

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

N.S., Appellant

and

**U.S. AGENCY FOR GLOBAL MEDIA, VOICE
OF AMERICA, Washington, DC, Employer**

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**Docket No. 21-0355
Issued: July 28, 2021**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 4, 2021 appellant filed a timely appeal from an August 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 in the performance of duty, as alleged.

FACTUAL HISTORY

On December 6, 2019 appellant, then a 64-year-old international broadcaster, filed a traumatic injury claim (Form CA-1) alleging that she developed post-traumatic stress disorder (PTSD) due to a November 10, 2019 employment incident. In an attached statement, she

¹ 5 U.S.C. § 8101 *et seq.*

explained that she suffered from PTSD due to significant stress caused by discrimination caused by the employing establishment. Appellant claimed that her condition had worsened since the first week in November, and she asserted that fears of losing her job, being followed by strangers, and being killed had taken a toll on her physical and mental health. On the reverse side of the claim form, the employing establishment indicated that it had no knowledge of appellant's injury. She did not stop work.

In a November 26, 2019 letter, Litza Sejas, a physician assistant, explained that, for the last several years, appellant's mental health had been impacted as a result of her situation at work. She indicated that appellant was experiencing depression with suicidal ideation, symptoms of PTSD, paranoid thoughts and insomnia. Ms. Sejas referred appellant to a therapist and prescribed her several medications to treat her symptoms.

In a December 19, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a physician's opinion supported by a medical explanation regarding the cause of her claimed emotional condition. It provided a questionnaire for her completion, which posed questions regarding her claimed employment factors. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

Appellant, through her then-counsel, submitted a January 20, 2020 notice of representation, in which counsel argued that the evidence previously submitted was sufficient to demonstrate gender discrimination, excessive observation, and supervisor abuse.

By decision dated January 27, 2020, OWCP denied appellant's claim for an employment-related emotional condition, finding that she failed to provide a detailed description of the employment incidents she alleged to have caused or aggravated PTSD or an anxiety condition. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On February 26, 2020 appellant, through her then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a subsequent June 4, 2020 letter, then-counsel withdrew the request for an oral hearing and indicated that appellant wished to proceed with a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a February 21, 2014 e-mail in which her managing editor expressed his appreciation for the work she and her team had performed on an employment assignment.

In a January 29, 2018 e-mail, appellant expressed her concern for her safety and security. She explained that she had been protesting the decision of A.A., the South and Central Asia Division Chief, to only promote men in Afghan service as clear gender discrimination. Appellant asserted that he openly supported Taliban ideology through different actions in the office, such as reducing the number of news shows presented by women and openly working with the former Afghan president while under oath in his GS-15 position with the Federal Government. She argued

that A.A.'s actions and support of the Taliban could threaten her life and harm her in any capacity. Appellant alleged that she had been out of the office since July 1, 2017 due to illness caused by stress and discomfort related to the discrimination she encountered at work.

Appellant attached a copy of a July 3, 2017 e-mail she sent to C.C., the employing establishment's Director of Human Resources, where she asserted that she was the victim of gender discrimination. She detailed a June 28, 2017 incident in which E.P., the Afghan service acting chief, promoted five of her male colleagues to GS-12 and GS-13 positions, but did not promote her, despite meeting the requisite qualifications. Appellant asserted that these actions were unfair and were the result of a Taliban influence that had taken affect in her office. She noted that an example of the "significant minimization of women's presence" was evidenced in the lack of presence of women on live television and radio shows. Appellant noted that two former female anchors had been promoted to management positions, but alleged that their powers under federal law had been suppressed and that they were essentially acting as "puppets" with no decision-making powers.

In a subsequent October 19, 2017 letter of reprimand, A.A. asserted that appellant's allegations against him were false. He also noted a separate September 12, 2017 e-mail wherein she accused him of removing her from her anchor position due to pressure from the Taliban. A.A. explained that appellant's claims were baseless, false, and could have damaged his reputation within the employing establishment. He countered that appellant's December 2016 removal was a consensus decision by management to decrease the number of anchors for the Afghanistan branch. A.A. again denied that the Taliban put pressure on him to make this decision.

By decision dated August 4, 2020, OWCP's hearing representative affirmed the January 27, 2020 decision, as modified, finding that the medical evidence of record was insufficient to establish injury in the performance of duty.²

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has 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.³

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained

² OWCP's hearing representative observed that, although appellant filed a traumatic injury claim, she alleged that she developed a stress condition due to events occurring over the course of more than one workday or shift. As a result, he deemed her claim to be one for an occupational disease.

³ *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁴ 28 ECAB 125 (1976).

that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.⁵ 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.⁶

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.⁷ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.⁸ Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors 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.⁹

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.¹⁰ Where 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.¹¹

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵ Additionally, verbal altercations and

⁵ *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

⁶ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 4.

⁷ *A.C.*, *id.*

⁸ *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

⁹ *A.C.*, *supra* note 6.

¹⁰ *C.V.*, *supra* note 3.

¹¹ *Id.*

¹² *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹³ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 12.

¹⁵ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

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.¹⁶

ANALYSIS

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

Appellant alleged that she sustained PTSD due to various incidents and conditions at work. Therefore, the Board must initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA. The Board notes that appellant's allegations do not directly relate to her regular or specially assigned duties under *Lillian Cutler*.¹⁷ Rather, appellant claimed that her supervisor, A.A., committed error and abuse with respect to various administrative and personnel matters. She also claimed that A.A. subjected her to harassment and discrimination.

With respect to administrative or personnel matters, appellant claimed that A.A. supported Taliban ideology and worked to reduce the amount of female news anchors who hosted television and radio shows in her office. The Board has held that 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.¹⁸ 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, coverage will be afforded.¹⁹ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.²⁰

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claim in regards to administrative/personnel matters. She submitted e-mails dated July 3 and October 19, 2017 where she accused A.A. of supporting Taliban ideology and working with a former Afghan president. Appellant alleged that A.A.'s actions were taken directly to minimize women's roles in hosting television and radio broadcasts. However, the record contains an October 19, 2017 letter in which A.A. explained that appellant's accusations were baseless and that decisions concerning the amount of broadcasters was a consensus decision by management to reduce the amount of anchors in the employing establishment's Afghanistan branch. Appellant has not otherwise presented evidence to show that A.A. or other managers committed error or

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

¹⁷ See *Lillian Cutler*, *supra* note 4.

¹⁸ *Supra* note 10.

¹⁹ *Id.*

²⁰ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

abuse with respect to administrative or personnel matters.²¹ Although she expressed dissatisfaction with the actions of A.A., the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²² Appellant has not substantiated any of her claims of error or abuse committed by A.A. or other managers in the above-noted matter and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by A.A. and claimed that he unfairly passed her over for a promotion and otherwise made her fearful of losing her job, being followed by strangers, or being killed. She asserted that she did not receive the same promotion that five of her male colleagues received, despite meeting all of the qualifications necessary for the promotion and that this decision was a part of A.A.'s attempt to work with the Taliban to minimize the presence of female news anchors. 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.²³ The Board has held that unfounded perceptions of harassment do not constitute a compensable employment factor.²⁴ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²⁵

Appellant reasoned that her not receiving a promotion to a GS-12 or GS-13 position while five of her male colleagues received a promotion was an act of gender discrimination against her. She also alleged that two woman who had been promoted to management positions had no decision-making power and were functionally "puppets" for the employing establishment. However, appellant submitted no evidence to support her assertion that these administrative functions were taken due to her gender. As stated above, unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²⁶ Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

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.

²¹ See generally *M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²² *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²³ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²⁴ *Supra* note 13.

²⁵ See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

²⁶ *Supra* note 15.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board