United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 20-0098**
	)	**Issued: March 17, 2022**
DEPARTMENT OF VETERANS AFFAIRS, PUGET SOUND HEALTH CLINIC, Seattle, WA, Employer	)	

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 October 16, 2019 appellant filed a timely appeal from a July 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 13, 2015 appellant, then a 58-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she developed emotional distress and severe anxiety on December 18, 2014 at 11:00 a.m. when the employing establishment police improperly arrested her with an unwarranted display of force while she was engaged in union duties.

In a January 21, 2015 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged emotional condition claim, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and an explanation of any areas of disagreement, a copy of her position description, and the results of any investigation. It afforded both parties 30 days for response.

On January 15, 2015 Dr. Keith Sonnanburg, a licensed clinical psychologist, opined that appellant was totally disabled due to a work-related psychological injury. On February 2, 2015 he diagnosed work-related stress and anxiety. Dr. Sonnanburg, in an attending physician's report (Form CA-20) dated February 4, 2015, checked a box marked "Yes" to indicate that her condition was caused or aggravated by her employment activity and added that her condition was directly related to episodes at her place of work.

By decision dated February 24, 2015, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish that the claimed incident occurred, as alleged. It noted that she had not submitted a factual statement outlining specific details of the alleged December 18, 2014 employment incident. Thus, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On March 4, 2015 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. She provided additional information in support of her request. In a March 3, 2015 statement, appellant noted that she was a union vice-president and was responsible for representing employees in meetings and hearings with management, filing grievances, and protecting employees' rights. She explained that in the course of representing an employee, R.G., a pathologist, she met with him on December 18, 2014 to discuss a fact-finding interview scheduled on that date. Appellant had consulted *via* telephone with J.M., a physician who was also the national union representative, who confirmed that R.G. was entitled to union representation at the scheduled fact-finding interview. She and the chief union steward, A.T., met S.L, the Acting Director of the employing establishment, and R.N., an employing establishment official, in the hallway and S.L. informed them that R.G. did not have representation rights for the interview. Appellant disagreed and noted that R.G. had requested her presence during the interview. She attended the interview with the permission of the interviewer and took notes.

[2] Docket No. 18-1375 (issued May 1, 2019).

Shortly after the interview began, R.N. interrupted the meeting and insisted that appellant and A.T. leave. After appellant left the room, she informed R.N. that she would file an unfair labor practice complaint against the employing establishment and requested his name. She remained outside the conference room in the hallway on her cellphone when two armed and uniformed employing establishment police officers, Lt. W.C., and Lt. E., began searching the area near the conference room. They subsequently entered the conference room, returned to appellant, and asked her name. The officers then informed her that they had been asked to remove her from that area and then that floor of the employing establishment's building. Appellant alleged that her removal was solely because of her protected union activities. She noted that Lt. W.C. became agitated and denied that there were any charges against her, but asked for her security badge. Appellant informed the officers that her badge was in her office and led them to her office to retrieve her badge. The officers again denied that she was under arrest and released her from custody after reviewing her badge. Appellant alleged that this incident caused her heart palpitations, shock, and fear. She was unable to continue her work that day and eventually went home. Appellant reported to work the next day and again experienced heart palpitations and tension. She felt that the stress was too much. Appellant had to ask coworkers to assist with completing her assigned work. Thereafter, she began to have nightmares about working at the employing establishment.

Appellant noted that she had filed a Federal Labor Relations Authority (FLRA) complaint against the employing establishment, but had not yet received a final decision. She alleged that the employing establishment interfered with protected union activity when it called the police after she left the interview on December 18, 2014.

Appellant provided a February 19, 2015 witness statement from R.G., who noted that he had requested that she accompany him to the interview to protect his rights. R.G. noted that he had invited appellant into the interview and the interviewer had indicated that he did not have a problem with her presence. He asserted that shortly after the interview began, management officials, including R.N., entered the room and informed the participants that R.G. did not have the right to union representation. Appellant then left the room.

In a February 19, 2015 statement, B.A., the union president, described the events of December 18, 2014 and confirmed that the police officers denied that appellant was under arrest, but escorted her into her office and examined her badge. She informed B.A. that the officers had been called to remove her from the area of the meeting. B.A. alleged that an officer advised her that the "panic button" had been pushed as a means of calling the police to the scene.

A February 20, 2015 e-mail from J.M. indicated that he was aware that appellant was acting as R.G.'s representative in the scheduled interview. On February 20, 2015 A.T. reported that he had attended the December 18, 2014 meeting with appellant and R.G. He confirmed that the interviewer consented to their presence during the interview. A.T. was taking notes when R.N. entered and asserted that union representation was not allowed. He and appellant then left the room.

In an undated form report, Dr. Sonnanburg noted that appellant was attending a meeting as a union representative and was shocked by the employing establishment police who responded to an improper panic signal and removed her. He diagnosed adjustment disorder with mixed anxiety and depressed mood with post-traumatic stress disorder symptom pattern.

On May 5, 2015 appellant requested reconsideration of the February 24, 2015 OWCP decision.

In a September 29, 2015 development letter, OWCP requested additional factual information from the employing establishment including a statement from a supervisor regarding the accuracy of appellant's claim, whether her job was stressful, and a copy of her position description. It afforded 30 days for a response. The employing establishment responded, contending that R.G. was not entitled to union representation at the December 18, 2014 interview and that appellant was aware of this fact. It alleged that appellant entered the room where the interview was scheduled on December 18, 2014 and R.N. had asked her to leave. The employing establishment asserted that she commented that she would leave the room, but would stand immediately outside the door. Appellant then demanded information from R.N. in a loud and aggressive manner. R.N. informed her that her behavior was inappropriate and asked her to leave the floor. Appellant refused. R.N. then asked the receptionist to summon the police and she activated the panic button call. The police arrived and asked to see appellant's identification. They escorted her to her office to retrieve her badge.

The employing establishment contended that appellant was not arrested, accosted, or subject to unwarranted display of force. It asserted that R.G. had no right to union representation, that she was advised of this, that she refused to leave the area when asked, and that she was therefore acting on her own volition, not as part of protected union activity. The employing establishment concluded that appellant was not in the performance of duty.

By decision dated January 19, 2016, OWCP modified its February 24, 2015 decision, finding that appellant had not established a compensable factor of employment and, thus, an injury was not sustained in the performance of duty. It noted that there was no evidence that the employing establishment's actions regarding the December 18, 2014 meeting were abusive, erroneous, or improper and found that her reactions were self-generated.

On January 18, 2017 appellant requested reconsideration of the January 19, 2016 decision on January 18, 2017. She provided an additional narrative statement dated January 14, 2017, wherein she asserted that on December 18, 2014 she attended a meeting on the fifth floor of the employing establishment in room 523 to represent R.G. Appellant was ordered to leave the room and did so. She remained in the hallway, outside of the room awaiting R.G. in case her assistance was needed. Appellant alleged that she was quiet, that she was not disruptive, and that she was checking her cellphone for the number of J.M. to ask for advice. She noted that she was so quiet that the police officers did not notice her and had to ask where she was. When appellant asked what charges were being leveled against her, one of the officers became red-faced and flustered. The police officer used an angry voice to tell appellant that she had to leave the fifth floor and that he had to remove her from the area. Appellant believed that she had no choice but to leave with the police under their escort. The police officers walked on either side and escorted her to her fourth floor office. While there, they notified appellant that she was free to go.

In a January 3, 2017 letter, B.A. indicated that R.G. requested union help and that on December 18, 2014 appellant was engaged in representational functions at the time of her injury. She noted that she was appellant's supervisor and that appellant was entitled to official time at the time of her injury.

On January 4, 2017 A.B., an employing establishment administrative assistant, provided a statement noting that on December 18, 2014 she observed appellant enter the conference room. She asserted that appellant was asked to leave the room and did so. R.N. then asked A.B. to call security, which she did. A.B. noted that appellant was in the hallway after leaving the conference room and did not raise her voice or make noise. She contended that appellant did not cause any commotion or disturbance from the time when she left the conference room until the police removed her from the area.

Appellant provided a copy of the FLRA-approved settlement agreement signed by the acting regional director of the employing establishment on January 23, 2016 and the FLRA notice to employees which was signed by the employing establishment's medical center director on January 24, 2016. Under the FLRA settlement agreement, the employing establishment was required to ensure that all references to the police encounter with appellant on December 18, 2014 was expunged from its records, and forbidden to rely on this incident in any future action. It was also required to post the following notice to all employees:

> "On or about December 18, 2014, [the employing establishment] police removed [appellant] from a location where she was waiting for an employee to exit a meeting. The [FLRA] statute prohibits an agency from interfering with an employee's exercise of protected activity and/or taking an action against an employee because of the exercise of protected activity."

The notice further provided that the employing establishment would not interfere with the exercise of protected activity or take an action against an employee because of the exercise of protected activity. The notice concluded, "WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute." (Emphasis in the original.)

On March 17, 2017 the employing establishment responded to appellant's January 18, 2017 request for reconsideration. In a statement dated November 3, 2015, A.B., noted that she was sitting at her desk on December 18, 2014 near room 523 at the employing establishment. She indicated that appellant was standing right in front of her desk and that she was shaken by her disruptive behavior, including yelling and screaming. A.B. asserted that appellant was asked to leave the area and refused to go. R.N. requested that she contact the police.

In an e-mail dated May 28, 2015, R.N. asserted that the December 18, 2014 meeting was not associated with personnel issues, that the union had no vested interest in attending, and that both R.G. and the union were made aware of these facts prior to the meeting. He indicated that the union presence was disruptive and unnecessary. R.N. asked the union officials to leave. He alleged that appellant became confrontational and initially refused to leave the room. Appellant then agreed to leave the room, but asserted that she would stand immediately outside the door in an outer office area. Once in the office area, she then demanded identification from R.N. R.N. asserted that appellant's demeanor was loud and aggressive. He informed her that this behavior was inappropriate and again asked her to leave, but she refused. A.B. was asked to summon the police and activated a panic button. When the police arrived, they asked to see appellant's identification. Appellant did not have identification, and the officer escorted her out of the area.

R.N. asserted that she was not engaged in protected union activity and that her disruptive behavior in the outer office work environment was inappropriate.

In an e-mail dated November 23, 2015, Lt. W.C. noted that on December 18, 2014 he was called to room 523 due to a disruptive situation. He indicated that he contacted someone in the office who informed him that they were conducting a meeting, that appellant was being disruptive, and that person requested that she be escorted out of the office as the meeting did not require union presence. Lt. W.C. asserted that she was argumentative toward the staff, loud, and disruptive. He advised appellant that she needed to leave the area and she became argumentative toward him and told him that it was her right to be in the office. Lt. W.C. escorted her to the union office and directed her actions to the union president. He alleged that appellant accused him of not knowing how to do his job.

On April 26, 2017 OWCP provided appellant with a copy of the employing establishment's responses and afforded her 20 days to submit comments. On May 15, 2017 appellant responded and asserted that in the FLRA posting, the employing establishment admitted to interfering with protected activity and interfering with appellant's exercise of her rights in accordance with FLRA statute. She further noted that the settlement agreement included that her interactions with the employing establishment police on December 18, 2014 would be expunged from the employing establishment's records.

By decision dated June 27, 2017, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that her reconsideration request was received on January 20, 2017. In a memorandum of telephone call (Form CA-110) dated September 7, 2017, OWCP's claims examiner noted reviewing appellant's claim file and found that her requests for reconsideration were entered into the Integrated Federal Employees' Compensation System (iFECS) on January 18, 19, and 20, 2017. The claims examiner directed her to either appeal to the Board or to make an additional request for reconsideration which would not be timely, but noted that the date of her original request for reconsideration would establish clear evidence of error.

On September 20, 2017 appellant requested reconsideration of the January 19, 2016 decision. She noted that her initial request for reconsideration was received by OWCP on January 18, 2017 and therefore, was timely.

By decision dated January 8, 2018, OWCP reviewed the merits of appellant's claim but denied modification of its January 19, 2016 decision. It found that she had submitted no evidence to demonstrate that the employing establishment acted in an abusive or improper manner in regard to the accepted December 18, 2014 employment incident. OWCP further found that the FLRA settlement agreement did not include an admission of error or abuse on the part of the employing establishment. It determined that appellant's emotional reaction was self-generated and not due to a compensable factor of her employment.

Appellant appealed to the Board, and in its May 1, 2019 decision,[3] the Board set aside the January 8, 2018 decision and remanded the case for OWCP to request that the employing

[3] *Id*.

establishment address her use of official time at 11:00 a.m. on December 18, 2014, when she alleged that her injury occurred. The Board further directed OWCP to require that the employing establishment provide documentation establishing whether she was performing a representational function at the fact-finding interview on December 14, 2018. The Board determined that if the employing establishment found that appellant was not on official time, she should be advised of this finding and provided an opportunity to submit relevant evidence on the issues. Following any further development, OWCP was to issue a *de novo* decision.

In a May 22, 2019 development letter, OWCP requested that the employing establishment address appellant's use of official time on December 18, 2014 at 11:00 a.m. and to provide documentation establishing her representational function. It further requested that the employing establishment provide documentation, in the form of appropriate regulations, executive order, or union agreement covering the specific situation. OWCP noted that in the absence of a full reply from the employing establishment, it could accept appellant's allegations as factual.

In a June 28, 2019 letter, the employing establishment responded and asserted that appellant was not performing a union representational function during the time of her alleged workplace injury on December 18, 2014 at 11:00 a.m. It noted that prior to the alleged incident, appellant had represented R.G. in a grievance filed on December 1, 2014. In addressing this grievance, R.G. also raised quality of medical care concerns. On December 12, 2014 W.C., the Chief of Staff and the employing establishment deciding official, partially accepted the grievance and directed the employing establishment to initiate an independent fact-finding by a qualified pathologist into the issues raised by R.G. regarding validation of laboratory studies which resulted in the medical quality review scheduled on December 18, 2014. The employing establishment asserted that on December 18, 2014 it was addressing R.G.'s concerns to ensure improvement in quality medical care at the facility in accordance with 5 U.S.C. § 7114; 38 U.S.C. §§ 5705, 7311, and 7422, and its medical bylaws, Article IX. It further asserted that the medical quality review was conducted for the sole purpose of addressing concerns in medical quality raised by R.G. and that anything he disclosed during the medical quality review was protected information and could not be used for any purpose other than improving medical quality of care. The employing establishment asserted that there was no right to union representation as the medical quality review was not about R.G., his practice, performance, conduct, or any issues specified as a basis for the grievance.

The employing establishment noted that as union vice president, appellant was authorized 80 percent official time to perform union duties. However, it asserted that on December 18, 2014 at 11:00 a.m. R.G. was not entitled to union representation and appellant was not authorized to attend the medical quality review. The employing establishment asserted that under 5 U.S.C. § 7114, representational rights were limited to formal discussion of a grievance or personnel policy, practices or general condition of employment, or any examination of an employee in connection with an investigation if the employee reasonably believes that the examination could result in disciplinary action and if the employee requests representation. It contended that R.G. had no reasonable expectation of disciplinary action from the December 18, 2014 medical quality review. The employing establishment asserted that, therefore, it was under no obligation to allow union representation during the medical quality review as it was in no way an investigation of R.G.

The employing establishment provided copies of Article 49 of the union's rights and privileges, the *Bylaws and Rules of the Medical Staff* of the employing establishment, Article IX; 5 U.S.C. § 7114, 30 U.S.C. §§ 5705, 7311, and 7422, the grievance filed by R.G. on December 1, 2014, and the response dated December 12, 2014 from W.C.

In a July 5, 2019 response, appellant asserted that she was performing union representation for R.G. on December 18, 2014. She noted her prior representation of R.G. which had begun with written counseling he received on October 7, 2014 during his probationary period. Appellant noted that beginning on November 10, 2014 R.G. was undergoing a Focused Professional Practice Evaluation (FPPE) which evaluated his ability to communicate effectively with staff, his productivity in areas requiring close interaction with colleagues, and his professional behavior. The FPPE required him to institute implementation of calculated ionized calcium in the laboratory test menu, implemental qualitative confirmation assays for amphetamine, benzodiazepine, and opiates, as well as correlate immunosuppressant drug testing. She asserted that each of these areas was directly implicated during the December 18, 2014 medical quality review. Appellant asserted that while the employing establishment contended that her answers during the medical quality review could not be used against him, he was asked to resign shortly thereafter. She further asserted that at the time of the medical quality review he had a reasonable belief that his participation in this investigation could result in disciplinary action.

Appellant provided a May 3, 2012 letter from the union president indicating that beginning September 2012 appellant would be on 100 percent official time.

In an undated and unsigned statement, R.G. noted that on October 9, 2014 a critical component on chemistry analyzers, the indirect ion selective electrodes (ISE) which allowed measurements of serum, plasma sodium, potassium, and chloride was updated, but not properly validated. He formulated a plan to repair to the validation of ISE and on December 3, 2014 alerted W.C. to his concerns about the quality of laboratory testing. W.C. commenced a 38 U.S.C. § 5705 medical quality assurance program review scheduled for December 18, 2014 with the interviewer. R.G. was informed that his disclosures would not and could not result in a punitive action against him or other employees so he attended the meeting with union representation which was removed during the course of the meeting. He alleged that he was then subjected to retaliation for disclosing a medical quality assurance issue in the December 18, 2014 meeting, for which he was explicitly told he could not be punished.

By decision dated July 18, 2019, OWCP again denied appellant's emotional condition claim finding that the quality review was not associated with a grievance, a change in work conditions or an investigation where a potential disciplinary action could have been imposed of misconduct. It determined that she, therefore, was not on official time as a union representative at the time her alleged emotional condition occurred. OWCP concluded, therefore, that appellant had not sustained an emotional condition in the performance of duty.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one'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.[4] 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.[5]

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.[6] 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.[7] 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.[8]

The Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.[9] Attendance at a union meeting, for example, is exclusively for the personal benefit of the employee and devoid of any mutual employer-employee benefit that would bring it within the course of employment.[10]

The Board has recognized an exception to this general rule. Employees performing representational functions which entitle them to official time are considered to be in the performance of duty if injured during the performance of those functions.[11] The underlying rationale for this exception is that an activity undertaken by an employee in the capacity of a union official may simultaneously serve the interest of the employer.[12] OWCP's procedures indicate that representational functions include authorized activities undertaken by employees on behalf of

[4] *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).

[5] *Lillian Cutler*, *id*.

[6] *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).

[7] *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005) *Thomas D. McEuen*, *id*.

[8] *Id*.

[9] *J.G.*, Docket No. 17-1948 (issued September 13, 2018); *Jimmy E. Norred*, 36 ECAB 726 (1985).

[10] *J.G.*, *id*.; *C.M.*, Docket No. 10-0753 (issued December 15, 2010).

[11] *J.G.*, *supra* note 9; *R.F.*, Docket No. 14-0770 (issued September 29, 2015) (those on official time performing activities related to the internal business of a labor organization such as soliciting new members or collecting dues are not considered to be in the performance of duty. The singular fact that one is on paid official time for union representation is not enough to establish that every interaction during such official time is within the performance of duty).

[12] *J.G.*, *supra* note 9; *Marie Boylan*, 45 ECAB 338, 342-43 (1994).

other employees pursuant to such employees' right to representation under statute, regulation, executive order, or terms of a collective bargaining agreement.[13]

OWCP's procedures discuss union representational functions and official time.[14] There are specific guidelines for case development when union activity may be involved:

> "When an employee claims to have been injured while performing representational functions, an inquiry should be made to the official superior to determine whether the employee had been granted official time or, in emergency cases, would have been granted 'official time' if there had been time to request it. If so, the claimant should be considered to have been in the performance of duty.[15]
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> "If [an] agency states that the employee was not performing an activity for which official time is allowed, [OWCP] should issue a letter warning [appellant] that the case will be denied unless additional information is provided, and allowing [30] days for a response. If there is no timely response from [appellant], a formal decision should be issued on the grounds that [appellant] is not in the performance of duty.
>
> "If [appellant] provides evidence contradicting the [employing establishment's] position, the official superior should be asked to reply to this evidence, providing documentation in the form of appropriate regulations, executive order or union agreement covering the specific situation. [OWCP] will accept the ruling of the [employing establishment] as to whether a representative was entitled to official time unless the ruling is later overturned by a duly authorized appellate body."[16]

ANALYSIS

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

Appellant alleged that she sustained an emotional condition when the employing establishment demanded that she leave a medical quality review meeting and the employing establishment police escorted her from the hallway outside of the meeting while she was performing representational union activities on December 18, 2014.

The first issue is whether appellant was in the performance of duty at the time of the alleged employment incident. In its June 28, 2019 letter, the employing establishment acknowledged that she utilized official time for 80 percent of her time. It did not specifically address appellant's official time schedule and whether or not she was on official time at 11:00 a.m. on

[13] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.16 (July 1997).

[14] *Id*.

[15] *Id*.

[16] *Id*.

December 18, 2014. Appellant submitted a May 3, 2012 letter from the union president indicating that, beginning September 2012, she would be on 100 percent official time and a January 3, 2017 letter from B.A., the union president, in which she noted that she was appellant's supervisor and that appellant was entitled to official time at the time of her injury. The Board thus finds that the weight of the evidence of record establishes that appellant was on official time on December 18, 2014 at the time of the alleged employment incident.

The Board has held that the singular fact that one is on paid official time is not enough to establish that every interaction during such official time is within the performance of duty.[17] The Board has also required that a claimant be performing a mutually beneficial activity such as a representational function.[18] The facts of this case establish that the nature of the activity in which appellant was engaged was representational and therefore of mutual benefit to the union and her employer.[19] Representational functions include authorized activities undertaken by employees on behalf of other employees pursuant to such employees' right to representation under statute, regulation, executive order, or terms of a collective bargaining agreement.[20]

The alleged employment incident occurred when appellant was instructed to leave the medical quality review meeting on December 18, 2014 after she indicated that she would file an unfair labor practice complaint against the ejecting official, R.N. Appellant further alleged that while she was waiting outside the meeting room for R.G. to emerge, and checking her cellphone for J.M.'s telephone number to request advice, the employing establishment police escorted her back to her office on a different floor. Further, the FLRA-approved settlement agreement indicated that appellant was acting in a representational capacity when the employing establishment police removed her from the meeting location. As appellant was on official time and performing representational functions, the Board finds that she was in the performance of duty at the time of the December 18, 2014 employment incident.[21]

While the Board finds that appellant was in the performance of duty at the time of the December 18, 2014 incident, she must also establish a compensable factor of employment.

Appellant has not attributed her emotional condition to any of the regular or specially assigned duties of her position as a nurse. Rather, she has alleged error and abuse in administrative matters by the employing establishment. As a general rule, a claimant's reaction to administrative

[17] *J.S.*, Docket No. 14-1532 (issued December 4, 2015).

[18] *J.G., supra* note 9; *Ray C. Van Tassell, Jr.*, 44 ECAB 316 (1992).

[19] *See Bernard Redmond*, 45 ECAB 298 (1994); *Ray C. Van Tassell, Jr., id.* (the Board has adopted a mutual benefit approach to determining if union activities occurred in the performance of duty, therefore activities related to the internal business of a labor organization, such as soliciting new members or collecting dues are not included).

[20] *Marie Boylan*, 45 ECAB 338 (1994).

[21] *Wayne F. Therrien*, Docket No. 97-2604 (issued December 9, 1999). *See also Kelly Y. Simpson*, 57 ECAB 197 (2005) (the Board found that the claimant was in a representational status at the time of her injury despite, the employing establishment's disagreement).

or personnel matters falls outside the scope of FECA.[22] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of a managerial action is not a compensable factor of employment. Appellant has submitted corroborative evidence of error or abuse in the administrative actions of the employing establishment demanding that she leave the medical quality review meeting and the employing establishment police escorting her from the hallway. In this regard, the FLRA-approved settlement agreement required the employing establishment to expunge all references to the encounter between appellant and its police from its records and forbade it to rely on this incident in any future action. It also required the employing establishment to post a notice that on or about December 18, 2014, the employing establishment police had removed appellant from a location where she was waiting for an employee to exit a meeting. It noted that its statute prohibited an agency from interfering with an employee's exercise of protected activity and/or taking an action against an employee because of the exercise of protected activity. The notice concluded, "WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute." (Emphasis in the original.)

The Board thus finds that appellant has submitted sufficient evidence to establish error or abuse by the employing establishment in demanding that she leave the medical quality review meeting and escorting her from the hallway on December 18, 2014. As appellant has established a compensable employment factor the case presents a medical question regarding whether her emotional condition resulted from the compensable employment factor. OWCP determined that there were no compensable employment factors and thus did not analyze or develop the medical evidence. The case will be remanded to OWCP for this purpose.[23] After such further development as deemed necessary, it should issue a *de novo* decision on this matter.

CONCLUSION

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

[22] *E.M.*, Docket No. 19-0156 (issued May 23, 2019),

[23] *Id.; see also K.J.*, Docket No. 17-1851 (issued September 25, 2019); *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2019 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 17, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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