

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

K.M., Appellant	)	
	)	
and	)	<b>Docket No. 22-1000</b>
	)	<b>Issued: November 9, 2022</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Oklahoma City, OK,	)	
Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 16, 2022 appellant filed a timely appeal from a June 10, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 30, 2020 appellant, then a 55-year-old processing distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a stress-related condition causally related to factors of her federal employment. She stopped work on February 28, 2020.

In an undated statement received by OWCP on April 13, 2020, appellant related that approximately 11:00 p.m. on February 27, 2020 she was sorting letters in her assigned area. R.D. frightened her by coming up behind her when she thought she was alone. Appellant advised that on May 31, 2019 R.D. had approached her from behind and body slammed her into a letter case. She reported the incident to managers G.S. and P.K. and told them that she did not feel safe working with R.D. G.S. allowed her to work in another area for a month but then told her to return to her usual location. Appellant maintained that on February 27, 2020 she asked R.D. not to come up behind her and R.D. began yelling at her. R.D. walked up behind appellant for the second time on February 27, 2020, yelled in her face in a threatening manner, and waved her hands in her face. Appellant backed away, but R.D. continued to scream at her. Appellant told G.S. about the incident and he advised that he had told R.D. to alert him if she walked up behind her in the future. G.S. told appellant that if either of them approached him again about these incidents he would take corrective action. Appellant responded that R.D. had body slammed her the prior year and currently threatened to hurt her and that she felt unsafe at work. She left work and filed a police report.

In an undated statement, R.D. advised that on February 27, 2020 she was humming a song when appellant told her not to “run up on [her] like that.” She asked appellant why she acted scared. G.S. told R.D. that if the two of them did not get along he would fire them both.

In a March 3, 2020 city police incident report form, appellant advised that one year earlier a coworker had body slammed her to the floor. On February 27, 2020 the same assailant allegedly screamed and threatened her and used “wild hand gestures in an intimidating manner.”

In a development letter dated April 13, 2020, OWCP advised appellant 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, it requested that the employing establishment provide additional information regarding her alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of her allegations and witness statements from employees with additional information. OWCP afforded both parties 30 days to submit the requested evidence.

On April 16, 2020 P.K. and G.S. indicated that appellant had alleged that on May 31, 2019 a coworker had bumped into her on purpose and knocked her into the case. The other employee’s version of events, however, differed. Appellant worked in another area for a month following the incident. On February 27, 2020 she advised that the same employee had scared her and the two “ended up in a shouting argument.... The only witness could hear yelling but did not hear what was said. Once again the [two] had different stories as to what had happened.” The employees were informed of the zero-tolerance policy and appellant became upset.

On April 21, 2020 the employing establishment challenged the claim. It asserted that appellant had not filed a claim for the May 31, 2019 incident until nearly a year later, and would receive discipline if she returned for leaving work without approval.

J.G., a coworker, related in a May 1, 2020 statement that he had twice witnessed R.D. scream at other employees. On May 2, 2020 L.M., another coworker, indicated that he had seen R.D. have verbal outbursts and use profanity. On May 4, 2020 M.W., a coworker, advised that management avoided dealing with R.D. M.W. asserted that appellant was frightened after R.D. body slammed her.

In a statement dated May 12, 2020, appellant reiterated that while casing mail on May 31, 2019 R.D. had hit her from behind pushing her into the standing case. She advised that the right side of her body hurt. Appellant reported the incident to management but there were no cameras in the area. She was temporarily relocated for a month but then G.S. told she had to return or lose her job. Management informed her the situation had been handled and it was safe for her to return. On February 27, 2020 appellant thought she was working alone but R.D. scared her on purpose by “entering [her] personal space from behind.” Appellant walked away and R.D. screamed and yelled at her. She related that for the second time on February 27, 2020, R.D. walked up behind her on her blindside and screamed at her. R.D. also threatened her by stretching out her arms and hands like she was choking her while telling her that she wanted to put her hands on her. G.S. threatened appellant with corrective action if she reported this again. A mail handler witnessed this incident but told her that management had informed him that he was not allowed to comment.

On September 30, 2020 OWCP prepared a statement of accepted facts (SOAF) and, on January 14, 2021, referred appellant to Dr. Louise M. Thurman, a Board-certified psychiatrist, for a second opinion examination.

In a March 29, 2021 report, Dr. Thurman diagnosed post-traumatic stress disorder and severe major depression due to assault and harassment at work. She opined that appellant was totally disabled from work.

In a development letter addressed to the employing establishment, dated April 16, 2021, OWCP requested that a knowledgeable supervisor address the accuracy of appellant’s allegations and explain and support with evidence any points of disagreement. It afforded the employing establishment 30 days to provide the requested information.

Subsequently, OWCP received an undated statement from G.S. He related that appellant and R.D. had “multiple altercations and have been told to not talk to each other and to stay away from each other unless it is something that needs to be said about work.” G.S. advised that appellant maintained that R.D. had body slammed her, while R.D. indicated that she had bumped into appellant “trying to get mail out of the case.” He allowed appellant to case mail in a different area because she was scared R.D. had bumped into her on purpose. After appellant returned to the regular work location, she told G.S. that R.D. had come up behind her unannounced. G.S. indicated that both employees told different stories. He found that both had yelled and cursed at each other and told them such behavior would not be tolerated. Appellant became angry and left work.

In a May 12, 2021 e-mail, S.W., who works for the employing establishment, advised that management had investigated two incidents regarding two employees but that the only evidence was their statements. A witness heard yelling but not the content of the conversation. Both employees were counseled about the zero-tolerance policy. S.W. noted that appellant believed that she would receive discipline if she reported a problem but advised that this was untrue. He noted that since she had stopped work the area had been reorganized and employees were not yelling or openly threatening each other.

By decision dated November 5, 2021, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable factors of employment.

On March 15, 2022 appellant requested reconsideration. She submitted supporting medical evidence.

By decision dated June 10, 2022, OWCP denied modification of its November 5, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim,<sup>3</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>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 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

---

<sup>2</sup> *Id.*

<sup>3</sup> *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *M.J., id.*; *O.G., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> 20 C.F.R. § 10.115; *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *Michael E. Smith*, 50 ECAB 313 (1999); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Elaine Pendleton, id.*

<sup>6</sup> *See C.C.*, Docket No. 21-0283 (issued July 11, 2022); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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.<sup>7</sup> 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.<sup>8</sup>

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>9</sup> 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.<sup>10</sup>

Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>11</sup> Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>12</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>13</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, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

---

<sup>7</sup> *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).

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

<sup>9</sup> *See 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).

<sup>10</sup> *See C.J.*, Docket No. 19-1722 (issued February 19, 2021); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>11</sup> *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>12</sup> *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

<sup>13</sup> *R.B.*, *id.*; *O.G.*, *supra* note 5.

<sup>14</sup> *Id.*

## ANALYSIS

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

Appellant attributed her emotional condition to altercations with R.D. on May 31, 2019 and February 27, 2020. She maintained that, on May 31, 2019, R.D. body slammed her from behind into a letter case. G.S. indicated that he had investigated the May 31, 2019 incident. He noted that R.D. informed him that she had bumped into appellant trying to get mail from a case. Physical contact by a coworker or supervisor can give rise to a compensable work factor, if the incident is established factually to have occurred as alleged.<sup>15</sup> The evidence, including the statement of G.S., supports that physical contact occurred between appellant and R.D. on May 31, 2019. In the present case, the work setting brought appellant and R.D. together, and created the conditions that resulted in the two incidents on February 27, 2020. The altercations occurred while appellant was performing her regular work duties and there is no indication that the hostility between her and R.D. resulted from a dispute imported from outside the employment.<sup>16</sup> Thus, the Board finds that she has established a compensable employment factor in this regard.<sup>17</sup>

Regarding the incident of February 27, 2020, appellant alleged that on two occasions R.D. walked up behind her to frighten her, yelled at her, threatened her, and waved her hands in her face. While the Board has recognized the compensability of physical threats or verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.<sup>18</sup> Although the record contains witness statements that R.D. has yelled and used profanity directed at co-workers, this evidence does not indicate that the yelling or profanity was directed toward appellant. Appellant has not otherwise submitted witness statements corroborating her allegations. The Board finds that appellant has not established, with corroborating evidence, that she was harassed by R.D. in this regard.<sup>19</sup>

---

<sup>15</sup> *K.W.*, Docket No. 20-0832 (issued June 21, 2022); *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *D.B.*, Docket No. 19-1543 (issued March 6, 2020); *Alton L. White*, 42 ECAB 666 (1991) (physical contact arising in the course of employment, if substantiated by the evidence of record, may constitute a compensable employment factor).

<sup>16</sup> Under the friction and strain doctrine, the fact that employees with their individual characteristics (emotions, temper, *etc.*) are brought together in the workplace creates situations leading to conflicts which may result in physical or emotional injuries. Because these conflicts have their origin in the employment they arise out of and in the course of employment even though they have no relevance to the employee's tasks. In other words, a conflict between employees involving a nonwork topic may be found to have occurred in the performance of duty because the employment brought the employees together and created the conditions which resulted in the conflict. However, the friction and strain doctrine does not apply to privately motivated quarrels or disputes imported from outside the employment. *See B.K.*, Docket No. 16-0698 (issued September 6, 2016); *A.B.*, Docket No. 15-0288 (issued May 21, 2015); *F.S.*, Docket No. 10-1398 (issued May 12, 2011); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.12b (March 1994, January 1997).

<sup>17</sup> *See P.T.*, Docket No. 19-1843 (issued April 24, 2020); *D.B.*, Docket No. 19-1543 (issued March 6, 2020).

<sup>18</sup> *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *C.B.*, Docket No. 19-1351 (issued March 25, 2020); *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>19</sup> *Id.*

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Thus, the Board will set aside OWCP's decision and remand the case for consideration of the medical evidence to determine whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factors.<sup>20</sup> OWCP should prepare an updated SOAF and request a rationalized opinion from a physician in the appropriate field of medicine regarding whether the compensable employment factors set forth in the updated SOAF caused or aggravated an emotional condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional condition claim.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 10, 2022 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 9, 2022  
Washington, DC

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

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

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

---

<sup>20</sup> *E.A.*, Docket No. 19-0582 (issued April 22, 2021).