

<sup>15</sup> *Supra* note 9.

<sup>16</sup> *Id.*; *see also C.F.*, Docket No. 20-1070 (issued August 9, 2023).

<sup>17</sup> *K.R.*, Docket No. 24-0651 (issued August 28, 2024); *J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.L.*, Docket No. 19-0942 (issued February 4, 2020).

<sup>18</sup> *Supra* note 14.



particularly when such evidence is of the character normally obtained from the employing establishment.<sup>19</sup> The case will therefore be remanded to OWCP for further development of the evidence regarding appellant's above-described allegations of stress during the performance of his work duties at CBP and the employing establishment.

Appellant also attributed his emotional condition to administrative matters at the employing establishment, including being forced to wear a mask in violation of his religious beliefs, matters involving his request for LWOP, the requirement that he undergo a fitness-for-duty examination, and the employing establishment's temporary suspension of his ability to carry a firearm. In *Thomas D. McEuen*,<sup>20</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>21</sup> In this case, the employing establishment advised that the vaccination requirement resulted from a Presidential mandate and that masks were required in federal facilities. C.D. indicated that appellant's supervisor had requested medical documentation identifying the condition that made him unable to wear a mask, which differed from a fitness-for-duty evaluation. She further related that it was usual to suspend authorization to carry a firearm temporarily for individuals on extended leave for a health or mental condition. A May 16, 2023 EEOC settlement did not find wrongdoing by the employing establishment. As appellant has not submitted the necessary corroborating evidence to establish error or abuse by management in these administrative and personnel matters, he has not established a compensable work factor.<sup>22</sup>

Appellant additionally alleged harassment and discrimination during his time with both CBP and the employing establishment. He maintained that he was bullied and mobbed at CBP from 2012 until 2015, when he filed an EEO complaint which was settled by the employing establishment and his performance appraisal amended. Appellant related that the bullying lessened, but he failed to receive promotions as a result of retaliation. He further contended that he experienced harassment and discrimination while working for the employing establishment beginning in 2018. Appellant described altercations with coworkers and supervisors, including that in September 2019 R.C. verbally harassed him and encroached on his space.

As previously discussed, OWCP has not requested a statement from CBP regarding appellant's allegations. Additionally, C.D. related that an investigation and report of findings dated December 27, 2019 found that appellant had R.C. had engaged in a verbal confrontation, and that R.C. had encroached on appellant's personal space. The investigation and report of findings, however, are not contained in the case record. On remand, OWCP should obtain

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<sup>19</sup> *D.G.*, Docket No. 22-1367 (issued June 28, 2024); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2016).

<sup>20</sup> See *Thomas D. McEuen*, *supra* note 9.

<sup>21</sup> *M.B.*, Docket No. 29-1160 (issued April 2, 2021); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>22</sup> See *Y.R.*, Docket No. 24-0612 (issued September 13, 2024); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

comments from a knowledgeable supervisor at CBP regarding appellant's allegations of harassment and discrimination, and additional evidence from the employing establishment, specifically the December 27, 2019 investigative report.

The case will accordingly be remanded for OWCP to further develop the evidence regarding appellant's allegations under *Cutler* and regarding his allegations of harassment and discrimination as set forth above. If an employing establishment fails to respond, OWCP's procedures provide that it may accept the claimant's statements as factual.<sup>23</sup> Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding whether appellant has established an emotional condition in the performance of duty.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2024 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.<sup>24</sup>

Issued: January 31, 2025  
Washington, DC

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> *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

<sup>24</sup> James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.