

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

A.H., Appellant)	
)	
and)	Docket No. 22-0079
)	Issued: November 18, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Greensboro, NC, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 27, 2021 appellant, through counsel, filed a timely appeal from a September 21, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 September 17, 2020 appellant, then a 54-year-old city delivery specialist, filed an occupational disease claim (Form CA-2) alleging that she developed chest pains, headaches, fatigue, and stress after attempting to return to work following an absence for COVID-19 childcare. She related that she was informed that there was no work available for her and that she should file a claim for wage-loss compensation (Form CA-7). Appellant first became aware of her condition and its relationship to her federal employment on August 28, 2020. The employing establishment noted that the date of appellant's last exposure to the conditions alleged to have caused her disease or illness was April 4, 2020. It also indicated that a form 2499 had been sent to appellant a few times as work was available for her, but that she had not returned to work.

In an attached narrative statement, appellant related that from April 24 to July 6, 2020 she had been off work due to COVID-19 childcare. She asserted that she was paid at a pay rate for a city carrier, but that she should have been paid as a supervisor. Appellant alleged that her supervisor deleted the leave codes for COVID-19 she had used for her leave and had replaced them with codes for sick, holiday, and annual leave. She stated that she was supposed to return to work on July 6, 2020, but her postmaster, J.C., told her that a form 2499 was required for her to return to work and instructed her to complete Form CA-7, a duty status report (Form CA-17), and a time analysis (Form CA-7a), even though she had been back to work full time for two years following her employment injury.³ Appellant stated that she was returning to work following COVID-19 childcare and there was no medical reason for her to be on workers' compensation. She also asserted that her supervisor did not provide OWCP with documents and, therefore, she was not paid wage-loss compensation by OWCP. Appellant also asserted harassment and discrimination by her supervisor and the postmaster as they forged her CA-7 forms.

On September 25, 2020 appellant filed a Form CA-7 for disability from work for the period August 29 to September 11, 2020. She noted loss of work/stress as the reason for the wage loss.

In a development letter dated September 30, 2020, 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.

³ Appellant has an accepted August 10, 2015 traumatic injury claim (Form CA-1) for right ankle sprain, causalgia of right lower limb, and complex regional pain syndrome of the right lower limb under OWCP File No. xxxxxx095. This claim has been administratively combined with the current claim by OWCP. OWCP File No. xxxxxx095 serves as the master file. OWCP paid appellant wage-loss compensation on the supplemental rolls as of August 1, 2020 and on the periodic rolls as of January 31, 2021.

In response to its request, OWCP received an April 10, 2019 copy of appellant's directed detail assignment as a customer services supervisor from April 13 through October 11, 2019, one page of an Equal Employment Opportunity complaint filed on September 30, 2020, and an August 23, 2020 letter from counsel requesting an investigation due to the employing establishment's alteration of forms or failure to submit forms to OWCP. It also received copies of Adjust Pay Certification forms for adjustments made on July 9, 10, 11, 13, 15, 16, 17, 25, and 27, 2020 signed by appellant and Supervisor J.M., which noted work hours instead of leave without pay (LWOP) or Family and Medical Leave Act (FMLA).

A July 28, 2020 offer of modified-limited-duty assignment was made in OWCP File No. xxxxxx095 for appellant's return to work as a modified city carrier. Appellant refused this job offer on August 13, 2020 noting that it was not within her medical restrictions. A second offer of modified limited-duty assignment dated August 24, 2020 was made in OWCP File No. xxxxxx095 for a modified city carrier position. Appellant did not respond to this job offer.

In a September 2, 2020 disability note, Dr. Henry Putnam Foote, a Board-certified internist, noted that appellant was seen on August 31, 2020 and requested that she be excused from work for the period August 31 to September 8, 2020 as she was receiving appropriate treatment for her condition.

In a disability note dated October 5, 2020, D'Nicole Tangen, a licensed social worker, advised that appellant was seen that day for stress management. She requested that appellant be excused from work for the period October 5 to 7, 2020.

In a statement dated October 6, 2020, appellant stated that J.C. initiated her FECA wage-loss compensation claim, even though she never asked to stay off work. J.C. told her that since no work was available for her that she must go back on workers' compensation. This caused stress because she was not getting paid while J.C. was finding work for her. Appellant also attested that her sick, holiday, and annual leave had been used, without her authorization or permission, while she was out under COVID-19 childcare and FMLA. She asserted that J.C. caused her stress by instructing her to gather documents, which she believed unnecessary, in order to return to work. Appellant also asserted that J.C. sent OWCP fraudulent CA-7 forms as she changed appellant's form, changing other wage loss to LWOP, and resigning appellant's forms with her own signature. As a result of J.C.'s actions, she had not been paid, which resulted in financial issues. Appellant alleged that her pay was incorrect while out on COVID-19 childcare as she was not paid at a supervisor's pay rate. She also alleged that she has been subjected to harassment since her return to work on July 6, 2020. Due to harassment, fraud, discrimination, and hostile work environment, she requested a permanent transfer from the employing establishment.

Appellant filed CA-7 forms claiming other wage loss for the period September 12 to October 9, 2020. She noted loss of work/stress as the reasons for wage loss.

By decision dated November 10, 2020, OWCP denied her claim, finding that she had failed to establish any compensable factors of employment.

On November 12, 2020 OWCP received an undated note from Ms. Tangen indicating that she had met with appellant on October 12 and 19, 2020.

In a letter dated November 23, 2020, appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 29, 2021, an OWCP hearing representative vacated the November 10, 2020 decision and remanded the case for further development of the evidence on the factual component of her claim. The hearing representative related that OWCP should obtain further comments from the employing establishment, which addressed all of appellant's allegations, and that OWCP should thereafter make findings relative to all of appellant's allegations.

In a March 2, 2021 statement, J.M., Health Resource Management Specialist, noted appellant's occupational disease claim alleged that she was not paid at proper pay rate. J.M. stated that, while appellant believed her position as an acting supervisor was a permanent position, it was a temporary detail, which was revoked on April 11, 2020. Appellant was out on COVID-19 childcare leave and the employing establishment attempted to find work when her leave was to end. J.M. explained that annual leave only accrued when an employee was in a leave earning status, and that amount of advanced annual leave was reduced if an employee was not in a leave earning status. Regarding the filing of appellant's Form CA-7, J.C. stated that the employing establishment must file these forms through Employees' Compensation Operations & Management Portal (ECOMP); however, appellant submitted a paper form. J.C. indicated that counsel had been contacted by the employing establishment and had been informed that appellant was claiming days for which she had been compensated. J.C. also indicated that the correct filing status was for LWOP, not other wage loss, that the employing establishment had never "whited out" a claim form, and that all of appellant's Form CA-7s were submitted in a timely fashion. In addition, she denied any discrimination or fraud on the part of the employing establishment with respect to submission of these forms. J.C. asserted that appellant had been provided multiple job offers; however, it appeared that appellant did not want to return to the employing establishment after she had been given an opportunity to work as a supervisor.

By decision dated April 15, 2021, OWCP denied appellant's claim, finding that she failed to establish any compensable factor of employment. It concluded, therefore, that the requirement had not been met to establish that she sustained an injury as defined by FECA.

In a letter dated April 19, 2021, appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on July 8, 2021. The hearing representative identified the issue as to whether appellant developed an emotional condition because she was told no work was available for her. Appellant testified that she was paid using her sick and annual leave while she was out on COVID-19 childcare leave, which made her unhappy as her paid leave was used without her permission. She agreed that if her leave had not been used that she would not have been paid. Appellant testified that she was paid at an incorrect pay rate and that she had filed a grievance regarding this matter. She alleged that she was forced to file for compensation, but her CA-7 form was changed by the employing establishment before it was submitted to OWCP and she was not paid in a timely manner. Appellant alleged that employees with less seniority worked as supervisors, but her supervisor refused to return her to any type of work. As to a job offer that

she had received, she stated she refused it because the pay rate was \$1,000.00 less than her previous pay. Appellant alleged that OWCP determined that she has not been given a valid job offer.

By decision dated September 21, 2021, OWCP's hearing representative affirmed the April 15, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim,⁵ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰

⁴ *Id.*

⁵ *L.G.*, Docket No. 21-0690 (issued December 9, 2021); *S.S.*, Docket No. 19-1021 (issued April 21, 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).

⁶ *L.G., id.*; *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ 20 C.F.R. § 10.115; *R.S.*, Docket No. 20-1307 (issued June 29, 2021); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See L.G., supra* note 5; *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ *L.G., 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).

¹⁰ *Lillian Cutler, id.*

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

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.¹³ 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.¹⁴

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁵ Mere perceptions of harassment, retaliation, or discrimination are not compensable under FECA.¹⁶

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 compensable factors of employment and may not be considered.¹⁷ If an employee does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹⁸ If a compensable factor

¹¹ See *L.G.*, *supra* note 5; *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹² *L.G.*, *id.*; *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹³ See *L.G.*, *id.*; *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, *supra* note 5.

¹⁴ *Id.*

¹⁵ *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Marlon Vera*, 54 ECAB 834 (2003).

¹⁶ *Id.*; see also *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁷ *R.D.*, *supra* note 15; *S.K.*, *supra* note 8; *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁸ *R.D.*, *id.*; *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *Charles E. McAndrews*, 55 ECAB 711 (2004).

of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence which has been submitted.¹⁹

ANALYSIS

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

The Board initially notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.²⁰ Rather, appellant has alleged error and abuse by her supervisors in administrative and personnel actions and harassment.

Appellant made several allegations regarding administrative and personnel actions. 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.²¹ In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.²²

Appellant has alleged that she utilized FMLA COVID-19 childcare leave. However, the employing establishment coded her leave as annual and sick leave to allow her to continue to be paid wages, but that she did not want to use her leave and be paid. Appellant did not submit any evidence reflecting that she informed her supervisor at any time during her COVID-19 childcare leave that she did not want to receive pay for annual or sick leave. She only raised complaints regarding her receipt of pay after her COVID-19 childcare leave had ended, while at the same time she alleged that she was stressed due to financial concerns because work was not available for her and her compensation benefits were delayed. Although appellant expressed dissatisfaction with the actions of her superior, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²³

Appellant also alleged that her annual and sick leave were paid at an incorrect rate as she was entitled to continued pay as a supervisor. The document she submitted in support of this allegation reflected that she was provided a temporary detail to work as a supervisor from April 13 through October 11, 2019. There is no evidence of record that she was still in a detail status as a

¹⁹ *R.D., id.; M.A., supra* note 12; *Norma E. McAndrews*, 55 ECAB 711 (2004).

²⁰ *Supra* note 8.

²¹ *See R.D., supra* note 15; *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001); *Thomas D. McEuen, supra* note 11.

²² *R.D., id.; B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

²³ *L.Y.*, Docket No. 20-1108 (issued November 24, 2021); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

supervisor when she began her leave on April 24, 2020. Appellant has not established an error with respect to this administrative matter.²⁴

Appellant alleged that once she was to return to work following her COVID-19 childcare leave, she became stressed due to financial concerns because the employing establishment did not have work available for her and the employing establishment requested that she claim FECA wage-loss compensation benefits. In this regard the evidence establishes that the employing establishment made appellant modified job offers on July 28 and August 24, 2020. Appellant refused the July 28, 2020 job offer, noting that it was not within her medical restrictions, and she did not respond to the August 24, 2020 job offer. While appellant further alleged that the employing establishment mishandled the filing of her CA-7 forms, the record establishes that after development of the claim, OWCP paid appellant wage-loss compensation as of August 1, 2020. The Board has previously found that handling of compensation claims is an administrative function of the employing establishment and, absent error or abuse, is not compensable.²⁵ Appellant has not established error or abuse by the employing establishment in the handling of these administrative matters.

Appellant also alleged that the employing establishment did not allow her to work as a supervisor, even though there were supervisors with less seniority. She has not established that supervisory status was determined by seniority alone. Appellant has not established any error in this personnel matter.²⁶

The Board therefore finds that appellant has not submitted sufficient evidence to establish that the employing establishment acted unreasonably in these administrative/personnel matters. Appellant submitted documents that concerned some of these administrative/personnel matters, but they did not show that the employing establishment committed error or abuse.²⁷

Appellant also alleged harassment by her managers. She asserted that the employing establishment forged her CA-7 forms for submission to OWCP. For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur as alleged. Mere perceptions of harassment are not compensable under FECA.²⁸ Although appellant alleged that her supervisors engaged in actions, which she believed constituted harassment, she provided no corroborating evidence to establish that the employing establishment filed her CA-7 forms fraudulently to harass her. Appellant's supervisor has explained that appellant submitted a paper Form CA-7 which incorrectly claimed other wage loss, instead of wage loss during LWOP. The supervisor corrected the CA-7 and signed her own name, and

²⁴ *Supra* note 22.

²⁵ *E.M.*, Docket No. 19-0156 (issued May 23, 2019).

²⁶ *See M.C.*, Docket No. 18-0585 (issued February 13, 2019).

²⁷ *See L.Y.*, *supra* note 23.; *M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²⁸ *P.B., id.*; *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). *See also M.G.*, Docket No. 16-1453 (issued May 12, 2017) (vague or general allegations of perceived harassment, abuse, or difficulty arising in the employment are insufficient to give rise to compensability under FECA).

submitted the form through ECOMP. Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that she was harassed by the employing establishment.

The Board, therefore, finds that appellant has not established a compensable employment factor under FECA. Appellant has thus not met her burden of proof to establish that she sustained an emotional or stress-related condition in the performance of duty.²⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 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

²⁹ *Supra* note 25.