



## ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on April 16, 2019, as alleged.

## FACTUAL HISTORY

On April 21, 2019 appellant, then a 52-year-old regular mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2019 she injured her head while in the performance of duty. She stopped work that same day.

In an undated statement, appellant alleged that on April 16, 2019 “at 9:33 [p.m.] the acting supervisor [R.P.] said he has to talk to me. I said okay. So at 9:36 [p.m.] he spoke to me and said that [B.H.] said every time she passes by the bullpen I am not working and I feel that I should get special privilege cause I am on limited duty.” She recounted that she became upset and her head was “hurting so bad,” so a coworker asked her to sit down. Appellant further related that, before she could sit, she fell down and hit her head on the floor. Emergency medical services (EMS) was called and noted that her blood pressure was elevated.

In two statements, both dated April 16, 2019, E.H., appellant’s coworker, explained that she was working overtime that night when appellant informed her that B.H. was harassing her for no apparent reason. Appellant was upset and asked for a request for or notification of absence (PS Form 3971), but did not receive the form. E.H. indicated that appellant then walked halfway down the work aisle and fell down face first. She regained consciousness three minutes later, but fainted again while trying to sit on a stack of pallets and EMS was called.

In a statement also dated April 16, 2019, R.P. indicated that he had arrived to work around 9:00 p.m. and B.H. informed him that appellant was not performing her work duties and instructed him twice to address the issue. He indicated that he told appellant that B.H. had walked past her work area several times and observed that she was not working. R.P. informed her that, if the behavior continued, he would have to correct it. Appellant requested to speak with her union representative, but he denied her request as it was not a good time. R.P. indicated that she became upset and requested a Form 3971. He noted that he went to retrieve the form and, by the time he returned, appellant was laying on the floor. Other employees informed R.P. that she had fainted. EMS arrived and assisted appellant on site, and a union shop steward drove her home.

In an April 16, 2019 statement, I.C., the acting supervisor, explained that, when she arrived at work, she learned that appellant had fainted and observed her lying face down on the floor. She indicated that appellant stated that she was dizzy. I.C. began interviewing other employees regarding the incident and heard a thump and turned to see that appellant had fallen again. EMS arrived at approximately 10:00 p.m. Appellant declined transport to the hospital and indicated that she would drive home.

In an April 16, 2019 statement, W.G., a chief steward, noted that he was working the early overtime shift when appellant came to him and stated that she felt B.H. was harassing her. He noted that she explained that R.P. informed her that B.H. stated that she was never working and that B.H. thought she felt that she had special privileges because she was on limited duty. W.G. indicated that appellant

appeared very upset, stated that she felt dizzy and unwell, and then collapsed onto the floor and hit her head.

In an April 16, 2019 statement, D.K., appellant's coworker, recounted that he was speaking with two employees when he heard a loud "smack" and turned around to see appellant lying on the floor.

In an April 16, 2019 e-mail, B.H., an employing establishment manager of distribution operations, claimed that she and other supervisors observed appellant standing around in the priority bullpen not engaging in any work and that other employees had complained about her standing around or dancing to loud music. She indicated that she asked appellant's immediate supervisor to address the issue and that she did not speak directly to her. B.H. related that five minutes later the supervisor asked for a PS Form 3971 and she told him she did not have any copies of the form. She indicated that 10 minutes after that, another employee called her and told her that there was a medical emergency. B.H. indicated that she observed appellant on the ground face down and learned that she had passed out. W.G. informed B.H. that her presence was making appellant uncomfortable and asked her to leave, after which appellant fell again. B.H. stayed until the paramedics arrived and then left to attend a meeting.

In another April 19, 2019 statement, Q.R., appellant's coworker, explained that on April 16, 2019 he heard a loud smack and observed appellant lying face down on the floor. He tried to get her up, but she was not responsive, so he and other employees called EMS. Appellant woke up and related that she felt dizzy. Q.R. observed her try to sit on a stack of pallets to distance herself from B.H., who was standing nearby, and then fall to the floor again.

In a development letter dated May 13, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

In a report of a magnetic resonance imaging (MRI) scan of the brain, dated April 26, 2019, Dr. Joshua Ewell, a Board-certified radiologist, noted a history that appellant had fallen and lost consciousness for two to three minutes on April 16, 2019. He opined that the MRI scan revealed nonspecific white matter changes, but no acute infarct, hemorrhage, or mass.

In a medical report dated April 26, 2019, Dr. Carlisle St. Martin, a Board-certified neurologist, noted that appellant related complaints of headaches, which she attributed to a fall on April 16, 2019 after being harassed at work. He noted that she indicated that R.P. informed her that B.H. accused her of not working and acting as if she had "many privileges." Dr. St. Martin further noted that appellant had a history of headaches in her 20s, high blood pressure and that, at the time of the April 16, 2019 incident, she was on limited duty for a prior work-related low back injury.<sup>3</sup> He performed an examination, diagnosed a concussion, and recommended that she remain off work.

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<sup>3</sup> Under OWCP Files No. xxxxxx874 and xxxxxx622, OWCP previously accepted a December 2, 2010 traumatic injury claim for a lumbar strain and a December 29, 2014 traumatic injury claim for contusion of the back and sprains of the cervical, thoracic, and lumbar spines, respectively. It has not administratively combined these claims with the current claim.

In notes dated April 27 and 30, 2019, Dr. St. Martin recommended that appellant undergo therapy and a memory test and remain off work.

In a May 8, 2019 attending physician's report (Form CA-20), Dr. St. Martin diagnosed a head injury -- memory. He checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by her federal employment, noting that she was upset, fell, and hit her head. In a duty status report (Form CA-17) also dated May 8, 2019, Dr. St. Martin explained that the harassment from B.H. caused her blood pressure to go up which caused her to pass out and hit her head on the floor. He recommended that appellant remain off work.

In medical reports dated May 15 and 18, 2019, Dr. St. Martin indicated that appellant was evaluated by another physician who recommended brain therapy. He diagnosed a head injury with concussion, headaches, and memory problems and recommended that she not work until June 10, 2019.

In response to OWCP's development questionnaire, appellant submitted a May 20, 2019 statement in which she recounted that she fell and hit her head on the floor, but did not strike anything else on the way down. She denied having a history of fainting or other contributing medical conditions and identified a permanent back injury she developed at work in 2010 and left shoulder pain she developed at work in 2017. Appellant asserted that her head was hurting prior to the fall because she was harassed by B.H.

In medical reports dated from May 22 to June 5, 2019, Dr. St. Martin noted that appellant was having difficulty focusing and participating in activities. He related that she was seen by another physician who was helping her with her headaches and stress. Appellant asserted that she was now open to completing psychotherapy and memory training in order to use less medication to treat her injury.

By decision dated June 17, 2019, OWCP denied appellant's claim that she sustained a traumatic injury in the performance of duty. It concluded that the evidence of record was insufficient to establish that her injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. OWCP found that appellant's fall was idiopathic in nature in that she did not establish that she "suffered an injury as a result of some hazard or condition of employment existing in the premises." It further found that she did not establish harassment on the part of the employing establishment by its observance of her performing her duties, offering to retrieve a form for her, or by denying her request to speak with her shop steward until she made an "official request" to do so.

OWCP continued to receive evidence. In an April 19, 2019 medical note, Temitope Adedimeji, a physician assistant, noted that appellant was seen that day and would return to work on April 23, 2019.

In a May 2, 2019 medical report, Dr. Jason Brown, a Board-certified neurologist, and Drs. Karen Valdesuso and Kim Busichio, Board-certified neuropsychologists, performed a neuropsychological evaluation of appellant after she reported problems with her attention, concentration, and memory as well as headaches, vision problems, and mild symptoms of depression following the claimed April 16, 2019 employment incident. They diagnosed a head injury, post-concussion syndrome, and cognitive deficits and recommended that she undergo cognitive rehabilitation treatment.

In a May 17, 2019 medical report, Dr. Ami Shah, a Board-certified psychologist, related that appellant's manager at work caused her to feel scared, upset, and anxious after the claimed April 16, 2019 employment incident in which B.H. accused her of not working. She related that she later passed

out and hit her head. Appellant explained that she had encountered problems with attention, concentration, visual processing, learning, memory, and information processing. On evaluation, Dr. Shah found an average pain report, severe anxiety levels, and moderate symptoms for depression. She recommended that appellant participate in therapy to address her symptoms.

In progress reports dated from May 7 to June 11, 2019, Dr. Brown provided treatment notes relating to appellant's neuropsychological sessions.

In a June 12, 2019 medical report, Dr. St. Martin indicated that appellant was totally disabled from work and noted that she was continuing to participate in traumatic brain injury (TBI) therapy with Dr. Brown.

In narrative reports dated June 17 and 19, 2019, Dr. Brown identified April 16, 2019 as the date of appellant's injury and diagnosed an unspecified intracranial injury and post-concussion syndrome. He opined that the employment incident was a competent medical cause of her injury and that her history of injury was consistent with her complaints and his objective findings. Dr. Brown estimated that appellant was temporarily impaired by 80 percent.

In medical reports dated June 19 and 26, 2019, Dr. St. Martin evaluated appellant for lower back pain and observed that she continued to have problems with her memory after her concussion. Appellant informed him that she felt that she needed more psychiatric support because the employing establishment did not believe her. Dr. St. Martin diagnosed a concussion, headaches, and memory problems and indicated that she was totally disabled from work.

Appellant submitted progress reports dated June 25 and 27, 2019 in which Dr. Brown provided notes relating to her neuropsychological sessions.

In a July 2, 2019 medical report, Dr. St. Martin provided an update relating to appellant's physical therapy and chiropractic treatment for her lower back injury.

In progress reports dated from July 2 to 11, 2019, Dr. Brown provided treatment notes relating to appellant's neuropsychological sessions. In physician's narrative reports dated July 5 and 11, 2019, he again diagnosed unspecified intracranial injury and post-concussion syndrome due to the claimed April 16, 2019 employment incident and estimated that she was temporarily impaired by 80 percent.

In medical reports dated July 9 and 17, 2019, Dr. St. Martin noted that appellant believed that she was prepared to return to limited-duty work, that her memory had somewhat improved, and that her headaches were less frequent. He cleared her to return to work as it related to her head injury.

Appellant also submitted additional progress reports from Dr. Brown dated from July 23 to August 14, 2019 summarizing neuropsychological treatment sessions.

On November 15, 2019 appellant, through counsel, requested reconsideration of OWCP's June 17, 2019 decision. Counsel for appellant attached an undated report from Dr. Malcolm Kanter, a Board-certified neurosurgeon, which provided information on the effects of TBI and a detailed description of the process and benefits of cognitive rehabilitation treatment therapy.

By decision dated January 22, 2020, OWCP denied modification of its June 17, 2019 decision.

## 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 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 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>8</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 to 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>

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.<sup>11</sup> Although related to the employment, administrative and personnel matters are

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

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>9</sup> *See A.M., id.*; *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>10</sup> *Lillian Cutler, id.*

<sup>11</sup> *A.B.*, Docket No. 18-0635 (issued August 14, 2020); *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), *re aff'd on recon.*, 42 ECAB 566 (1991).

functions of the employer rather than the regular or specially assigned duties of the employee.<sup>12</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>13</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>14</sup> However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did, in fact, occur.

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his or her allegations with probative and reliable evidence.<sup>15</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>16</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, OWCP must base its decision on an analysis of the medical evidence.<sup>17</sup>

### ANALYSIS

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

Appellant alleged that she sustained a head injury in the performance of duty when she passed out and fell after being harassed by B.H., an employing establishment manager. OWCP denied her claim, finding that she had not established that she sustained an injury or medical condition during the course of employment and within the scope of a compensable work factor. The Board must, therefore,

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<sup>12</sup> *A.B., id.*; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen, id.*

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

<sup>14</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).

<sup>15</sup> *A.B., supra* note 11; *G.R., supra* note 11; *Roger Williams*, 52 ECAB 468 (2001).

<sup>16</sup> *See C.G.*, Docket No. 20-0058 (issued September 30, 2021); *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

<sup>17</sup> *Id.*

review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.<sup>18</sup>

The Board initially notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.<sup>19</sup> Rather, appellant has alleged error and abuse by management in administrative and personnel actions, as well as harassment, reprisal, and a hostile work environment.

As noted above, 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 an employee unless there is error or abuse on the part of the employing establishment.<sup>20</sup> In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record.<sup>21</sup>

Appellant alleged that she requested a PS Form 3971 and to speak with a shop steward on April 16, 2019. R.P. confirmed that she made these requests and explained that he went to the second floor to retrieve the form. B.H. indicated that appellant had not made an official request to speak with the shop steward. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.<sup>22</sup> Appellant has not offered evidence to establish that the employing establishment acted unreasonably regarding her requests for the form and to speak to a shop steward, and therefore she has not established a compensable employment factor relating to those requests.<sup>23</sup>

Appellant further alleged that R.P. told her that B.H. accused her of not working and acting like she had a special privilege because she was on light duty from a prior work-related injury. She indicated that these accusations caused her to become upset, have pain in her head, pass out, and hit her head on the floor. These allegations were substantiated by R.P. in his April 16, 2019 statement. The Board has held that disparaging remarks from coworkers, if substantiated by probative reliable evidence, can constitute harassment.<sup>24</sup> Thus, the Board finds that appellant being accused of not working hard enough and being told that she acted like she had a special privilege because she was on light duty from a prior

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<sup>18</sup> See *K.W.*, Docket No. 20-0832 (issued June 21, 2022); *S.H.*, Docket No. 21-0240 (issued May 2, 2022).

<sup>19</sup> See *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 9.

<sup>20</sup> *R.D.*, *id.*; *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, *supra* note 11; *Thomas D. McEuen*, *supra* note 11.

<sup>21</sup> *R.D.*, *id.*; *B.S.*, *supra* note 14; *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>22</sup> *Supra* note 14.

<sup>23</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j) (July 1997); see *R.D.*, *supra* note 24; *D.B.*, Docket No. 18-0537 (issued September 12, 2018).

<sup>24</sup> See *S.S.*, Docket No. 17-0959 (issued June 26, 2018).



work injury constituted error and abuse by the employing establishment.<sup>25</sup> A compensable employment factor has therefore been established.

In denying appellant's claim, OWCP did not review the medical evidence submitted on the issue of an emotional and/or stress-related condition causally related to the accepted compensable factor of employment. The Board will therefore set aside OWCP's January 22, 2020 decision and remand the case for a review of the medical opinion evidence. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2020 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.

Issued: December 14, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>25</sup> *Id.*