

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

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C.J., Appellant

and

DEPARTMENT OF THE AIR FORCE,  
HEADQUARTERS, ROBINS AIR FORCE  
BASE, GA, Employer

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**Docket No. 22-0600**  
**Issued: November 10, 2022**

*Appearances:*

Wayne Johnson, Esq., for the appellant<sup>1</sup>

Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 12, 2022 appellant, through counsel, filed a timely appeal from a September 13, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 that she sustained a stress-related condition in the performance of duty, as alleged.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 30, 2018 appellant, then a 58-year-old management assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained stress-related conditions, including mental stress, migraines, anxiety attacks, paranoia, elevated blood pressure, vertigo, dizziness, insomnia, low energy, rapid heartbeat, and aggravation of service-connected conditions. She claimed that, on July 20, 2018, K.G., a supervisor, approached her while she was coming from the bathroom and “started yelling untrue accusations at me in an extreme[ly] hostile and overwhelming, embarrassing manner.” Appellant asserted that K.G. threatened her and that the incident occurred in a hallway where coworkers were present. She noted that she first became aware of her claimed condition and its relation to her federal employment on July 20, 2018. Appellant stopped work on July 20, 2018 and returned to work on August 20, 2018. On the reverse side of the claim form, M.S., appellant’s immediate supervisor controverted the claim.

In a September 12, 2018 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant’s allegations. It afforded both parties 30 days to respond. No response was received.

By decision dated November 27, 2018, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that a compensable employment factor occurred as alleged. The requirements had therefore not been met for establishing an injury as defined under FECA.

On December 27, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on April 18, 2019 at which appellant asserted that, on July 20, 2018, K.G. falsely accused her of coming in late to work.

By decision dated July 2, 2019, OWCP’s hearing representative set aside OWCP’s November 27, 2018 decision and remanded the case for OWCP to attempt to obtain a statement from the employing establishment regarding the claimed events of July 20, 2018 and issue a *de novo* decision.

On remand, OWCP requested additional information from the employing establishment. In a response received by OWCP on September 17, 2019, the employing establishment denied appellant’s claim that K.G. or any other management official committed harassment or discrimination on July 20, 2018.

Appellant submitted statements in which she asserted that management officials had issued her incorrect performance evaluations, unfairly criticized her work, improperly took away her computer, wrongly denied leave requests, and improperly denied her applications for promotion. She also submitted medical evidence in support of her claim.

By decision dated November 22, 2019, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish a compensable employment factor.

Appellant, through counsel, again requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated June 16, 2020, OWCP's hearing representative affirmed the November 22, 2019 decision.

Appellant, through counsel, requested reconsideration. She submitted a document from an Equal Employment Opportunity (EEO) claim in which she outlined a number of her assertions regarding the employing establishment's conduct.

By decision dated September 13, 2021, OWCP denied modification of the June 16, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</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>5</sup>

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>6</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional 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>7</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or

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

<sup>4</sup> *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>7</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

his or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>8</sup>

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>9</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>10</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.<sup>11</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, it must base its decision on an analysis of the medical evidence.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a stress-related condition in the performance of duty, as alleged.

Appellant alleged that she sustained stress-related conditions due to various incidents and conditions at work. Therefore, the Board must initially review whether these allegations constitute compensable employment factors under the terms of FECA. The Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.<sup>13</sup>

With respect to administrative or personnel matters, appellant claimed that management issued her incorrect performance evaluations, unfairly criticized her work, improperly took away her computer, wrongly denied leave requests, and improperly denied her applications for promotion. The Board has held that 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.<sup>14</sup>

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<sup>8</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>9</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>10</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>11</sup> *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 7.

<sup>14</sup> *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.<sup>15</sup> In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.<sup>16</sup>

Appellant submitted EEO documentation concerning some of these administrative/personnel matters, but it did not show that the employing establishment committed error or abuse with respect to these matters. There is no indication that appellant obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.<sup>17</sup> Although appellant expressed dissatisfaction with the actions of superiors, 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.<sup>18</sup> She has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by management. She claimed that, on July 20, 2018, K.G., a supervisor, treated her differently from other employees by yelling at her, making false statements and threats, and demeaning her in front of her coworkers. Appellant, however, did not submit corroborative evidence in support of her allegations regarding the claimed July 20, 2018 employment incident. She did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.<sup>19</sup> Appellant also did not submit the final findings of any complaint or grievance she filed with respect to these matters, such as an EEO complaint or a grievance filed with the employing establishment.<sup>20</sup> The Board has held that unfounded perceptions of harassment or discrimination do not constitute an employment factor.<sup>21</sup> Mere perceptions are not compensable under FECA, but harassment or discrimination can constitute a factor of employment if it is shown that the incidents constituting the claimed wrongdoing actually occurred.<sup>22</sup> The Board thus finds that the evidence of record is insufficient to establish a compensable employment factor with respect to the claimed harassment and discrimination.

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<sup>15</sup> *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>16</sup> *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>17</sup> *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

<sup>18</sup> *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

<sup>19</sup> *See B.S.*, Docket No. 19-0378 (issued July 10, 2018).

<sup>20</sup> *See generally L.C.*, Docket No. 20-0461 (issued June 2, 2021); *see also C.T.*, Docket No. 08-2160 (issued May 7, 2009).

<sup>21</sup> *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

<sup>22</sup> *See id.*

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.<sup>23</sup>

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 that she sustained a stress-related condition in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>23</sup> See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).