United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 20-0832**
	)	**Issued: June 21, 2022**
U.S. DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, Atlanta, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2020 appellant, through counsel, filed a timely appeal from a January 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

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 19, 2019 appellant, then a 44-year-old passport specialist, filed an occupational disease claim (Form CA-2) alleging that she developed emotional conditions including major depressive disorder and anxiety causally related to factors of her federal employment. She noted that she first became aware of her claimed conditions and their relationship to her federal employment on January 23, 2017. Appellant asserted that she was subjected to workplace discrimination, hostile work environment, reprisal, and threatening interactions with her supervisors. She stopped work on November 28, 2018.

In a report dated May 9, 2017, Lindsay Thomas, a Board-certified psychiatric mental health nurse practitioner, noted that appellant was initially seen on May 7, 2017. She diagnosed major depressive disorder and generalized anxiety, and opined that the severity of appellant's current anxiety and depression symptoms were likely temporary. Ms. Thomas recommended that appellant remain off work until July 10, 2017 as appellant was unable to perform her duties and then return to work for four hours a day.

OWCP continued to receive disability slips excusing appellant from work.

Ms. Thomas, in a report dated January 21, 2019, diagnosed recurrent severe major depressive disorder and generalized anxiety disorder. She noted that appellant had been a patient since March 7, 2017 when appellant was seen for significant workplace stress. Ms. Thomas opined, based on appellant's statements, that appellant's work environment contributed significantly to her mental health issues.

In a March 13, 2019 statement, the employing establishment controverted the claim, asserting that appellant had a history of disciplinary, conduct, and performance issues since 2014. It indicated that appellant filed a traumatic injury claim on November 28, 2018 for a slip and fall, which had occurred nine days prior, and that she had not returned to work since. The employing establishment noted that her current claim was apparently based upon recent personnel actions. The personnel actions included the denial of a within-grade increase (WGI) in 2018 and placement on a performance improvement plan (PIP) on November 18, 2018. The employing establishment also noted that appellant served a 14-day suspension, as of January 21, 2019, for improper personal conduct, failure to follow instructions, and being absent without leave (AWOL).

In a development letter dated March 15, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a development questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted numerous documents related to her allegations. She alleged that in 2014 she engaged in a heated argument with her supervisor, J.C., regarding a leave request. J.C.

placed the leave request on appellant's head following her refusal to accept it. The record contains documents concerning an arrest and criminal charges brought against J.C. for the September 11, 2014 incident, during which he placed her leave request on her head. The case against J.C. was closed and finalized on April 29, 2015 with a *nolo contendere* plea for a charge of disorderly conduct (fighting).

Appellant, in an August 2014 statement, detailed incidents occurring from May to August 22, 2014 involving J.C. and V.A. She alleged that, while she was off work for her daughter's graduation on May 22 and 23, 2014 the rest of the staff was trained regarding new policy. Management did not inform appellant of the new policy and she, therefore, made mistakes/errors due to the policy changes. She described another incident regarding her eligibility for a WGI on June 17, 2014. V.A. informed appellant that she would not receive the WGI due to her error rate, she was then given a performance evaluation, written by J.C., which was "personal and highly critical" and referred to her as a failure. After appellant objected to the evaluation, the human resources (HR) office directed that it be revised. Appellant further alleged that on July 8, 2014 she was wrongly charged with an error in processing an application as the error should have been charged to J.C. who was required to review all her work while she was on 100 percent audit. The incidents alleged also included being issued a letter of admonishment for failure to work the counter as requested by appellant's supervisor, J.C. However, during a July 25, 2014 meeting discussing the letter of admonishment, he admitted that he had not specifically instructed her to go to the counter.

In an undated affidavit, appellant related that on August 21, 2014 J.C. informed her that she had left an application face-up on the counter of her workstation, which he turned over. The following day, August 22, 2014, she received an e-mail from J.C. informing her that he wanted to discuss her violation of the employing establishment policy regarding processing of work. During the meeting, J.C. informed her that disciplinary action would be taken regarding the August 21, 2014 incident, but that the type of disciplinary action would be decided following discussions with HR. In response to appellant's question about union representation, J.C. informed her that she was not entitled to union representation during the meeting.

In an undated statement, appellant noted that on January 7, 2015 she submitted documentation regarding a Family and Medical Leave Act (FMLA) request. She stated that her FMLA request for the period December 18, 2014 through January 2, 2015 had been approved, but the employing establishment refused to accept medical documentation for the period December 16 to 17, 2014 and January 5 to 6, 2015. On January 29, 2015 appellant received e-mail correspondence from her supervisor advising that her FMLA request for December 3, 2014 through January 7, 2015 would not be approved, even though she had signed the appropriate forms for the periods December 2 to 15, 2014 and December 18, 2014 through January 2, 2015. She asserted that the documents provided by her supervisor were incomplete and without any explanation on how to complete the forms. As a result of the lack of information and incomplete documents, appellant stated that she had to research and print out the relevant forms. She stated that she provided medical certification to her supervisor on December 3, 2014 and January 7, 2015. According to appellant, her supervisor did not inform her of any FMLA time frames for submitting supporting medical documentation until January 7, 2015. She asserted the employing establishment erred in issuing her a leave restriction letter as she was within the timeframes for submission of her FMLA medical documentation. Appellant asserted that the

voicemails and e-mails she received regarding her leave restriction and FMLA appeared to be conflicting and were evidence of harassment by the employing establishment. She alleged reprisal and harassment for filing an Equal Employment Opportunity (EEO) complaint and requested to amend her current complaint to include the denial of her FMLA request and constant threats of disciplinary action.

In a follow-up e-mail dated January 7, 2015, L.M., supervisory passport specialist, informed appellant that she would be charged with being AWOL from December 16, 2014 through January 7, 2015 until medical documentation was provided and noted that she was under leave restrictions. L.M., in April 15, 2015 e-mail correspondence, informed her that her leave restriction expired on April 10, 2015. L.M. indicated that HR had advised appellant that she could not abide by the guidelines in the October 10, 2014 leave restriction letter until receiving a formal notification implementing new leave restriction and that she could follow the normal leave policy until then.

In a letter dated June 1, 2015, the employing establishment advised appellant that it was proposing a three-day suspension without pay for failure to follow proper leave procedures. It noted that on October 10, 2014 that she was placed on leave restriction requiring advance requests and approvals of absences, and that 53.50 hours of leave under FMLA had been approved on November 25, 2014 for the period September 11 to 18, 2014. On December 2, 2014 appellant verbally advised that she was invoking her right to FMLA, however, she failed to complete and submit her request for FMLA. The employing establishment noted that she was denied authorization to use leave on November 28 and December 16 and 17, 2014, and January 5, 6, and 7, 2015.

In a February 22, 2017 memorandum, appellant requested an extension of her FMLA leave. She requested between 174 and 480 hours of FMLA leave between January 30 and March 8, 2017 to cover her medical disability with an expected return to work date of March 9, 2017. The record contains e-mail correspondence dated July 14 and 24, 2017 between V.A., supervisory passport specialist, and M.W. conditionally approving appellant's absences as leave without pay (LWOP) under FMLA. M.M., an employing establishment employee relations specialist, noted that appellant had LWOP approved through May 2018 as a reasonable accommodation for her part-time schedule.

In e-mail correspondence dated November 28, 2017 from appellant to V.A., appellant requested to see video footage showing her entering an elevator on November 9, 2017 at 11:04 a.m. and returning to her desk at 11:57 a.m. She asserted she had falsely been accused of being absent from her desk for approximately one hour and that she had been threatened with being charged with AWOL for this alleged absence.

In July 5, 2018 e-mail correspondence, V.A., informed appellant that she did not have authorization to be away from her assigned task and that she failed to follow proper protocol by not requesting leave to be away from her assignment/workstation. V.A. noted that appellant had been advised to request time to be away from her desk outside her official break times.

In a July 24, 2018 letter, appellant detailed her federal employment history. She noted that she filed criminal charges against J.C., her supervisor, for hitting her on the head with a piece of

paper. Following that incident, appellant filed three EEO complaints. She asserted that she was subjected to a hostile work environment, harassment, reprisal, undue scrutiny, and sabotage. Appellant stated that she has been diagnosed with major depressive disorder, anxiety, migraines, sciatica, herniated discs, etc. and has been granted a reasonable accommodation for these conditions.

In July 26, 2018 e-mail correspondence to management, appellant alleged that she overheard L.K. and B.V. discussing her medical status and entitlement to FMLA. She noted that B.V. was a colleague and personal friend of L.K., and not a management official.

Appellant noted that she had been placed on PIPs in 2015, 2016, and 2018.

In e-mail correspondence dated December 11, 2018, V.A., informed appellant that her request for annual leave could not be approved due to the lack of supporting medical documentation for her illness. She informed appellant that she was currently on a PIP and was expected to be in the office. V.A. further informed appellant that she would be charged AWOL until medical documentation was provided.

In e-mail correspondence of even date, appellant requested assistance from G.Y., a union official, noting that she had called in sick that day and was being charged with AWOL because she was on a PIP. She stated that she was not on leave restrictions and alleged that her supervisors were constantly changing the rules applicable to her.

The record also contains e-mail correspondence dated December 13 and 14, 2018 between appellant and R.A., appellant's union president, concerning issues with her supervisor and her leave request. Appellant stated that her supervisor failed to help her with her workers' compensation claim. In addition, she asserted that she was authorized to use annual leave when calling-in sick because she had no sick leave available. Appellant also asserted that her supervisor refused to provide an authorization for examination and/or treatment (Form CA-16) for her November 28, 2018 slip and fall injury and, as a result, she was being asked to pay for treatment since her health care plan would not pay for a work injury.

In e-mail correspondence dated December 17, 2018, M.M. stated that appellant's supervisors reported that appellant refused to provide medical documentation for her absences due to an employment injury until they provided a Form CA-16. She advised appellant that a Form CA-16 was only issued in severe emergency situations. M.M. noted that it appeared appellant's slip and fall was a minor injury based on witness statements and no medical documentation had been provided. She stated that appellant had been given guidance on how to submit medical bills to OWCP.

In a January 21, 2019 form report, Lindsay Thomas, a Board-certified psychiatric mental health nurse practitioner, noted that appellant has been her patient since March 7, 2017 and that counseling had been recommended. She stated that it was necessary for appellant to use leave to attend medical appointments due to her episodic flare-ups. Ms. Thomas checked a box marked "No" to the question of whether appellant was disabled from performing the duties of her position.

In a letter dated March 13, 2019, the employing establishment controverted appellant's assertions noting that she had a history of performance, disciplinary, and conduct issues since

2014. It noted that she served a 3-day suspension for AWOL and failure to follow leave procedures in 2015, that a WGI had been denied in 2014, and that she had been placed on a PIP, which appellant passed. The employing establishment noted that appellant was also denied a WGI in 2018; was placed on a PIP on November 19, 2018; that appellant refused to submit medical documentation for a November 28, 2019 slip and fall injury; she displayed combative behavior when given guidance and instructions on filing this claim; and that appellant served a 14-day suspension beginning on January 21, 2019 for improper personal conduct, failure to follow instructions, and being AWOL.

In March 27, 2019 e-mail correspondence, M.M. stated that appellant's assertion that she had not been provided any advice on how to file a workers' compensation claim was untrue. She stated that a detailed e-mail had been sent to appellant containing relevant information regarding her traumatic injury, which appellant appeared to either have ignored or not read. M.M. noted that information had been provided to appellant on how to receive reimbursement for medical treatment without a Form CA-16. She informed appellant that she had previously been given an explanation as to why a Form CA-16 had not been issued and that the issuance of a Form CA-16 was not required by the employing establishment in all cases. Additionally, M.M. stated that the witness statements did not support a severe slip and fall claim. She attached copies of the e-mail correspondence to appellant regarding the November 28, 2019 slip and fall including information on how to file a claim. The correspondence informed appellant of the lack of any supporting medical documentation and witness statements and advised her on the submission of medical documentation.

In an April 9, 2019 report, Ms. Thomas noted the dates of treatment and that appellant had been disabled from work since January 2017. She diagnosed major depressive disorder and generalized anxiety. Ms. Thomas opined that she was unable to determine the cause of appellant's emotional condition, but noted that appellant reported a significant amount of work stress. This report was subsequently cosigned by Opeoluwa Akinnusi, a Board-certified psychiatrist.

On April 15, 2019 OWCP received appellant's undated statement asserting that her 14-day suspension was predicated on false statements from her coworkers and that she was falsely charged with being AWOL. Appellant alleged that the statements regarding her slip and fall accident were inaccurate. She asserted that, since 2014 she had been under constant scrutiny for her work, attire, break times, and departure from work.

By decision dated June 25, 2019, OWCP denied appellant's claim, finding that she had not established the factual component of her claim. Specifically, it found that the evidence she submitted was vague and general without any supporting documentation. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 2, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, held on October 16, 2019. During the hearing, she testified that she had filed EEO complaints, which were denied, and that had requested an investigation by the Inspector General into her allegations of discrimination, but had received no response. Appellant also alleged that her supervisor would aggressively throw boxes of work assignments onto her desk, and would make facetious remarks about her work.

By decision dated January 24, 2020, OWCP's hearing representative affirmed the June 25, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim,[4] including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5] 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.[6]

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) 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.[7]

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.[8] 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.[9]

[3] *Supra* note 2.

[4] *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *M.J., id.*; *O.G., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] 20 C.F.R. § 10.115; *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *Michael E. Smith*, 50 ECAB 313 (1999); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Elaine Pendleton, id.*

[7] *See A.B.*, Docket No. 18-0635 (issued August 14, 2020); *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).

[8] *A.B., 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).

[9] *A.B., id.*; *Cutler, id.*

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.[10] 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.[11] 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.[12]

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.[13] 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.[14] 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.[15]

ANALYSIS

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

OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor. The Board must therefore initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.[16]

[10] *A.B., id*; *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).

[11] *A.B., id*.; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen, id*.

[12] *Id*.

[13] *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).

[14] *A.B., supra* note 8; *G.R., supra* note 11; *Roger Williams*, 52 ECAB 468 (2001).

[15] *See C.M., supra* note 8; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996); *Margaret S. Krzycki*, 43 ECAB 496, 502-3 (1992).

[16] *See S.H.*, Docket No. 21-0240 (issued May 2, 2022),

The Board initially notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.[17] 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.[18] In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record.[19]

Appellant alleged events that had occurred involving her supervisors since 2014. She alleged that her coworkers were provided training regarding new policies in May 2014, on days she was off work, but that she was never informed of the new policies. Training is a managerial action, and absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[20] Appellant has not substantiated that the employing establishment improperly offered training on her days off or that it failed to inform her of new policy requirements.

Appellant further alleged that she was denied a WGI in June 2014 and was then given a "personal and highly critical" performance evaluation. In July 2014, she alleged that she was improperly charged with an error and she was improperly admonished for failing to report/work the counter. During August 2014 appellant was threatened with disciplinary action for leaving an application face-up on her desk and was denied union representation during the discussion of the incident. She alleged that she was falsely accused of being absent from her desk in 2017. Appellant also alleged that she wrongfully denied a WGI in 2018, wrongfully placed her on PIPs in 2015, 2016, and 2018. Although the handling of disciplinary actions and evaluations are generally related to the employment, the Board has held that they are administrative functions of the employing establishment, not duties of the employee, and are not covered under FECA. An administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.[21] Appellant has not offered evidence to establish that the employing establishment acted unreasonably in these matters and therefore she has not

[17] *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* 9.

[18] *R.D.*, *id.*; *G.R.*, *supra* note 11; *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen*, *supra* note 11.

[19] *R.D.*, *id.*; *B.S.*, *supra* note 14; *Ruth S. Johnson*, 46 ECAB 237 (1994).

[20] *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *Carolyn S. Philpott*, 51 ECAB 175 (1999).

[21] *Supra* note 13.

established a compensable employment factor relating to her disciplinary and performance evaluation matters.[22]

Appellant also described a number of allegations related to her requests for FMLA leave, and other leave issues, commencing in December 2014. She alleged that management wrongfully issued a 3-day suspension on June 1, 2015 for failure to follow leave policy, and a 14-day suspension on January 21, 2019. She alleged also improprieties in the handling of her CA-1 claim in November 2018. Handling of leave requests[23] and workers' compensation matters[24] are also administrative functions of the employer and not duties of the employee. Appellant has not established that the employing establishment improperly denied her leave requests or otherwise acted unreasonably.

Appellant further alleged that she was subjected to discrimination, reprisal, and harassment by management, specifically V.A. and J.C. Specifically, she asserted that she was subjected to daily scrutiny. Appellant also alleged that V.A. improperly discussed her medical status with a co-employee. The Board also finds that appellant submitted no evidence corroborating her allegations of harassment. Harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred, however, mere perceptions are not compensable under FECA.[25] As appellant has not provided evidence corroborating her assertions, she has not established a compensable employment factor as to any of these allegations of harassment.

Appellant further alleged, however, that her supervisor, J.C., inappropriately placed a piece of paper on her head on September 11, 2014. This physical contact is substantiated by the evidence of record, including documentation concerning the arrest of and criminal charges brought against supervisor J.C. for the September 11, 2014 incident. The Board thus finds that this physical contact constitutes error and abuse by the employing establishment.[26] 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 causal relationship regarding this accepted factor. The Board will therefore set aside OWCP's January 24, 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.

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[22] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997); *see R.D., supra* note 13; *D.B.*, Docket No. 18-0537 (issued September 12, 2018).

[23] *M.R.*, Docket No. 18-0305 (issued October 18, 2019); *A.L.*, Docket No. 17-0368 (issued June 20, 2018).

[24] *B.Y.*, Docket No. 17-1822 (issued January 18, 2019).

[25] *B.L.*, Docket No. 18-0965 (issued November 19, 2018); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[26] *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *D.B.*, Docket No. 19-1543 (issued March 6, 2020); *S.B.*, Docket No. 16-1522 (issued March 3, 2017); *E.M.*, Docket No. 16-1695 (issued June 27, 2017); *D.S.*, Docket No. 15-0585 (issued July 11, 2016); *Alton L. White*, 42 ECAB 666 (1991) (physical contact arising in the course of employment, if substantiated by the evidence of record, may constitute a compensable employment factor).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 24, 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: June 21, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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