

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

M.V., Appellant)	
)	
and)	Docket No. 20-0397
)	Issued: September 8, 2022
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Santa Clarita, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Madison Goodman, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 4, 2019² appellant, through counsel, filed a timely appeal from a June 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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 Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from June 10, 2020, the date of OWCP's last decision, was December 7, 2020. Since using December 10, 2020, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. *See* 20 C.F.R. § 501.3(f)(1). As appellant's appeal request was postmarked December 4, 2021, the appeal is, therefore, timely.

Federal Employees' Compensation Act³ (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 an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On November 1, 2017 appellant, then a 38-year-old internal revenue service agent, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition and related symptoms, including fear, anxiety, insomnia, panic attacks and post-traumatic stress disorder (PTSD) due to factors of her federal employment. She explained that she was assaulted by a taxpayer while in the performance of duty and begin to have flashbacks of the assault, which caused her emotional condition and related symptoms. Appellant noted that she first became aware of her condition and attributed it to her federal employment on October 10, 2017. She stopped work on October 11, 2017.

In a November 7, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from appellant and provided a questionnaire for her completion. OWCP afforded 30 days for a response.

Appellant provided a November 13, 2017 narrative statement and described the events of Friday, July 17, 2015. She asserted that a taxpayer requested to speak to her manager, but that he was not available. However, appellant was available and he agreed to meet with her at a scheduled appointment. When the taxpayer arrived for the appointment, he called her from the employing establishment lobby and she went to greet him, when she noticed he was accompanied by a second man. After appellant greeted him, he called the other man by initials and instructed him to hand her a package. She informed the pair that she was not accepting anything and raised her hand to direct attention to the lobby cameras. Simultaneously, the taxpayer directed the other man to throw the package at appellant, who was seven months pregnant at the time. She saw the package coming at her and only had time to cover her stomach to protect herself before the package struck her arm. Appellant then ran into the interview room and the two men ran from the lobby. She informed her manager, who picked up the package and reviewed the contents. He informed appellant that the taxpayer was suing her. Appellant's manager then directed her to photocopy the documents comprising the package without removing the staples, which took 45 minutes during which time she experienced movement in her stomach. A coworker asserted that her manager should have completed this task. Appellant concluded that over that weekend, following the incident, she was hospitalized due to preterm labor, and was prescribed bedrest, but delivered her infant prematurely.

Appellant also attributed her emotional condition to improper evaluation remarks, overriding her proposed adjustments without adequate reasoning, and putting her in unsafe situations including conducting a face-to-face meeting with an incarcerated taxpayer at the prison, but denying her request for a management escort. She also requested a transfer, which was denied.

³ 5 U.S.C. § 8101 *et seq.*

On October 10, 2017 appellant saw her manager prior to a meeting with a taxpayer's representative. During the meeting, she experienced a flashback to the events of July 17, 2015 and alleged that her manager had failed to protect her and to provide her with proper medical attention. Appellant asserted that she experienced a panic attack while driving back to the employing establishment following the meeting. She sought medical treatment and experienced a panic attack at the physician's office as well as two days later during an interview with her psychiatrist.

Appellant alleged that, prior to the July 17, 2015 meeting, the taxpayer sent letters, which established that he was a threat to her and further noted that she was pregnant during this time. She asserted that, due to the untimely submission of a document, her donated leave was retracted and she was required to return to work.

On October 10, 2017 Dr. Mariam Milad Youssef Assaad, a Board-certified internist, found that appellant was temporarily totally disabled due to insomnia, family stress, and a stressful work schedule.

In a November 22, 2017 attending physician's report (Form CA-20), Dr. Ching Lam, Board-certified in occupational medicine, diagnosed PTSD and described the July 17, 2015 employment incident during which a taxpayer physically and emotionally threatened appellant and threw a package at her. He answered "Yes" to the question of whether his findings and diagnosis was consistent with her history of injury.

In a December 13, 2017 development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of appellant's statements. On January 3, 2018 her supervisor, C.L., was unable to recall that she was required to visit a prison for a taxpayer meeting. He acknowledged that appellant's positions required audits or examinations including meetings with taxpayers or their representatives, reviews of documents, and determinations of whether the taxpayers paid the appropriate amount of taxes, which could be stressful. C.L. was unable to recall a time that she requested accommodation due to stress.

With regard to the July 17, 2015 meeting, C.L. denied that appellant requested his presence for the meeting, and asserted that the taxpayer left a package on the floor in the reception area. He went with her to pick up the package and she then explained what had taken place. C.L. opened the package and found documentation that the taxpayer was suing appellant. He called a Treasury Inspector General for Tax Administration (TIGTA) special agent to determine if there were any criminal violations by the taxpayer. C.L. did instruct her to make copies of the documents. He did not recall that appellant reported that the taxpayer or his companion had thrown the package at her. C.L. reported that he was not aware that the package struck her arm. He instead reported that to the best of his recollection, based on the records that he reviewed, the taxpayer just dropped the package on the floor when appellant refused to accept it. C.L. noted that the special agent should have written documentation in the incident report.

By decision dated May 4, 2018, OWCP denied that appellant sustained an emotional condition claim in the performance of duty as she had not established that her condition arose during the course of employment and within the scope of compensable work factors. It found that she had not established error or abuse by the employing establishment in her evaluation or in denying her transfer request. OWCP further found that the October 10, 2017 panic attack was

self-generated. It determined that appellant had not substantiated that a taxpayer threw a package at her on July 17, 2015.

On March 25, 2019 appellant, through counsel, requested reconsideration of the May 4, 2018 decision. In support of this request, she provided a February 3, 2019 statement from a coworker, K.O., who reported that on July 17, 2015 she witnessed appellant making copies and she was shaking and appeared angry. Appellant informed her that she was being sued and that a taxpayer had thrown a package at her.

Dr. Elena Konstat, a licensed clinical psychologist, in a report of June 25, 2018, described the events of July 17, 2015 as related by appellant. She diagnosed adjustment disorder with mixed anxiety and depressed mood. Dr. Konstat opined that appellant's employment caused and contributed to her diagnosed condition.

On April 29, 2019 M.T., appellant's second-line supervisor, noted that C.L. did not recall the events in July 2015 having occurred as appellant described and was unaware that any violent activity had occurred. He did recall picking the package up from the floor. M.T. reviewed appellant's activity record and found no indication of violent activity. He noted that her activity record indicated that she did not accept the package, so the taxpayer told the other person to leave it on the floor. According to the activity record, appellant stayed inside the interview room and watched the other person leave the package on the floor and then leave the lobby. M.T. reported that the lawsuit had been dismissed on July 1, 2015 and the package contained expired documents.

By decision dated June 10, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶

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

⁴ *Supra* note 2.

⁵ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 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).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁷

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*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA.⁹ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹³ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁴ A disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a person injury sustained in the performance of duty within the meaning of FECA. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁵

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.¹⁶ Where 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

⁷ *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).

⁸ 28 ECAB 125 (1976).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *G.R.*, Docket No. 18-0893 (issued November 21, 2018). *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *Supra* note 4.

¹² *B.O.*, Docket No. 17-1986 (issued January 18, 2019).

¹³ *Id.*

¹⁴ *M.R.*, Docket No. 18-0305 (issued October 18, 2018).

¹⁵ *Supra* note 10.

¹⁶ *Charles D. Edwards*, 55 ECAB 258 (2004).

employment factor.¹⁷ A claimant must support his or her allegations with probative and reliable evidence. Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁸

ANALYSIS

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

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions, including an alleged July 17, 2015 assault by a taxpayer. OWCP denied her emotional condition claim because it found that she had not established that her conditions arose during the course of employment and within the scope of compensable work factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.¹⁹

Appellant alleged that on July 17, 2015 she scheduled a meeting with a taxpayer. When she went to greet him in the lobby, he was awaiting in the lobby with another man. The taxpayer instructed his companion to give a package to appellant. When appellant declined to accept it, he directed his companion to throw the package at appellant, who was seven months pregnant at the time. She saw the package coming at her and only had time to cover her stomach to protect herself before the package struck her arm. Appellant asserted that she informed her supervisor, C.L., of the assault. She submitted a witness statement from K.O., who reported that on July 17, 2015 she witnessed appellant making copies and that appellant recounted that a taxpayer had thrown a package at her. Appellant sought medical treatment after the incident.

In his January 3, 2018 statement, C.L. noted that he did not recall that appellant had reported that the taxpayer or his companion had thrown the package striking her on July 17, 2015. He indicated that he was not aware that the package struck her arm. C.L. instead reported that to the best of his recollection and based on the records that he reviewed, the taxpayer just dropped the package on the floor when appellant refused to accept it. C.L. noted that the TIGTA special agent should have written documentation in the incident report.

M.T. reviewed appellant's activity record related to the July 17, 2015 employment incident and found that it indicated that because she did not accept the package, the taxpayer told the other person to leave it on the floor. According to the activity record, appellant stayed inside the interview room and watched the other person leave the package on the floor and then leave the lobby.

An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive

¹⁷ *Kim Nguyen*, 53 ECAB 127 (2001). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁸ *Roger Williams*, 52 ECAB 468 (2001).

¹⁹ *S.F.*, Docket No. 20-0249 (issued December 31, 2020); *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

evidence.²⁰ CL. did not witness the events, and could not recall appellant's statements regarding the events. Thus, his statement does not directly contradict appellant's allegation that the taxpayer's companion threw the package in her direction, striking her on the arm.²¹ MT. reviewed an activity record, which she asserted contradicts appellant's statement, but she did not provide the contents of this activity record for review by OWCP or the Board.

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.²² In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record.²³

Appellant has alleged events that occurred involving her supervisor including improper evaluation remarks, overriding her proposed adjustments without adequate reasoning, and denying her request for a transfer. She also alleged that her supervisor put her in unsafe situations including conducting a face-to-face meeting with an incarcerated taxpayer at the prison, but denying her request for a management escort. In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.²⁴

Although the handling of disciplinary actions and evaluations of work are generally related to the employment, the Board has held that they are administrative functions of the employing establishment, not duties of the employee, and are not covered under FECA.²⁵ To the extent that supervisors or management properly exercised their supervisory or managerial duties and responsibilities, appellant's emotional reaction thereto is not compensable.²⁶ Mere perceptions of error or abuse are not sufficient to establish entitlement to compensation.²⁷ To discharge her burden of proof, appellant must first submit any corroborative evidence to establish a factual basis for her allegations.²⁸

²⁰ *D.B.*, Docket No. 18-0537 (issued September 12, 2018); *Betty J. Smith*, 54 ECAB 174 (2002); *Allen C. Hundley*, 53 ECAB 551 (2002).

²¹ *D.B.*, *id.*

²² *See R.D.*, Docket No. 19-0877 (issued September 8, 2020); *Andrew J. Sheppard*, 53 ECAB 170-71 (2001), 52 ECAB 421 (2001)

²³ *See B.S.*, Docket No. 19-0378 (issued July 10, 2019); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

²⁴ *Id.*

²⁵ *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990).

²⁶ *See Janet I. Jones, id.*; *Isabel Apostol Gonzales*, 44 ECAB 901 (1993).

²⁷ *D.M.*, Docket No. 20-0500 (issued July 6, 2021); *Ruthie M. Evans*, 41 ECAB 416 (1990).

²⁸ *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *Ruthie M. Evans, id.*

Based on the evidence of record, the Board finds that appellant has not established, with corroborating evidence, that error or abuse was committed by the employing establishment. As such, she has not established a compensable factor of employment in this regard.²⁹

With regard to a denied transfer, the Board has held that denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment under FECA, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position or location.³⁰

With regard to appellant's allegations that the employing establishment acted unreasonably by placing her in unsafe situations, she has not offered corroborative evidence in support of her allegations regarding same. She did not submit witness statements or other documentary evidence to demonstrate that such events occurred as alleged.³¹ The Board finds, however, that OWCP failed to sufficiently develop the evidence regarding whether she was assaulted at work while in the performance of duty on July 17, 2015. OWCP's procedures provide that, in cases involving assault, OWCP should obtain copies of police reports, which may have been made, as well as statements from the official superior, the TIGTA special agent who investigated the incident, coworkers, the assailant, or other witnesses.³² In this instance, appellant detailed the circumstances surrounding the July 17, 2015 incident and reported the taxpayer as the assailant. The record reflects that a TIGTA report had been filed. OWCP, however, failed to properly develop the evidence by requesting this relevant information from the employing establishment addressing her allegations of the assault.³³ Further, appellant noted that there may have been video evidence of the July 17, 2015 employment incident, as she motioned to cameras in the lobby during her interaction with the taxpayer.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.³⁴

Accordingly, the Board will remand the case for OWCP to obtain the necessary information from the employing establishment regarding the claimed July 17, 2015 employment incident. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

²⁹ See *E.A., id.; R.B.*, Docket No. 19-0343 (issued February 14, 2020); *R.V.*, Docket No. 18-0268 (issued October 17, 2018).

³⁰ *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

³¹ See *B.S.*, *supra* note 23.

³² 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.125; *L.S.*, Docket No. 18-1208 (issued April 30, 2020); *A.M.*, Docket No. 18-0630 (issued December 10, 2018).

³³ *Lillian E. Lesniak*, Docket No. 00-1021 (issued February 22, 2001).

³⁴ *A.M.*, *supra* note 32; *L.L.*, Docket No. 12-0194 (issued June 5, 2012); *N.S.*, 59 ECAB 422 (2008).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision.

Issued: September 8, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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