

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

_____)
H.M., Appellant)

and)

**U.S. POSTAL SERVICE, WHITEHALL POST
OFFICE, Whitehall, PA, Employer**)
_____)

**Docket No. 22-0433
Issued: September 27, 2022**

Appearances:
Appellant, pro se
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 January 29, 2022 appellant filed a timely appeal from a January 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional and/or stress-related condition in the performance of duty on December 2, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 21, 2022 decision, OWCP received additional evidence. However, 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.*

FACTUAL HISTORY

On December 6, 2021 appellant, then a 52-year-old postal support employee (window clerk), filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2021 she sustained anxiety and aggravation of preexisting high blood pressure when a coworker ran up to her while shouting and pointing a finger toward her while in the performance of duty. On the reverse side of the claim form the employing establishment checked a box marked “No” in response to the question of whether the injury was in the performance of duty noting “[n]o physical damage, traumatic due to her mental state.” Appellant stopped work on December 2, 2021.

In a statement dated December 2, 2021, S.S., a maintenance employee, related that he heard bells ringing while collecting garbage, which meant that either supervisor or another clerk was needed at the windows. He asked appellant why the bell was ringing and she told him that a clerk was needed to help out, but she was not going there. Appellant stated that if they tried to make her help then she would go home sick. S.S. later saw appellant leave approximately 15 minutes later.

In a statement dated December 3, 2021, C.M., a clerk, related that on December 2, 2021 she was at the window helping a customer with 50 packages and E.M. was processing a passport. She noted the line was out the door and that she rang the bell three times for appellant to come and help. After the third time, C.M. asked appellant to put her drawer in, but appellant told her no.

Appellant, in a December 6, 2021 statement, alleged that she has been subjected to workplace bullying for the past few months. On December 2, 2021 she related that she was waiting for instructions from her supervisor regarding her work assignment following lunch. According to appellant, this was the procedure since she reported being harassed. While talking with her supervisor, E.M. came charging toward her, shouted at her, and pointed his finger at her telling her to get her “a** to the window now” while noting how crowded the window was. Appellant asserted that she was shocked and feared for her life. She alleged that her supervisor held E.M. back and told him he was out of line for what he said to her. At this point appellant requested to go home. She asserted the employing establishment had a hostile work environment.

In a December 6, 2021 statement, H.M., postmaster, stated that on December 2, 2021 appellant had been instructed to report back at 1:30 p.m. after lunch to relieve the window clerks for lunch. He stated that after he ran a few errands appellant told him that the bell kept ringing for assistance and his response was that was because help was probably needed. After noticing the long line, H.M. instructed appellant to go up and help the clerks reduce the line. Appellant informed him that she felt unwell. At this point, E.M. left his window and interjected himself into the conversation H.M. was having with appellant. E.M. told appellant that they had been calling her to help and to get her “a**” up there. Appellant responded by telling E.M. that she did not know who his “a**” was talking to. H.M. instructed E.M. to leave. Appellant walked away and told him she was going home.

In a December 6, 2021 note, Dr. Cecilia Fleser, a Board-certified psychiatrist, advised that appellant had experienced an anxiety episode and inability to function at work. She placed appellant on medical leave for December 3, 4, and 6, 2021.

In a December 7, 2021 statement, E.M., a coworker noted that it was very busy at the window so he rang the bell for appellant to come up. When she did not answer, C.C. rang the bell

again. The lines for the window were getting longer so he texted H.M. to let him know that appellant refused to come to the window noting that appellant told C.C. that she was not going to help. He stated that after he finished with his passport appointment, he saw appellant standing next to H.M. He then walked up to them and told appellant that they had been calling her, she was needed, and to “get your a** up there.” E.M. explained that at that point he was frustrated and embarrassed because of the long lines and as the customers could see appellant working in the back, and could hear her say that she would not come up to help.

Appellant, in a December 15, 2021 statement, alleged that her co-worker charged, pointed his finger, and yelled at her. While talking to her supervisor, she alleged that he told her to get her “a**” to the window and began to threaten her.

In a development letter dated December 16, 2021, 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.

OWCP received a December 22, 2021 disability note from Dr. Fleser advising appellant was disabled from work for the period December 21 and 22, 2021.

By decision dated January 21, 2022, OWCP denied appellant’s claim finding she failed to establish an injury in the performance of duty as she did not establish any compensable factors of employment and did not submit any medical evidence containing a medical diagnosis. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim,⁴ 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.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

³ *Supra* note 1.

⁴ *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).

⁵ *M.J.*, *id.*; *O.G.*, *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 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.*

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.⁷

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.⁸ 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.⁹

To the extent that disputes and incidents alleged as constituting harassment by coworkers are established as occurring and arising from a claimant's performance of his or her regular duties, these could constitute employment factors.¹⁰ However, for harassment to give rise to a compensable disability under FECA there must be evidence that harassment did, in fact, occur.¹¹

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.¹² 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.¹³

ANALYSIS

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

OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor. The Board must therefore initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

⁷ *J.T.*, Docket No.20-0390 (issued April 2, 2021); *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *J.T.*, *id.*; *E.S.*, *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).

⁹ *Cutler, id.*

¹⁰ *P.K.*, Docket No. 21-0967 (issued December 3, 2021); *T.L.*, Docket No. 18-0100 (issued June 20, 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).

¹¹ *P.K.*, *id.*; *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *E.S.*, *supra* note 4; *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Roger Williams*, 52 ECAB 468 (2001).

¹³ *See J.T.*, *supra* note 4; *C.M.*, *supra* note 7; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

Appellant alleged that the verbal altercation with E.M. on December 2, 2021 resulted in an anxiety attack and aggravation of preexisting high blood pressure.

Appellant alleged that E.M. charged at her, he pointed his finger at her, and told her to get her “a**” up to the window, while she was waiting for instructions from her supervisor regarding her work assignment. The Board has recognized the compensability of verbal physical threats in certain situations, but the factual aspects of such claimed threats must be established in order to establish a compensable employment factor. The evidence of record includes witness statements regarding the verbal altercation detailing the December 2, 2021 interaction with E.M. The evidence substantiates that E.M. was angry with appellant because she had been ignoring the bell requesting assistance at the window. The witness statements confirm that E.M. told appellant to get her “a**” up to the window, and came toward appellant pointing her finger at her.

The Board finds the evidence of record supports appellant’s claim that she was verbally confronted and threatened by E.M. on December 2, 2021.¹⁴ The record contains appellant’s own statements, as well as corroborating witness statements from coworkers and her supervisor.¹⁵ The Board has recognized the compensability of threats, when the factual aspects of such claimed threats are established.¹⁶ The Board finds that the verbal confrontation on April 16, 2019 constitutes a compensable employment factor.

As appellant has established a compensable factor of employment the case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.¹⁷ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

CONCLUSION

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

¹⁴ See *J.T.*, *supra* note 4; *J.Z.*, Docket No. 19-1156 (issued July 28, 2020); *M.R.*, Docket No. 17-1803 (issued February 8, 2019).

¹⁵ See *J.T.*, *id.*; *M.F.*, Docket No. 17-1649 (issued July 20, 2018).

¹⁶ See *C.O.*, Docket No. 07-1290 (issued December 6, 2007) (defacing a timecard with KKK was a compensable factor of employment).

¹⁷ See *J.Z.*, *supra* note 15; *S.S.*, Docket No. 17-0959 (issued June 26, 2018).

ORDER

IT IS HEREBY ORDERED THAT January 21, 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: September 27, 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