

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

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**L.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Panama City, FL, Employer**

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**Docket No. 20-0461  
Issued: June 2, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 26, 2019 appellant filed a timely appeal from a November 15, 2019 merit decision<sup>1</sup> of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal 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>

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<sup>1</sup> Appellant requested an appeal from a June 26, 2019 merit decision. For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals that are filed within 180 days from the date of issuance of OWCP's decision. See 20 C.F.R. § 501.3(e). As appellant's December 26, 2019 notice of appeal was more than 180 days from the June 26, 2019 merit decision, the Board took jurisdiction over the November 15, 2019 merit decision.

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

<sup>3</sup> The Board notes that, following the November 15, 2019 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. However, 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.*

## 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 February 26, 2019 appellant, then a 60-year-old mail clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition in the performance of duty. She noted that she first became aware of her condition on April 23, 2013 and realized its relation to her federal employment on February 20, 2019. Appellant claimed that on December 12, 2018 she was approached by D.T., a postmaster, who told her that there was delayed mail and informed her that he had told a coworker to “get it out.” She further claimed that on April 1, 2013 she was improperly placed on emergency placement when she worked at the Munster Station Post Office in Indiana. Appellant stopped work on December 24, 2018.

Accompanying the Form CA-2, appellant submitted a hand-written 26-page statement, some of which contained illegible writing, and a 5-page typed statement. In these statements, she further discussed her work at the Munster Station Post Office in Indiana prior to working in Panama City, Florida. While stationed there, C.G., an employing establishment manager, found delayed mail that had not been reported and appellant was subsequently put on emergency placement. Appellant indicated that she sought medical treatment and was diagnosed with generalized anxiety disorder. When she moved to Panama City, Florida, she shared some of her experiences from the Munster Station Post Office with D.T. Appellant asserted that, at one point, D.T. had questioned her as to why a truck left the dock approximately an hour late. She noted that she subsequently apologized to D.T. for her reaction to this matter, but explained that whenever she was accused of delaying things, it “set her off.”

Appellant indicated that, while working in Panama City, Florida she told D.T. that she had instructed A.F., a coworker, to throw away circulars. She recalled thinking about whether she would get fired and explained that this occurred in the context of Panama City’s mail delivery having been affected by Hurricane Michael in October 2018. On December 12, 2018 appellant observed D.T. telling a coworker that there was delayed mail and that he had to “get it out.” She indicated that she then saw some delayed circulars and told A.F. to throw them away. Appellant asserted that in her mind that was what D.T. wanted her to do. However, based upon the subsequent actions of her coworkers, she felt that she had been “set up” by management. Appellant noted that she had experienced a nightmare and she informed D.T. on February 18, 2019 that W.F., another manager, had manipulated D.T., and that A.F. had thrown away the mail. She explained that she had suffered an anxiety attack on December 12, 2018 and, therefore, told A.F. to throw the mail away. Appellant indicated that D.T. told her that she was not in trouble regarding the matter.

Appellant also submitted December 28, 2018 and February 6, 2019 reports from Blythe Smith, a licensed clinical professional counselor, who indicated that appellant was under her care for acute stress disorder and anxiety.

In a February 25, 2019 e-mail from two officials of the employing establishment's Office of Inspector General (OIG), D.T. reported that appellant had confessed to him that she had thrown away every door direct mail (EDDM) in November or December 2018 and that the mail was discovered in an undeliverable bulk business mail (UBBM) container. He noted that appellant's story was confusing and he did not fully understand the dates and timeframes. D.T. indicated that she alleged that it had been brought to her attention that there was delayed mail and she threw it away in the UBBM container because of her panic/anxiety disorder. In addition, appellant told him that there had been a prior incident in Indiana where she was "set up" with delayed mail in her building and she was put on emergency placement. In a subsequent February 25, 2019 e-mail to D.T., one of the OIG officials noted that, since there was no evidence of delayed or discarded mail being observed or recovered, she would not be interviewed.

In a February 27, 2019 claim challenge letter, D.T. denied that his actions would have led appellant to believe that she could throw away mail or instruct a coworker to do so. He indicated that she advised him on February 18, 2019 that she had thrown away an EDDM mailing in December 2018. D.T. indicated that he had no idea what appellant was talking about and that he had no knowledge of anyone throwing away mail. He advised that he had documented two incidents that he was aware of relative to undelivered mail, but noted that no one ever accused appellant of throwing away mail. D.T. noted, "[t]he only thing that occurred is that it was brought to [appellant's] attention that we had some delayed mail in the building and it needed to be delivered [as soon as possible]."

In a March 5, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. By a separate letter of even date, it also requested that the employing establishment provide additional information. OWCP afforded both parties 30 days to respond.

In response, appellant submitted a March 20, 2019 statement in which she indicated that she had suffered an anxiety attack that caused her to tell A.F. to discard a pallet of circulars. She asserted that D.T. "hazed" her relative to this matter. Appellant further claimed that she had been intentionally embarrassed, harassed, humiliated, and ridiculed by managers. She claimed that she was made to "take the fall" so that "these men" could save their jobs. Appellant claimed that D.T. mishandled her workers' compensation claim, that she was issued improper disciplinary actions, and that she was wrongly subjected to investigation by the employing establishment's OIG. She submitted copies of text messages and e-mails between herself and coworkers and managers. Some of the e-mails contained discussions regarding discarded mail and regarding the functions of the OIG. Appellant also submitted additional medical evidence in support of her claim, including an April 23, 2013 report from Dr. Brian Dieckmann, a clinical psychologist, and an April 4, 2019 report from Dr. Nitin Thapar, an osteopath Board-certified in psychiatry.

In an April 4, 2019 letter, OWCP requested further information from the employing establishment, including whether appellant had any past or pending disciplinary or investigative actions. It also requested that the employing establishment respond to her statements of record. OWCP afforded the employing establishment 30 days to respond.

In response, D.T., provided another statement in which he disagreed with appellant's allegations, asserting that he has never given an instruction to discard deliverable mail. He

indicated that, to his knowledge, any delayed mail that was discovered was delivered. D.T. maintained that appellant's admission of throwing away mail (or ordering it to be thrown away) was of her own doing, and was only revealed to him on a later date due to her own confession. He advised that she had no active disciplinary action on file, but he noted that, if she returned to work, she might be subject to discipline as disposal of deliverable mail was a serious offense. D.T. explained that Panama City, Florida had been severely impacted by Hurricane Michael on October 10, 2018 and that the recovery efforts took weeks. He indicated that all of Panama City had delayed mail due to this weather event. D.T. denied that he gave appellant improper instructions with respect to the pallet of circulars.

D.T. further denied that management officials conspired with a craft employee to "haze [appellant]." He noted that appellant ultimately turned in her badge, keys, and other items on February 21, 2019. D.T. denied that he had mishandled her workers' compensation claim, noting that he initially incorrectly filled out a compensation form, but immediately corrected it and properly resubmitted it. He confirmed that trucks often departed late due to returning carriers, but that this did not constitute a case of delayed mail. D.T. further denied appellant's allegation that she was intentionally embarrassed harassed, humiliated, ridiculed, and emotionally at risk so that "these men" can save their jobs. He indicated that he was not aware of any OIG investigation with regard to appellant. D.T. asserted that policy was followed when appellant's system access was revoked due to her incapacity from work. He noted that documents demonstrated that she told him multiple times that she was retiring and that she had turned in her keys, badge, and other items.

In April 26, 2019 development letter, OWCP indicated that it was providing appellant an opportunity to respond to the employing establishment's controversion of her claim. In response, appellant reiterated the assertions made in her previously submitted statements. She also submitted numerous copies of text messages sent between her and various other individuals.

Appellant also submitted a number of witness statements. In an undated statement, H.S., the postmaster from the Greenwood Post Office in Indiana, noted that appellant was put on emergency placement, but she was not issued any corrective actions due to many extenuating circumstances. In a May 2, 2019 statement, E.K., a coworker, indicated that she witnessed appellant tell K.E. to throw away or disregard his circular mail. In a May 3, 2019 statement, K.E. noted that circulars were left at his case and she told him that she had been given permission to place the circulars in the UBBM container. In a May 3, 2019 statement, L.G., a coworker, indicated that appellant informed him that she would be retiring because she had told A.F. to throw away a pallet of circulars. He noted that appellant thought that this was what her supervisor had told her to do when he stated to get rid of the delayed mail. In a May 3, 2019 statement, J.L., a coworker, generally asserted that appellant was being harassed by several postal managers. In a May 6, 2019 statement, D.B., a coworker, indicated that appellant had been put on emergency placement for allegedly delaying mail, but that no corrective action was taken. In a May 23, 2019 statement, J.H., a coworker noted that there was a rumor going around that appellant was fired for putting box holders in UBBM containers. In a May 23, 2019 statement, E.H., a coworker, indicated that there was a lot of mail that could not be delivered. He noted that there were rumors that appellant was going to be fired for putting first class mail in UBBM containers. Appellant also submitted statements from coworkers, as well as individuals not connected with her work, who generally attested to her good character and the emotional toll of her problems at work.

Appellant submitted a September 21, 2009 letter of warning from the employing establishment due to failure to complete a required audit by August 19, 2009. She also submitted an October 15, 2009 proposed warning in lieu of a time-off suspension from the employing establishment. This document related to appellant's office failing a service audit when delayed mail was found in multiple carrier cases. In a May 5, 2019 e-mail to her, a manager described his interaction with two OIG investigators. Appellant submitted additional medical evidence, including June 13 and July 3, 2017, and March 13, 2019 reports of Dr. Augustine Izah, a Board-certified family practitioner.

By decision dated June 26, 2019, OWCP denied the claim, finding that appellant had not met her burden of proof to establish an emotional condition in the performance of duty, as alleged. It determined that the evidence did not support that the employment incident(s) occurred as she described.

Appellant disagreed with the June 26, 2019 decision and requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. She submitted a July 24, 2019 statement in which she provided a description of her claimed employment factors, which was similar to that contained in prior statements. Appellant also submitted additional counseling reports of Ms. Smith.

By decision dated November 15, 2019, OWCP's hearing representative modified the June 26, 2019 decision to find that, although the employment incident(s) occurred as she described, the evidence of record was insufficient to establish that a medical condition arose during the course of employment and within the scope of compensable work factors.

### **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 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, 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>5</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>6</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

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>7</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. 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>8</sup> On the other hand, the disability is not covered where 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>9</sup>

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>10</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>11</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>13</sup>

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<sup>7</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>8</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>9</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>10</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>11</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>12</sup> See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>13</sup> *Id.*

## 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 has alleged that she sustained an emotional condition as a result of a number of employment incidents and work conditions. OWCP denied her emotional condition claim finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the terms of FECA.<sup>14</sup>

The Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.<sup>15</sup> Rather, appellant primarily claimed that management committed error and abuse with respect to various administrative/personnel matters. She also claimed that management subjected her to harassment and discrimination.

With respect to administrative or personnel matters, appellant claimed that management officials, including D.T., gave her improper instructions and incorrectly led her to believe that she had to discard mail as undeliverable, including on an occasion in December 2018. She claimed that she was issued improper disciplinary actions and was wrongly subjected to investigation by the employing establishment's OIG. Appellant also asserted that D.T. wrongly accused her of delaying mail and otherwise unfairly criticized her. She claimed that D.T. mishandled her workers' compensation claim. Appellant further asserted that she was wrongly put on emergency placement status when she worked at another employing establishment location in Indiana.

The Board has held that administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

The Board finds that appellant has not submitted sufficient evidence to establish the above-noted claims about administrative/personnel matters. Appellant submitted e-mails and memoranda, which concerned some of these administrative/personnel matters, but the

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<sup>14</sup> Y.W., Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>15</sup> See *Lillian Cutler*, *supra* note 8.

<sup>16</sup> T.L., Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>17</sup> M.S., Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>18</sup> J.W., Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

communications did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that she obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.<sup>19</sup> Although appellant expressed dissatisfaction with the actions of several superiors, 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.<sup>20</sup> Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by supervisors and managers. She claimed that D.T. “hazed” her with respect to the incident when she told A.F. to discard a pallet of circulars. Appellant further asserted that she had been intentionally embarrassed, harassed, humiliated, and ridiculed by management and that she was made to “take the fall” so that unidentified managers could save their jobs. 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>21</sup> The Board has held that unfounded perceptions of harassment do not constitute an employment factor.<sup>22</sup> 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.<sup>23</sup>

Appellant, however, did not submit corroborative evidence in support of her allegations regarding harassment/discrimination. She submitted numerous witness statements, but none of these statements contained a clear, detailed account of specific acts of harassment or discrimination.<sup>24</sup> For example, in a May 3, 2019 statement, J.L., a coworker, generally asserted that appellant was being harassed by several postal managers. However, the statement was vague in nature and did not discuss specific actions that would constitute harassment or discrimination. Appellant did not submit the final findings of any complaint or grievance she might have filed with respect to these matters, such as an Equal Employment Opportunity Commission complaint or a grievance filed with the employing establishment.<sup>25</sup> Therefore, she has not established a compensable employment factor with respect to the claimed harassment and discrimination.

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<sup>19</sup> See *M.R.*, Docket No. 18-0304 (issued November 13, 2018).

<sup>20</sup> *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

<sup>21</sup> *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>22</sup> See *F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>23</sup> See *id.*

<sup>24</sup> See *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

<sup>25</sup> Appellant established that a supervisor made certain comments, but she did not show that they rose to the level of harassment or discrimination. See generally *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (some statements may be considered abusive and constitute a compensable factor of employment, but not every statement uttered in the workplace is covered by FECA).



As the Board finds that appellant has not met her burden of proof to establish a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>26</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 in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

Judge

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

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<sup>26</sup> See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (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).