

<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 his oral argument request, appellant contended that he wanted to tell his story clearly, with the right context and details. 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 case record. 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.

Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **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 July 17, 2024 appellant, then a 34-year-old human resources (HR) specialist (information systems), filed an occupational disease claim (Form CA-2) alleging that he developed anal fissures and internal/external hemorrhoids due to factors of his federal employment. He explained that he worked in a high-stress environment that was understaffed and flooded with tasks with constantly changing deadlines. Appellant noted that he first became aware of his claimed condition on June 1, 2023, and realized its relationship to his federal employment on January 1, 2024. He stopped work on June 24, 2024.

In a September 10, 2019 reasonable accommodation management decision memorandum, B.W., an employing establishment Branch Chief, approved appellant's July 30, 2019 request for reasonable accommodations to work 10 hours per day, four days per week with flexible use of leave.

In a May 13, 2020 form report, Dr. Neil Rosenman, a Board-certified family medicine specialist, diagnosed anxiety. He recommended that appellant be permitted to telework 10 hours per day, four days per week, and noted that he would also require leave of up to two hours per day, two to three days per week, for his health needs.

In an August 5, 2020 memorandum, B.W. approved appellant's April 27, 2020 request for reasonable accommodation to exclusively telework.

On July 17, 2024 OWCP received a statement by appellant, which indicated that he received a lower-than-normal performance rating in 2023, which he felt was unfair and inaccurate, and that the employing establishment's expectations were not communicated to him in a mid-year review. Appellant explained that he received a 3.5 rating, which he claimed was rounded down to a three, and that his branch chief provided him with vague feedback about the rating. He noted that additional workload was transferred to him due to colleagues taking extensive leave or leaving the unit. Appellant indicated that he wanted to apply for a GS-13 level position, but the position was not opened for applications. He felt he was not provided opportunities to advance despite the length of his service. Appellant claimed that he was performing GS-13 level work as a GS-12

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

<sup>3</sup> The Board notes that, following the November 5, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

employee, including that he led a project to draft standard operating procedures (SOP), was primarily responsible for accessibility compliance remediation for users with disabilities, and was responsible for two high priority information technology (IT) projects, which included the migration of a shared drive and combining multiple Microsoft Teams platforms. He also claimed that he was reprimanded in his January 2023 review for reducing some metrics. Appellant indicated that the constant mental strain, stress, anxiety, and depression associated with “the toxic work culture” caused his hemorrhoids and aggravated his physical symptoms of pain, cramps, diarrhea, and constipation.

OWCP also received hospital forms dated July 4, 2024.

In a July 7, 2024 work status form, Dr. John D. Bulter, Jr., a Board-certified general surgeon, diagnosed anorectal pain and recommended work restrictions for the period July 1 through August 1, 2024.

In an August 6, 2024 development letter, 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 provided 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.

OWCP thereafter received a June 25, 2024 medical report by Dr. Melissa Anderson, a Board-certified internist, who noted that appellant related complaints of work-related stress since July 3, 2023 which he attributed to “the Branch Chief is having me do all the work and this is causing so much stress for me. There are employees who do less work, and I am the one who he has overloaded with work.” She noted his history of severe rectal pain that began in July 2023 and his diagnoses of external hemorrhoids in January 2024 and rectal fissure in May 2024. Dr. Anderson diagnosed stress reaction, generalized anxiety disorder, unspecified hemorrhoids, and rectal fissure.

On August 22, 2024 OWCP received a response to its questionnaire from the employing establishment, which indicated that appellant was provided written summaries of his review, a meeting to discuss his rating, and the opportunity to challenge his rating, which he did not. It denied that he was reprimanded for reducing metrics and noted that he was thanked for his metrics work in his mid-year performance appraisal. The employing establishment indicated that appellant was not performing at a GS-13 level, nor was he asked to perform work at the GS-13 level. It also indicated that only the digital applications section was understaffed, which was not where appellant worked, and that appellant was not asked to take on any of the duties managed by that section. The employing establishment noted that appellant’s two reasonable accommodations requests were approved, that it asked him to not work during off hours, and that it honored all of his extension requests.

The employing establishment enclosed a copy of appellant’s 2024 mid-year performance appraisal report, which included positive feedback for his disability accessibility compliance work, use of metrics to move the workforce planning toolkit, and testing support for application

development. In the report it also provided him with recommendations for ways to improve customer experience, data literacy, data strategy culture, innovation, productivity, accountability, teamwork, and his technical knowledge.

The employing establishment also enclosed appellant's 2022 and 2023 performance appraisals. In 2022, appellant received an overall rating of 4, and in 2023, he received an overall rating of 3.5. His ratings in the areas of customer service and data literacy were lower in 2023 compared with 2022, and his ratings remained the same in the categories of innovation, productivity, accountability, teamwork, and technical knowledge.

OWCP also received an employing establishment position description for appellant's position.

In an August 6, 2024 follow-up development letter, OWCP advised appellant that it had conducted an interim review and found that the evidence remained insufficient to establish the factual circumstances of his claim. It noted that he had 60 days from the August 6, 2024 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 thereafter received a September 24, 2024 narrative letter by Dr. Jose de Leon Carpio, a Board-certified internist, who indicated that on June 24, 2024 he evaluated appellant for severe anal pain and recommended a rectal examination under anesthesia to determine the cause. During surgery on July 1, 2024, Dr. Carpio diagnosed an anal fissure and performed an internal anal sphincterotomy. He saw appellant postoperatively on July 15, 2024, at which time he noted resolution of his pain. Dr. Carpio indicated that he "was not involved in any psychological testing," and his "only comment is that this patient was in severe, debilitating pain during the first office visit."

In a September 26, 2024 response to OWCP's follow-up development letter, appellant reiterated his belief that he was performing GS-13 level work and that his performance rating had been unfairly downgraded to a 3.

In a September 26, 2024 narrative letter, Dr. Carpio noted that appellant had a history of anxiety and post-traumatic stress disorder, which were previously controlled with medication. He indicated that he developed severe anorectal pain caused by an anal fissure and that the pain was "incapacitating and caused a significant physical and mental impairment during a few weeks." Dr. Carpio opined that appellant had an exacerbation of his anxiety symptoms due to severe pain and, once he recovered from the July 1, 2024 surgery, his pain and anxiety improved.

OWCP also received appellant's self-appraisal performance evaluations for 2023 and 2024 and an additional statement regarding the SOP project.

By decision dated November 5, 2024, OWCP denied appellant's claim, finding that he had not factually established that the implicated employment factors had occurred, as alleged. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

## **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 that the individual 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 disability or medical condition for which compensation is claimed is causally related to the 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 causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<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

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *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).

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>

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 or discrimination are not compensable under FECA.<sup>14</sup>

### 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.

Appellant has attributed his anal fissure and internal/external hemorrhoids, in part, to being overworked due to understaffing and constantly changing deadlines. He also alleged that, as a GS-12 employee, he was performing GS-13 level work duties, including disability accessibility remediation, preparation of SOPs, and merger of IT systems. The employing establishment, in its response to OWCP's questionnaire received on August 22, 2024, indicated that appellant's unit was not understaffed. It noted that the digital applications section was understaffed, which was not where appellant worked, nor was he asked to take on any duties that were managed by that section. The employing establishment also advised that appellant was not performing work at a GS-13 level, nor was he asked to perform work at the GS-13 level. The Board has held that overwork, when substantiated by sufficient factual information to corroborate an account of events, may constitute a compensable factor of employment.<sup>15</sup> However, appellant's allegation of overwork was refuted.<sup>16</sup> Therefore, the Board finds that appellant has not factually established that the implicated employment factor of overwork occurred.

Appellant also alleged that management committed error and abuse with respect to various administrative/personnel matters. In particular, he claimed that his performance appraisal in 2023 was unfair and inaccurate, that he was reprimanded for reducing metrics, that the employing establishment's expectations were not communicated to him in a mid-year review, that his 3.5 rating was rounded down to a 3, and that his branch chief provided him with vague feedback about

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<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).

<sup>13</sup> See *J.C.*, Docket No. 22-0254 (issued November 29, 2022); *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

<sup>14</sup> *A.E.*, *supra* note 10; *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>15</sup> *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>16</sup> *Supra* note 12.

the rating. However, appellant's allegations in this regard were not factually substantiated.<sup>17</sup> The record contained strong and persuasive evidence, including detailed performance appraisal forms and the employing establishment's response to OWCP's questionnaire, refuting appellant's allegations.<sup>18</sup> Accordingly, the Board finds that appellant has not submitted evidence to factually corroborate these allegations.

As the evidence of record is insufficient to establish an emotional/stress-related condition in the performance of duty, the Board finds that appellant has not met her burden of proof.<sup>19</sup>

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>20</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/stress-related condition in the performance of duty, as alleged.

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<sup>17</sup> *L.E.*, Docket No. 22-1302 (issued December 26, 2023); *L.S.*, *supra* note 13.

<sup>18</sup> *Supra* note 12.

<sup>19</sup> *See J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>20</sup> *H.S.*, Docket No. 24-0375 (issued July 31, 2024); *T.B.*, Docket No. 23-0675 (issued June 24, 2024); *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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