



Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### ISSUE

The issue is whether appellant has met his burden of proof to establish a stress-related condition in the performance of duty on May 28, 2021, as alleged.

### FACTUAL HISTORY

On July 12, 2021 appellant, then a 32-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2021 he developed post-traumatic stress disorder (PTSD) after he became trapped in a file room while in the performance of duty. He explained that boxes in the room collapsed on the only exit, and he had to be rescued by the fire department. Appellant asserted that he experienced ongoing effects to his mental health, including debilitating anxiety, depression, stress, and speech impairment. On the reverse side of the claim form appellant's supervisor, J.K., indicated that appellant was not injured in the performance of duty because he had no reason to be in the closed file area and management had no knowledge as to why he was in the room. Appellant stopped work on June 1, 2021 and returned to work on June 7, 2021.

In a challenge statement dated July 13, 2021, J.K. repeated her belief that appellant had no reason to be in the closed file storage room at the time of the alleged employment incident. She explained that claims examiners generally only worked with open files and had very little need to be in the closed files storage room, where closed files were stored for four years after completion. J.K. indicated that if claims examiners had to enter this storage room, it was generally to retrieve one file that was previously labeled and identified by year and month and that they had absolutely no need to take closed files home with them. She noted that earlier on the date of injury, appellant and another examiner were looking for a missing file that appellant believed to be in the closed file storage room, but they agreed to suspend the search until the room was reorganized. J.K. stated that three employees, T.S., C.H., and A.K., organized the storage room the week of May 24 through 28, 2021 and that on the date of injury, approximately 300 storage boxes were labeled and stacked by the year and month the files were closed. She described the placement of the Fiscal Year (FY) 2017 through FY 2021 boxes throughout the storage room, indicating that some boxes were grouped against walls and some were stacked in the center of the room, not to exceed seven or eight boxes high. Additionally, there was an assortment of six or seven miscellaneous boxes not containing files that were placed alongside a black metal file cabinet towards the back of the room. J.K. noted that photographs taken in the aftermath of the incident showed piles of tipped-over boxes from all years mixed together, in contrast to the previous organization separated by year. She also stated that two boxes that should have been close to the back wall were discovered among the pile of boxes that appellant alleged had collapsed. J.K. concluded that appellant had

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the August 26, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

no reason to be in the closed files storage room, that the boxes had been stacked safely and did not spontaneously “collapse,” but rather were “forced... into a disorganized and chaotic pile,” and that the employing establishment was not negligent in any way.

In a development letter dated July 22, 2021, OWCP informed appellant of the deficiencies of his traumatic injury claim. It explained the type of evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information. It afforded both parties 30 days to respond.

In an e-mail exchange regarding check deposit vouchers beginning on May 25, 2021, appellant wrote to J.K. that he would need assistance to locate claims “in the closed files.” He indicated that a list of these files was attached to his e-mail. J.K. responded on May 27, 2021 to confirm appellant’s plan of action.

In a May 28, 2021 e-mail to J.K., appellant indicated that he had prepared an on-the-job training for T.S., a new team member, regarding new files.

In a June 1, 2021 statement, C.H., a coworker, indicated that, on May 25, 2021, he, A.K., and T.S., began the first phase of organizing the closed file storage room, separating and arranging the files by year. Their goal that day was to build and arrange the banker boxes so they could begin loading them with the FY 2018 closed files. C.H. described the organization of boxes within the storage room, with boxes stacked in groups by year against each wall and in the center of the room. He also provided a hand-drawn diagram of the storage room showing the arrangement of boxes by year. C.H. stated that, upon completion of the initial organizing phase, “we deemed it safe, but not in any way complete.”

In a June 1, 2021 statement,<sup>5</sup> T.S., another coworker, described his work to reorganize the storage room with C.H. and A.K. on May 25, 2021. He described how the boxes were stacked according to year against the right, left, and back walls, as well as in the middle of the room, up to seven boxes high. T.S. indicated they did not stack any boxes near the door on either side, left walkways through the room, and ensured plenty of room between the front doors and the box stacks. In an additional statement of even date, he provided a timeline of his day on May 28, 2021. At 2:00 p.m. T.S. worked with appellant on an older file for a claimant, V.P., per J.K.’s direction. At 2:35 p.m., he and appellant went into the storage room and only looked at the boxes. They determined that the missing V.P. file may be on the bottom of the FY 2019 stack located in the left-middle side of the room and agreed not to move any boxes as several more would need to be moved to get to the box in question. T.S. and appellant spoke with J.K. about the missing file and all three agreed that no further action was required or necessary that day.

The employing establishment provided a June 8, 2021 e-mail exchange in which J.K. requested appellant’s statement regarding the alleged May 28, 2021 employment incident. Appellant replied to J.K.’s e-mail with his statement indicating that end of the day on May 28, 2021, he had a mental list of claims he had to search for in the closed file storage room to gather and place in his box for the following week. He walked into the storage room to the left and then to the back, trying to find the fiscal year that he needed. Appellant turned around for half a second

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<sup>5</sup> Though the statement was dated June 2, 2021, J.K. indicated in her August 12, 2021 response to OWCP’s development letter that this was a typographical error.

and then heard boxes crashing into the door. He explained that he did not know how or why the boxes fell, but he noted that they were stacked at or above his eye level and were in front of the door. Appellant started to have a panic attack as he tried to get towards the door, experiencing heavy breathing, chest pain, and the feeling that he might pass out “or worse.” He called 911 and sat down to try to calm down. The firefighters initially could not find appellant. After several minutes, appellant heard slamming on the storage room door and yelled so the firefighters could hear him. They were unable to push the door open, so they told appellant to stand back, and they cut half the door with a chainsaw before helping him out. When the firefighters evaluated him outside, appellant continued to feel chest pain and panic, he was stuttering and stammering, his hands were shaking, and he felt that he might vomit. The first responders administered an anti-nausea medication injection and tried to calm appellant down. Appellant noted that he spoke on the telephone with J.K. to explain the situation as best as he could. The fire department told appellant his heart was fine, and that he was going through a traumatic event causing a severe panic attack. Appellant’s wife drove him to an emergency room, where he underwent blood work to check for a heart attack and was provided with heavy sedatives. At the end of his statement, appellant indicated that recalling these events had triggered a panic attack and that he would have to request additional sick leave.

In a July 14, 2021 letter, Dr. Daryoush Jamal, a Board-certified psychiatrist, related appellant’s history of injury and described his symptoms and their relationship to the May 28, 2021 employment incident and appellant’s military experience. He diagnosed PTSD, generalized anxiety disorder (GAD), and recurrent moderate-to-severe major depressive disorder (MDD). Dr. Jamal recommended reasonable accommodations for reduced environmental distractions and environmental triggers.

In a July 30, 2021 e-mail to J.K., appellant requested assistance obtaining copies of the first responder report as the fire department had insisted he route his request through the employing establishment. He noted that a concerned coworker sent him a photograph after the employment incident showing boxes stacked in such a way that showed signs of stress and looked ready to fall. Appellant requested that J.K. provide OWCP with information he believed she omitted, including that he had sent her a list of files he needed to find, that she confirmed the name of a particular file, and that J.K. had a conversation *via* his cell phone with a first responder, during which they argued that the file boxes were stored in an unsafe manner.

On August 2, 2021 appellant responded to OWCP’s development questionnaire. He reiterated that he had provided his supervisor with a list of closed files he was looking for and that he was planning to place the files in his mailbox in the office and work on redeposits for those files. Appellant stated that he searched the entire storage room for no more than 5 to 10 minutes, did not move any boxes before the boxes fell, and did not know which boxes by year and month fell. He stated that the boxes were improperly and unsafely stored in code violation, six feet high within 29 inches of a doorway, and that multiple stacks fell towards the door. Appellant called the fire department after 30 seconds of being trapped in the storage room and it took 20 minutes for the fire department to open the doors because there was no room number. Five or six first responders were unable to open the door and they had to cut it down. Appellant then sought emergency care. He noted that all sources of his stress were work related and that he had previously received mental health treatment. Appellant also postulated that his supervisor omitted material facts related to his job functions for the day of the accident.

In J.K.'s August 12, 2021 response to OWCP's development letter, she indicated that C.H.'s June 1, 2021 diagram of the storage room showed that boxes with miscellaneous items were stored in the back left corner of the room, but that a post-incident photograph showed one of those boxes essentially in the middle of the room in a large, toppled pile of boxes. In response to appellant's assertion that she omitted information about her telephone call with a first responder, J.K. stated that she did not recall any paramedic telling her that the boxes were stored in an unsafe manner. She reiterated that she did not know why appellant was in the storage room at the time of the employment incident. J.K. noted that of the six files appellant listed in their earlier e-mail exchange about the check voucher issue, five were closed on May 10, 2021 and reopened on May 25, 2021. Per her recollection, May 2021 closed files were not yet in the closed file storage room on May 28, 2021, but rather would have been placed in banker boxes in her office or in the clerk's room. J.K. believed that the sixth file appellant had requested was either in her office or in a May 2021 closed file banker box, which would not have been in the storage room. She added that appellant wrote a database entry about another file, indicating that the hard copy had been misfiled or closed in error and that the search would be suspended until the storage room was reorganized, per her instructions.

OWCP also received an August 23, 2021 challenge statement from H.L., an employing establishment human resources specialist, who asserted that appellant's PTSD and GAD were preexisting conditions, that Dr. Jamal's July 14, 2021 letter did not establish causal relationship, and that appellant did not completely answer OWCP's development questionnaire.

By decision dated August 26, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It explained that he did not support his allegations with specific, substantive, or probative evidence or any witnesses. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim,<sup>7</sup> 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.<sup>8</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>9</sup>

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional

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<sup>6</sup> *Supra* note 3.

<sup>7</sup> *R.S.*, Docket No. 20-1307 (issued June 29, 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).

<sup>8</sup> *R.S.* and *S.S.*, *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> 20 C.F.R. § 10.115; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition or psychiatric disorder is causally related to the identified compensable employment factors.<sup>10</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>11</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>12</sup> 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.<sup>13</sup>

Allegations alone by a claimant are insufficient to establish a factual basis of an emotional condition claim.<sup>14</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>15</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>16</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>17</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>18</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable

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<sup>10</sup> See *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>11</sup> 28 ECAB 125 (1976).

<sup>12</sup> See *Lillian Cutler*, *id.*; see also *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>13</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 11.

<sup>14</sup> *A.C.*, *id.*

<sup>15</sup> *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

<sup>16</sup> See *A.C.*, *supra* note 13; *Lillian Cutler*, *supra* note 11.

<sup>17</sup> *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>18</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

evidence.<sup>19</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>20</sup>

### ANALYSIS

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

Appellant has attributed his stress-related condition to the performance of his regular work duties in accordance with the *Cutler* factors.<sup>21</sup> He asserted in his July 12, 2021 Form CA-1 that he developed PTSD after a May 28, 2021 employment incident in which he was trapped in a storage room after boxes collapsed in front of the exit and he had to be rescued by the fire department. On the reverse side of the claim form, J.K., appellant's supervisor, indicated that appellant was not injured in the performance of duty because he had no reason to be in the closed file area. The employing establishment did not dispute that appellant was in the storage room, that the boxes collapsed towards the exit, or that appellant had to be rescued by the fire department. Although the employing establishment challenged the factual basis of his claim on other grounds, the Board finds that the evidence of record contains probative and reliable evidence refuting each of these arguments.<sup>22</sup>

Appellant's supervisor asserted in multiple statements that appellant had no reason to be in the storage room. However, T.S.'s June 1, 2021 statement and J.K.'s July 13, 2021 statement indicated that appellant and T.S. were in the storage room earlier on the date of injury to search for a missing case file. Further, the May 25 through 27, 2021 e-mail exchange between appellant and J.K. shows that J.K. knew of and approved of appellant's plan to search for closed files the week of the employment incident. That appellant, T.S., and J.K. agreed to temporarily suspend the search for a missing file on the date of injury does not indicate that appellant lacked authorization to be in the storage room and does not support J.K.'s argument that he had no reason to be there.

The Board finds that appellant has established compensable factors of employment under *Cutler*<sup>23</sup> with regard to the May 28, 2021 employment incident where he was trapped in a storage room after boxes collapsed in front of the exit and he had to be rescued by the fire department. Where the claimed disability or condition results from an employee's stress reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>24</sup> As appellant was searching for closed files in the storage room that day, the boxes collapsed, blocking the exit, and he ultimately had to be rescued by the fire department with a chainsaw. He indicated that, while he was trapped in the room, he began to have a panic attack and continued to experience panic-related symptoms after being rescued,

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<sup>19</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 17.

<sup>20</sup> *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>21</sup> *Lillian Cutler*, *supra* note 11.

<sup>22</sup> *See G.R.*, *supra* note 15.

<sup>23</sup> *Supra* note 14.

<sup>24</sup> *Supra* note 16.

including difficulty breathing and speaking. He contended that this traumatic incident caused his diagnosed stress-related conditions. The Board finds that, as the events of May 28, 2021 occurred while appellant was performing his regularly assigned duties, his stress reaction to these events constitutes a compensable factor of employment under *Cutler*.<sup>25</sup>

As appellant has established a compensable factor of employment of the May 28, 2021 employment incident, OWCP must review the medical evidence of record in order to determine whether he has established that his stress-related condition is causally related to a compensable work factor.<sup>26</sup> Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2021 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: November 28, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>25</sup> *Lillian Cutler*, *supra* note 13; *see also* *Z.S.*, Docket No. 16-1783 (issued August 16, 2018).

<sup>26</sup> *Z.S.*, *id.*; *Margaret S. Krzycki*, 43 ECAB 496 (1992).