

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

C.B., Appellant	)	
	)	
and	)	<b>Docket No. 19-1351</b>
	)	<b>Issued: March 25, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Belmawr, NJ, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On June 4, 2019 appellant filed a timely appeal from December 27, 2018 and April 19, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an emotional condition while in the performance of duty, as alleged.

**FACTUAL HISTORY**

On November 16, 2018 appellant, then a 31-year-old retail sales clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2018 she developed stress and anxiety as a result of an incident involving a coworker while in the performance of duty. On the reverse side

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

of the claim form, appellant's supervisor, S.S., controverted the claim indicating that both employees displayed unacceptable behavior and that all the statements she had received were different. No additional evidence was submitted.

In a development letter dated November 26, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate development letter of even date, it requested that the employing establishment provide comments regarding her claim, a copy of her position description, and witness statements. OWCP afforded both parties 30 days to submit the necessary evidence.

In a November 7, 2018 statement, received by OWCP on November 27, 2018, appellant recounted that, on November 7, 2018, she went on a break and when she returned A.R., the lead clerk, was sitting in her spot at the window. She noted that normally A.R. would move from her spot when she returned from a break. However, this time A.R. pointed to an open spot that belonged to R.D., a coworker, and told appellant to sit there. In response, appellant informed A.R. that she was sitting in her spot and asked why she did not sit in R.D.'s spot as he was on a lunch break. A.R. repeated that R.D.'s spot was open. Appellant then unlocked her drawer, grabbed her things, and moved to R.D.'s spot where she closed out her day. She went into the back where she requested that T.C., a coworker, count her box. Appellant claimed that A.R. came into the back with a balled up fist and screamed shut up at her using profane language. She responded in kind by telling her to shut up. Appellant indicated that A.R. continued to scream at her in the same manner. R.D. told her to watch her mouth. In response, A.R. balled up her fist, lunged at him, and used profane language for approximately five minutes. Appellant closed out her box, walked away, and clocked out. When she walked outside, A.R. was still screaming in a parking lot. Appellant went back inside the building to retrieve her cup and as she walked back out of the building A.R. was walking inside. She contended that A.R. provoked violence by coming at her in a threatening manner, which created a hostile work environment.

In a November 8, 2018 Report of Hazard, Unsafe Condition or Practice (PS Form 1767) and in the narrative, appellant reiterated the history of the claimed November 7, 2018 incident.

In a November 8, 2018 statement, R.D. indicated that there was an eruption of yelling and cursing by A.R. on that day. He noted that A.R. approached him and other coworkers with a profanity-laced rant. R.D. alleged that her behavior was very threatening and unacceptable.

In another statement dated November 8, 2018, T.C., a coworker, indicated that he heard appellant and A.R. screaming back and forth at each other. He stated that he did not remember what they said to one another.

A.R., in an undated statement, recounted that she told appellant to sit in an open seat at the middle window when appellant returned to work. She noted that appellant became mad, closed out her drawer, and turned in her money for the day. A.R. claimed that she barked at her, called her names, and told their coworkers something about her. She asked appellant to be quiet. Appellant responded by asking who are you talking to and A.R. replied that she was talking to her and walked away. A.R. noted that she had previously been through the same situation with appellant. She became frustrated and walked to the parking lot where she called her mother and supervisor. A.R. subsequently calmed down and returned to work.

In a letter dated November 30, 2018, the employing establishment submitted an assault and threat specialty report prepared by B.W., an investigating inspector from the U.S. Postal Service Inspection Service. B.W. determined that, based on his review of appellant's statement, witness statements, and A.R.'s statement and November 30, 2018 interview, A.R.'s behavior on November 7, 2018 constituted a noncredible threat. He noted that her account of the November 7, 2018 events presented during her interview mirrored her written statement. B.W. noted that A.R. added that she had not felt respected by her coworkers due to her young age and being from Delaware rather than New Jersey. He also noted that she explained to him that she used derogatory language because she was angry about the situation. A.R. also explained that she balled up her fists in anger and not as a threat. She denied raising her hands or lunging at anyone with her shoulder. A.R. acknowledged that getting angry was a mistake and maintained that she would not do it again. B.W. indicated that S.S. issued a letter of warning to both appellant and A.R. regarding their conduct with regard the claimed incident.

In a December 13, 2018 letter, S.S. challenged appellant's claim based on an investigation of the circumstances surrounding the claim. She noted that on November 7, 2018 at the Bellmawr retail store, appellant was involved in a verbal altercation with A.R. S.S. related that both employees' behavior was unacceptable as the employing establishment had zero tolerance for such behavior in the workplace. She indicated that before the altercation took place, appellant told another coworker on that day that she was leaving her shift early because she was not feeling well and that A.R. wanted to play games. S.S. ended her day and left the building, but moments later came back inside the building to retrieve her tea cup. She related that the altercation between appellant and A.R. occurred at that time. S.S. noted appellant's allegation that she felt threatened, but maintained that statements from all employees/witnesses had conflicting results. She concluded that appellant had failed to establish fact of injury and to submit any medical evidence to support her claim.

In a December 24, 2018 statement, appellant refuted S.S.'s version of the November 7, 2018 incident. She contended that A.R. came at her when she was cashing out while on the clock and not when she returned to the building. Appellant also contended that she should not be charged with displaying the same behavior as A.R. since she walked away from the incident. She noted that she sent text messages indicating that A.R. lunged at R.D. on November 7, 2018.

OWCP received medical evidence.

By decision dated December 27, 2018, OWCP accepted that the November 7, 2018 employment incident constituted a compensable factor of employment, but denied appellant's claim, finding the medical evidence of record insufficient to establish that the compensable employment factor caused or aggravated her diagnosed emotional condition. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received additional medical evidence.

On January 11, 2019 appellant requested reconsideration of the December 27, 2018 decision. In an accompanying December 22, 2018 statement and January 7, 2019 letter, she reiterated her account of what occurred on November 7, 2018, denial of S.S.'s account of the incident, and that her text messages showed that A.R. lunged at R.D.

Appellant provided a screenshot of text messages between herself and R.D. during the period March 21 through November 7, 2018. In the November 7, 2018 text messages, she asked R.D. whether “she” had lunged at him. R.D. responded that it was more of a menacing approach.

OWCP continued to receive medical evidence.

In a February 8, 2019 letter, S.S. again challenged appellant’s claim, reiterating that she had not established a factual basis for her claim and failed to submit medical evidence to establish her claim.

By decision dated April 19, 2019, OWCP modified the December 27, 2018 decision finding that the accepted November 7, 2018 incident was not a compensable employment factor. Therefore, the denial of the claim was affirmed.

### **LEGAL PRECEDENT**

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>2</sup>

Workers’ compensation law does not apply to each and 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>3</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>4</sup>

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant’s performance of his or her regular duties, these could constitute employment factors.<sup>5</sup> However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur.

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<sup>2</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>3</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>4</sup> *Cutler*, *id.*

<sup>5</sup> See *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

Mere perceptions of harassment are not compensable under FECA.<sup>6</sup> Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>7</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.<sup>8</sup> Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>9</sup> However, to the extent 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> Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable employment factor.<sup>11</sup> A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.<sup>12</sup>

### ANALYSIS

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

The Board notes that appellant's allegations do not pertain to the performance of her regular or specially assigned work duties as a retail sales clerk under *Cutler*.<sup>13</sup> Rather, she has alleged verbal abuse and threat of physical harm by a coworker, and error and abuse on the part of her supervisor.

Appellant attributed her emotional condition to A.R. allegedly screaming, using profanity, balling up her fist, and lunging at her on November 7, 2018. She contended that when she returned from a break, A.R. was sitting in her seat at the window. Appellant related that she refused to get up from the seat and told her to move to an open spot at the window belonging to their coworker, R.D. She moved to R.D.'s spot where she unlocked her drawer, grabbed her things, closed out her day, and went into the back of the window area where she asked T.C. to count her box. Appellant

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<sup>6</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>7</sup> *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>8</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>9</sup> *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen, id.*

<sup>10</sup> *Id.*

<sup>11</sup> *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *E.K.*, Docket No. 17-0246 (issued April 23, 2018); *T.G.*, 58 ECAB 189 (2006); *Doretha M. Belnavis*, 57 ECAB 311 (2006).

<sup>12</sup> *D.W., id.*; *E.K., id.*; *C.W.*, 58 ECAB 137 (2006); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>13</sup> *Supra* note 3.

asserted that A.R. came into the back with her hand balled into a fist and used profanity as she screamed shut up. While the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.<sup>14</sup>

The Board finds that the factual evidence of record fails to support appellant's allegations of verbal abuse and physical threat. Appellant submitted a November 8, 2018 witness statement from R.D. who related that A.R. yelled and cursed at him and other coworkers in a threatening and unacceptable manner on November 8, 2018. The Board notes that the incident was accepted as having occurred on November 7, 2018. Further, R.D. did not provide a detailed description of actions that could be considered verbal abuse or a threat of physical assault by A.R. He did not indicate that A.R. yelled and cursed at appellant. Furthermore, R.D. did identify the nature of the incident that led to A.R.'s behavior. Similarly, T.C., in a November 8, 2018 statement, related that he heard appellant and A.R. screaming at each other, but he did not remember what they said to each other and, thus, did not have enough information to identify the nature of their argument.<sup>15</sup> Appellant submitted screen shots of text messages between her and R.D., and contended that this evidence established that A.R. lunged at her and R.D. However, in November 7, 2018 text messages, R.D. informed appellant that in fact A.R. did not lunge at him. Rather, he described her behavior as a menacing approach.

In an undated statement, A.R. acknowledged that she used profanity towards appellant during the November 7, 2018 incident. However, she denied physically threatening her or anyone else with a balled fist, raised hands, or a shoulder lunge. A.R. explained that she balled her hand into a fist out of anger and feeling disrespected by her coworkers, and not as a threat. B.W.'s November 30, 2018 investigative report found that A.R.'s behavior was a noncredible threat.

Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was verbally abused and physically threatened on November 7, 2018 by A.R.<sup>16</sup>

Appellant has also alleged that S.S. erred in issuing a letter of warning for unacceptable behavior demonstrated on November 7, 2018. Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.<sup>17</sup> Appellant did not submit evidence that S.S. erred or acted abusively in handling this administrative matter.<sup>18</sup> Although S.S., in a December 13, 2018 letter, did not accurately indicate when the incident occurred on November 7, 2018, she explained that the employing establishment had a zero tolerance policy for the type of

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<sup>14</sup> *D.W.*, *supra* note 11; *E.K.*, *supra* note 11; *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>15</sup> *E.K.*, *supra* note 11.

<sup>16</sup> *See supra* note 11.

<sup>17</sup> *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *B.Y.*, Docket No. 17-1822 (issued January 18, 2019); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>18</sup> *W.F.*, *id.*; *L.H.*, Docket No. 17-1295 (issued November 22, 2017).

behavior demonstrated by appellant and A.R. who also received a letter of warning. For these reasons, the Board finds that appellant has not met her burden of proof to establish 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>19</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 her burden of proof to establish an emotional condition while in the performance of duty, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2020  
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> See *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *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).