

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

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<b>D.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0237</b>
	)	<b>Issued: April 18, 2023</b>
<b>U.S. POSTAL SERVICE, HILO POST OFFICE,</b>	)	
<b>Hilo, HI, Employer</b>	)	
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*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 December 1, 2021 appellant filed a timely appeal from an October 7, 2021 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 over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On July 18, 2020 appellant, then a 38-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that his severe panic attacks, anxiety symptoms, and loss of focus and concentration were due to actions by C.E., his supervisor. He first became aware of his condition

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

on June 22, 2019, but did not realize that it was connected to his federal employment until August 23, 2019. Appellant stopped work on July 9, 2020.

In an undated statement, appellant detailed multiple incidents with C.E. He related that he began intermittent training/detail as a supervisor with C.E. in January 2019. Shortly, after appellant began his training, C.E. became increasingly hostile, manipulative, and controlling while working and training him. He stated that he gave up his training in June 2019 to distance himself from C.E. Appellant alleged that C.E. harassed and bullied him from June 2019 through March 2020 by making unnecessary requests for medical documentation, making false accusations, spreading rumors, and denying legitimate assistance requests. He stated that he was autistic and that, on multiple occasions, C.E. would tease him, mock his speech, stand too close to him, and mimic the way he did something. When appellant reminded her that he was autistic she would apologize, but would continue with her behavior the following day. Next, he alleged C.E. bullied him by pulling him aside or berating him when he provided suggestions in the presence of others. C.E. would also criticize appellant when a daily task was not completed. Appellant alleged that if he spoke up, she told him that since she was the supervisor, he was required to do what she told him without question. C.E. also attempted to pass on tasks she was given by R.K., the Postmaster, telling appellant that R.K. stated that he needed to do the task. However, when appellant asked R.K., R.K. informed him that C.E. was to do the task, which incensed C.E. and resulted in her berating appellant to do what he was told. In early June 2019, appellant asserted C.E. threw a piece of hard candy at him, ignored him when he questioned her, and began yelling at him. He asserted that due to the panic and anxiety he felt due to C.E.'s bullying and hostility he reverted to being a letter carrier and gave up his training in mid-June 2019. Appellant stated that he invoked the Family and Medical Leave Act (FMLA) to use sick leave on June 25 and 26, 2019. On June 28, 2019 he asked C.E. for his sick leave forms and timecard to sign and noted that the June 26, 2019 form noted that documentation was being required. According to appellant no documentation was required for approved FMLA usage. When he questioned C.E. whether he was cleared to work without documentation, she loudly and aggressively told him to sign the form and forget about documentation. Appellant stated that he filed grievance and Equal Employment Opportunity (EEO) claims for FMLA violations and disparate treatment. On August 23, 2019 he stated that he saw a large, typed note, instructing him to remove the labels on the empty trays, attached to a large stack mail trays sitting at his route case. Appellant asserted that C.E. was retaliating against him for filing a grievance which made him extremely anxious and he called out sick using FMLA. According to him, she then informed him documentation was required per R.K. for his absence. Appellant also asserted that coworkers told him that C.E. called them into her office asked for negative information about him. Coworker L.N. told appellant that C.E. had referred to him as a "son of a b[\*\*\*\*]". Appellant noted that he filed a grievance and an EEO complaint against C.E., and that she would question him about the complaints and ask that he drop them. In January 2020, an Officer-In-Charge, K.A. told appellant that a team had been sent to investigate his EEO complaints and that C.E. had been instructed not to talk to him or interact with him in any manner. In February 2020, C.E. approached appellant and told him that R.K. had told E.O., a supervisor, to ask him for documentation when appellant was out on sick leave. Later that day, R.K. told appellant that she had spoken with C.E. and that appellant was to let her know if C.E. stated or did anything in the future.

In a report dated June 9, 2020, Dr. Ian N. Chun, a Board-certified psychiatrist and neurologist, noted that appellant has been under his care since February 21, 2019. He advised that

appellant was capable of working with no restrictions provided prior psycho-social/environmental stressors are minimized or resolved. Dr. Chun further advised in a report dated July 15, 2020, that appellant was currently unable to work due to reemergence and further exacerbation of his condition.

In a development letter dated August 7, 2020, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information including comments from C.E. or a knowledgeable supervisor and whether that there were aspects of appellant's job that could be perceived as stressful. It also specifically requested that any agency employees that may have additional information on his allegations be identified and witness statements from each employee be provided. OWCP afforded both parties 30 days to submit the necessary evidence.

In an undated statement, L.N., a coworker, noted that on August 23, 2019 appellant went home for reasons unknown to her. L.N. related that C.E. approached her and asked her to case and split the carrier's work, stating "the son of a b[\*\*\*\*\*]" went home." On August 29, 2019 C.E. asked for statements against appellant.

In a statement dated September 8, 2019, L.V., a coworker, noted that on August 29, 2019 C.E. asked her whether she had seen appellant at work on August 23, 2019. After C.E. refreshed her memory, L.V. recalled seeing him before the start of his shift and that she was later told that he went home sick. C.E. asked L.V. to provide a written witness statement, which C.E. stated that was necessary because appellant filed an EEO complaint against "them."

The record contains a grievance filed by appellant on September 10, 2019 alleging management failed to provide safe working conditions. Specifically, he alleged that C.E. created and maintained a hostile work environment towards him by informing coworkers about his autism without his permission, spreading rumors, acting in an unfair and unprofessional manner toward him, and generally acting in an unprofessional and unethical manner with him.

In a report dated October 9, 2019, Dr. Chun noted that appellant required time off from September 16 to October 11, 2019 and advised that he could return to work on October 12, 2019 with restrictions. He advised that appellant was limited to only working the currently assigned route beginning at 8:30 a.m. until completion only on regularly assigned days.

The record contains a written summary of an interview with appellant dated November 20, 2019 for his complaint of harassment against C.E. Appellant reiterated his allegations regarding the August 23, 2019 incident with her, as well as C.E.'s discussions regarding him with coworkers. He alleged that C.E. always required him to provide documentation when he called in sick even though he had approved FMLA and that other employees who had approved FMLA were not required to provide any documentation. Appellant alleged that C.E.'s treatment of appellant was not an isolated event, but the beginning of a series of events. He also alleged that any negative action C.E. took was attributed to R.K. Appellant also alleged that C.E. told R.K. that he was abusing his FMLA because he did not want to carry his route.

The record contains additional interview and witness statements from C.E.; R.K.; L.V.; and K.K., city carrier, regarding the employing establishment's investigation into appellant's allegation of harassment and hostile work environment against C.E.

A December 19, 2019 decision letter from an employing establishment human resources manager related that the fact-finding process had been completed regarding appellant's allegations of workplace harassment. The letter stated that "[t]he results of the [Initial Management Inquiry Process] IMIP indicates strong evidence of employee information manipulation and sharing private information to employees other than the intended employee. There is also a high risk of the agency's liability because of the sharing of unwarranted private information to other employees." H.R. recommended that C.E. be placed on a performance improvement plan (PIP), that daily and weekly monitoring be conducted on the privacy and confidentiality of employee information, observation of interaction with subordinate employees, and feedback sessions with C.E.

In a June 3, 2020 initial management inquiry report, the employing establishment found the evidence sufficient to substantiate appellant's allegations of harassment and hostile work environment by C.E. against him and two other employees. It recommended a PIP for C.E.

In progress notes dated August 12, 2020, Dr. Chun noted that appellant felt he worked in a hostile environment due to his relationship with his supervisor. He diagnosed generalized anxiety disorder, trauma and stressor related disorder, major depressive disorder, attention deficit disorder, and autism.

On August 20, 2020 appellant responded to the questions posed by OWCP. He related that his problems with C.E. began around April 2019, that she did not impact his work until June 2019 and that in August 2019 he started missing work. Appellant noted that he filed grievances in June and August 2019, that filed two EEO complaints in August and September 2019, and that a third EEO complaint was filed in February 2020 against her. He requested that C.E. be reassigned, which was denied. However, appellant noted that in April 2020 she had been reassigned due to grievance filed by another person.

Dr. Chun, in a September 3, 2020 report, noted appellant's condition had improved following a recent exacerbation. He released appellant to return to work with no restrictions provided the prior psychosocial/environmental stressors were minimized or resolved.

By decision dated October 7, 2021, OWCP denied appellant's claim finding the evidence insufficient to establish any compensable factors of employment. It concluded, therefore, that the requirements had not been met to establish an emotional condition in the performance of duty.

## 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, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<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. In the case of *Lillian Cutler*,<sup>7</sup> 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 under FECA.<sup>8</sup> 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>9</sup>

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>10</sup> Where the claimant alleges compensable factors of employment, he or she must

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

<sup>3</sup> *R.D.*, Docket No. 21-0050 (issued February 5, 2021); *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> *R.D.*, *id.*; *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; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

<sup>6</sup> *E.A.*, Docket No. 19-0582 (issued April 22, 2021); *W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> *R.D.*, *supra* note 3; *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>9</sup> *R.D.*, *id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 7.

<sup>10</sup> *R.D.*, *id.*; *A.C.*, *id.*

substantiate such allegations with probative and reliable evidence.<sup>11</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors 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>12</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>13</sup> 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.<sup>14</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>15</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>16</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>17</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>18</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>19</sup>

### ANALYSIS

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

Appellant alleged that he sustained an emotional condition due to various incidents and conditions at his place of work, caused by his supervisor C.E. The Board must review whether

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<sup>11</sup> *R.D., id.; G.R.*, Docket No. 18-0893 (issued November 21, 2018).

<sup>12</sup> *R.D., id.; A.C.*, *supra* note 9.

<sup>13</sup> *See C.J.*, Docket No. 19-1722 (issued February 19, 2021); *G.R.*, *supra* note 11; *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

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

<sup>15</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>16</sup> *O.G.*, *supra* note 3; *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>17</sup> *R.D.*, *supra* note 3; *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>18</sup> *R.D., id.; J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 16.

<sup>19</sup> *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

these alleged incidents and conditions are covered employment factors under the terms of FECA.<sup>20</sup> The Board notes that appellant's claim does not directly relate to his regular or specially assigned duties under *Lillian Cutler*.<sup>21</sup> Rather, appellant claimed that C.E. engaged in actions that constituted error or abuse and subjected him to harassment and a hostile work environment.

An inappropriate sharing of information by a supervisor can constitute error or abuse, and thus establish a compensable factor of employment.<sup>22</sup> The Board finds that the employing establishment's December 19, 2019 decision letter found and establishes that C.E. engaged in employee information manipulation and sharing private information to employees other than the intended employee. This letter establishes appellant's allegations that C.E. improperly spoke to coemployees in a derogatory manner regarding appellant and shared private information regarding appellant. Appellant has therefore established error or abuse in the dissemination of information, including private information.<sup>23</sup>

In the June 3, 2020 management inquiry report, the employing establishment also found the evidence sufficient to substantiate appellant's allegations of harassment and hostile work environment by C.E. It found that C.E. did not perform at a minimally satisfactory level as a supervisor, regarding her interactions with her staff, and that she should be placed on a PIP. As the employing establishment acknowledged that appellant had been subjected to harassment and hostile work environment by C.E., he has established a compensable factor of employment regarding harassment and hostile work environment.<sup>24</sup>

In the present case, appellant has established compensable employment factors with respect to error or abuse and harassment and hostile work environment by C.E. However, his burden of proof is not discharged by the fact that he has established employment factors, which may give rise to a compensable disability under FECA. To establish appellant's occupational disease claim for an emotional condition, he must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder, and that such disorder is causally related to an accepted compensable employment factor.<sup>25</sup>

As appellant has established compensable factors of employment, the case must be remanded for an evaluation of the medical evidence regarding the issue of causal relationship.<sup>26</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>20</sup> *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>21</sup> *Supra* note 7.

<sup>22</sup> *See S.W.*, Docket No. 17-1016 (issued September 19, 2018).

<sup>23</sup> *Id.*

<sup>24</sup> *Supra* note 16.

<sup>25</sup> *See supra* notes 5 and 18.

<sup>26</sup> *E.G.*, Docket No. 20-1029 (issued March 18, 2022); *M.D.*, Docket No. 15-1796 (issued September 7, 2016).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 7, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: April 18, 2023  
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