

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

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T.H., Appellant)	
)	
and)	Docket No. 22-0658
)	Issued: September 1, 2022
)	
U.S. POSTAL SERVICE, ROCKY MOUNT)	
CARRIER ANNEX, Rocky Mount, NC,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 11, 2022 appellant filed a timely appeal from a September 21, 2021 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty, as alleged.

FACTUAL HISTORY

On July 3, 2020 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 30, 2020 she developed anxiety, depression, headaches, chest

¹ 5 U.S.C. § 8101 *et seq.*

wall strain, and post-traumatic stress disorder (PTSD) while in the performance of duty. She indicated that Postmaster B.C. called her into his office, swore at her, and jumped out of his chair as if he was going to hit her. On the reverse side of the claim form, Postmaster B.C. indicated that there was an argument between himself and appellant, but controverted that she sustained any injury. Appellant stopped work on July 2, 2020 and returned to work on July 3, 2020.

In a report dated July 2, 2020, Dr. Celeste Good, a psychiatrist, opined that employment incidents on May 28, 2019² and June 30, 2020 had “added to” to appellant’s PTSD symptoms. She opined that appellant was capable of returning to work, but recommended that appellant be permitted to take 15-minute breaks or leave work and take her medication if her stress level became overwhelming, come to work early if needed, and wear headphones while casing mail to block out extraneous noise.

In a statement dated July 8, 2020, Postmaster B.C. indicated that on June 30, 2020 he requested that appellant meet with him in his office after he observed her come into work early without authorization carrying parcels that had not been delivered. He related that he questioned her regarding unauthorized overtime and whether she had delivered any packages that morning. Postmaster B.C. indicated that appellant began arguing with him and used profanity, stating that he should be worried about other employees who “do n[o]t do [sh*t].” He responded by saying “You do n[o]t do [sh*t], you delivered no packages in the two hours you were here.” Postmaster B.C. indicated that appellant then stood up, leaned over his desk, and started swearing at him in his face, and told him to do his job and address other employees that “were n[o]t doing [sh*t].” He then stood up and instructed her to leave his office. Postmaster B.C. further noted that, a union representative, J.M., was present for the meeting.

In an undated statement, T.S., appellant’s coworker, indicated that she heard appellant swearing, shouting, and stating that she was going “to get rid of” Postmaster B.C. “just like we got rid of” a prior Postmaster.

In a July 16, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a statement by appellant dated July 1, 2020, who indicated that, on June 30, 2020 she came in early to run parcels before she cased her route, and when she loaded her parcels and headed to the route, it began to rain heavily. Appellant returned to the annex with the parcels and learned that her coworker, E.M., was carrying her route that day, so she offered to help her case the route. She related that, while she was casing the route, Postmaster B.C. asked her to come into his office with union steward J.M. Appellant noted that he questioned who had instructed her to come to work early, and she responded that her supervisor, B.K., told her that she could come in early to run parcels. She further related that Postmaster B.C. told her that she was only permitted to come in early on Mondays, and she responded that no other supervisor had advised her that she could only come in early on Mondays. He then asked appellant about carrying

² On May 31, 2019 appellant filed a claim for a May 28, 2019 traumatic injury resulting in PTSD, anxiety, depression, and migraines. OWCP denied the claim under OWCP File No. xxxxxx738. It assigned the present traumatic injury claim OWCP File No. xxxxxx911. Appellant’s claims have not been administratively combined.

parcels, and she indicated that she attempted to explain the events of that morning, but he interrupted her and yelled “You have n[o]t done [sh*t]!” and “You do n[o]t do a [f*cking] thing, you do n[o]t do [sh*t], what the [f*ck] do you do.” Appellant related that Postmaster B.C. was angry and jumped out of his chair and leaned toward her as if to hit her. She indicated that she felt chest pains, became afraid, nervous, and anxious, and began crying, shaking, and yelling. Appellant noted that Postmaster B.C. told her to leave the office, and they were both yelling at each other as she left. She related that she then went to the employing establishment’s main office and contacted a human resources (HR) specialist about how Postmaster B.C. treated her. Appellant noted that she felt Postmaster B.C. had been verbally abusive and this caused her PTSD and depression to flare up resulting in her missing time from work.

OWCP thereafter received an undated statement by appellant’s coworker E.M., who indicated that on June 30, 2020 appellant had offered to help her case mail.

In a statement dated July 7, 2020, J.M. indicated that he observed the meeting between appellant and Postmaster B.C. on June 30, 2020. He noted that Postmaster B.C. advised her that she was no longer permitted to come to work early and questioned her productivity. J.M. indicated that, when appellant tried to answer, Postmaster B.C. interrupted her and yelled “You have n[o]t done [sh*t]!” He noted that she responded calmly, but Postmaster B.C. then jumped out of his chair and leaned forward toward her and yelled and cursed at her again. J.M. noted that appellant then began arguing and cursing, and Postmaster B.C. told her to leave his office.

In reports dated July 6 and August 10, 2020, Dr. Good reiterated her prior recommendations.

In a further statement dated August 11, 2020, J.M. indicated that he had prior discussions with Postmaster B.C. regarding the prior Postmaster, who had constantly yelled at employees, including appellant. He indicated that he had advised Postmaster B.C. that she was a good worker if left alone and allowed to work as her medical file instructed from her physician.

In a narrative report dated August 12, 2020, Dr. Good noted that appellant had a prior diagnosis of PTSD and major depression and had difficulty tolerating stressful events, loud noises, and conflict. She noted that she related that appellant had an increase in migraine headaches, intrusive thoughts, isolation, irritability, weight gain, fatigue, and poor grooming since the June 30, 2020 incident. Dr. Good diagnosed an exacerbation of PTSD and depression and recommended that appellant remain out of work until August 16, 2020. She opined that she anticipated that appellant would return to her baseline by September 30, 2020.

By decision dated August 21, 2020, OWCP denied appellant’s traumatic injury claim, finding that she had not established a compensable factor of employment as causing or contributing to her diagnosed emotional condition. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including an emergency room report dated July 1, 2020 by Dr. John W. Surles, Board-certified in emergency medicine, who noted that appellant related complaints of midsternal chest pain after an incident at work on June 30, 2020. Dr. Surles noted that she indicated that she felt physically threatened by her supervisor, and that he had cursed at her. He performed a physical examination and documented anterior chest wall tenderness with

palpation. Dr. Surles noted that computerized tomography scans of appellant's head and x-rays of her chest were normal. He diagnosed chest wall pain, acute nonintractable headache, and an anxiety reaction.

In a report dated April 20, 2021, Dr. Good excused appellant from work on April 13, 14, 19, and 20, 2021, and cleared her to return to work on April 21, 2021. She reiterated her prior recommendations, but also noted that appellant was unable to deliver her route and may only case her own route. Dr. Good again opined that appellant had not recovered from injuries sustained on May 28, 2019 or June 30, 2020, and that each additional incident added to her PTSD symptoms.

On August 9, 2021 appellant requested reconsideration of OWCP's August 21, 2020 decision.

OWCP thereafter received an undated statement by B.R., an employing establishment custodian, who indicated that she observed appellant in front of the building crying and very upset after Postmaster B.C. cursed at her and jumped at her like he was going to hit her.

In a further statement dated October 15, 2020, J.M. indicated that Postmaster B.C. initiated a verbal assault on appellant, stood up, and used obscenities. He noted that, at a later time, Postmaster B.C. apologized for his actions.

In a report dated December 7, 2020, Dr. Good again noted that same recommendations and also that appellant should not be assigned to park and loop.

In a statement dated March 1, 2021, appellant's coworker, V.H., indicated that in June 2020 she heard yelling coming from Postmaster B.C.'s office and then heard him yell at appellant to get out of his office and she yelled back at him not to curse at her again. She observed appellant crying and noted that she was visibly shaken.

In a statement dated April 2, 2021, appellant indicated that she reviewed Postmaster B.C.'s July 8, 2020 statement and disagreed that she started the argument. She related that he started using profanity and arguing with her and she tried to remain calm, but when he continued to curse at her, she cursed back at him at which point he jumped out of his chair and leaned over his desk as if he was going to hit her so she panicked and stood up from her chair. B.C. then yelled at appellant to leave his office, which she did.

In a report dated May 5, 2021, Dr. Good reiterated her prior opinions and excused appellant from work for one-half of that day.

In reports dated July 14 and 29, 2021, Dr. Good noted that the same prior recommendations and excused appellant from work from July 27 through 29, 2021 and recommended that she be permitted to start early and take extra breaks as needed due to the heat.

In a letter dated August 19, 2021, the employing establishment controverted appellant's claim and noted that she had filed prior claims for stress, anxiety, and chest wall strain.³

By decision dated September 21, 2021, OWCP denied modification of its August 21, 2020 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 that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.⁸

³ Appellant has previously accepted traumatic injury claims for emotional conditions as follows: January 23, 2002 claim for depressive reaction under OWCP File No. xxxxxx869; June 30, 2004 claim for PTSD (mild), major depressive disorder (recurrent without psychotic features) under OWCP File No. xxxxxx914; May 27, 2005 for acute reaction to stress under OWCP File No. xxxxxx864; and October 31, 2005 for major depressive disorder (severe, without psychotic features) under OWCP File No. xxxxxx227. By decision dated September 11, 2009, OWCP terminated her entitlement to medical and wage-loss compensation benefits for the October 31, 2005 claim. In addition to the May 28, 2019 claim under OWCP File No. xxxxxx738, appellant has previously denied claims for emotional conditions as follows: August 16, 2000 under OWCP File No. xxxxxx189; May 15, 2007 under OWCP File No. xxxxxx268, August 13, 2008 under OWCP File No. xxxxxx323, December 5, 2011 under OWCP File No. xxxxxx116, March 9, 2012 under OWCP File No. xxxxxx479, April 27, 2012 under OWCP File No. xxxxxx916, September 18, 2012 under OWCP File No. xxxxxx936, February 25, 2014 under OWCP File No. xxxxxx978, July 30, 2014 under OWCP File No. xxxxxx674, July 18, 2015 under OWCP File No. xxxxxx344, December 16, 2016 under OWCP File No. xxxxxx553, January 17, 2017 under OWCP File No. xxxxxx680, and April 10, 2017 under OWCP File No. xxxxxx260.

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

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*,⁹ 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 of FECA.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

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee and are not covered under FECA.¹⁴ 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 employment factor.¹⁵

Verbal altercations and difficult relationships with supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.¹⁶ However, this does not imply that every ostensibly abusive or threatening statement uttered in the workplace will give rise to coverage under FECA. For appellant to prevail on his or her claim, he or she must support his or her allegations with probative and reliable evidence.¹⁷

⁹ 28 ECAB 125 (1976).

¹⁰ *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

¹¹ *D.I.*, Docket No. 19-0534 (issued November 7, 2019); *T.G.*, Docket No. 19-0071 (issued May 28, 2019).

¹² *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

¹³ *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁴ *C.V.*, Docket No. 18-0580 (issued September 17, 2018).

¹⁵ *K.W.*, Docket No. 20-0832 (issued June 21, 2022); *A.B.*, Docket No. 18-0635 (issued August 14, 2020); *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁶ *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

¹⁷ *Y.J.*, Docket No. 15-1137 (issued October 4, 2016) (allegations of verbal abuse must be surrounded by specificity in order to more appropriately gauge the context in which they were made).

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.¹⁸

ANALYSIS

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

Appellant has not attributed her emotional condition to the performance of her regular or specially assigned duties under *Cutler*.¹⁹ Rather she has alleged that she sustained an emotional condition as a result of a hostile work environment, harassment, and abuse by Postmaster B.C. in the meeting in his office on June 30, 2020. OWCP denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.²⁰

Specifically, appellant asserted that on June 30, 2020 Postmaster B.C. yelled at her, used profanity conversing with her, and stood up and leaned toward her in a manner that made her feel physically threatened. Postmaster B.C. acknowledged the verbal altercation between them, but claimed that appellant initiated it by arguing, yelling, and swearing at him first. J.M., a union representative who was present for the meeting, prepared several statements confirming that Postmaster B.C. initiated the verbal altercation by getting out of his chair and interrupting, yelling, and swearing at appellant. As noted above, verbal altercations and difficult relationships with supervisors/managers, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.²¹ The Board finds that appellant has provided reliable and probative evidence in the form of multiple witness statements with respect to her allegations of a hostile work environment, harassment, and abuse, specifically Postmaster B.C. standing up, yelling, and swearing at her during the meeting on June 30, 2020. Thus, appellant has established a compensable employment factor.²²

As appellant has established a compensable employment factor, OWCP must base its decision on analysis of the medical opinion evidence with regard to causal relationship. The Board will therefore set aside OWCP's September 21, 2021 decision and remand the case for OWCP to review the medical evidence as it relates to the accepted compensable factor of employment.

¹⁸ See *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *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. *T.G.*, Docket No. 19-0071 (issued May 28, 2019); *Garry M. Carlo*, 47 ECAB 299, 305 (1996); *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹⁹ *Supra* note 9.

²⁰ *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

²¹ *Supra* note 16.

²² *Id.*; *S.F.*, Docket No. 20-0249 (issued December 31, 2020).

Furthermore, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.²³ Therefore, on remand OWCP should also consider whether the correct adjudication of the issues would require that it administratively combine the current case record with any of appellant's prior emotional condition claims, as noted above.²⁴

Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: September 1, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

²⁴ *Id.* at Chapter 2.400.8(c)(1); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).