

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

exacerbation of a migraine disorder<sup>2</sup> due to factors of her federal employment. She indicated that her work environment was stressful, her station was understaffed and under supported, and she was not properly paid. Appellant noted that she first became aware of her conditions on December 1, 2021 and realized their relationship to her federal employment on January 18, 2022. She did not stop work.

In support of her claim, appellant submitted a March 26, 2022 letter to N.S., the employing establishment station manager. She indicated that her pay grade was incorrect, and that her work location was severely under supported, having lost an employee in September 2021 who was not replaced. Appellant related that she felt she and her coworker, M.R., were unfairly held accountable for problems that arose due to the station being understaffed and unsupported by management. She claimed that instead of resolving issues that she and M.R. brought to management's attention, they were brought in for frivolous investigative interviews, spoken about behind their backs, and branded and treated as lazy. Appellant further noted that the heater was broken for approximately five weeks in the middle of winter, which resulted in her working in 50-degree indoor temperatures, and that she made five requests for a work order to fix the heater. She also described a confluence of broken equipment and electricity and wi-fi outages that made it difficult for her to complete her work tasks. Appellant related that, if she was off from work and someone filled in for her, she would return and the office would be a mess, with equipment and stamps out of place, unsorted mail from the day before, trash, and her personal belongings damaged. She noted that despite bringing these issues to N.S.'s attention, N.S. was not receptive or responsive, minimized her concerns, and did not fix the issues. Appellant indicated that this made her extremely overwhelmed and caused her to become ill with migraines.

In a statement dated April 19, 2022, appellant reiterated the various workplace issues that she described in the March 26, 2022 letter. She further indicated that lack of assistance from her chain of command forced her and M.R. to deal with tasks that were outside of the scope of their positions. Appellant related that she felt overwhelmed due to being burdened with so many tasks and assignments that should be handled by upper management. She noted that she did not receive the standard tools, training, and guidance required to complete her job.

In a development letter dated April 26, 2022, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the 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 thereafter received a photograph of a thermostat dated December 31, 2021, which read that the temperature was 59 degrees in heat mode.

In a screenshot of text messages exchanged between appellant and M.R. dated January 19 and 20, 2022, they discussed problems with the internet, printers, computers, electricity, and heat. On January 20, 2022 appellant indicated that she could not obtain assistance with these problems,

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<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxx172. The record reflects that a appellant has an accepted traumatic injury claim for a January 31, 2022 closed head injury (single laceration) under OWCP File No. xxxxxx969. The files have not been administratively combined.

because no one answered their phones and e-mail was not working. She noted that she experienced a migraine and had to leave work.

In an e-mail dated February 3, 2022 to the postmaster, appellant described problems with her pay since September 2021, including that she had attempted to resolve the issue with the Human Resources Shared Service (HRSS) Center, who advised her that her management would have to complete the finance number change by speaking with the time attendance coordinator and emailing HRSS. She indicated that she requested this assistance from management, but they failed to resolve the issue. Appellant also related that management created a hostile and unsafe work environment, and that the office was not properly staffed. She described the issues with the equipment, heating, and wi-fi as described in her statements. Appellant also noted an incident on January 18, 2022 when she and M.R. were reprimanded, because they were not able to stay at work for 10 hours, which caused her to develop anxiety and a migraine, because she felt the real problem was that the office was understaffed.

In e-mail correspondence dated February 14, 2022 to N.S., appellant discussed attendance, hour, and pay issues.

In a letter dated April 27, 2022, Robert Johnson, a physician assistant, recommended that appellant remain off work until May 27, 2022 due to medical reasons.

In a further statement dated May 1, 2022, appellant indicated that the postmaster sent out an investigative team after receiving her February 3, 2022 letter, but the work environment only worsened. She indicated that she did not request assistance from the union for these issues.

In a May 13, 2022 response to OWCP's development questionnaire, appellant reiterated the concerns she raised in her previous statements, and also indicated that she did not have any sources of stress outside of work. She related that she felt overwhelmed, depressed, and anxious that she would be disciplined for workplace issues outside of her control.

In a report dated May 13, 2022, Mr. Johnson noted that appellant related complaints of hair loss, insomnia, depression, and anxiety, which she attributed to stress at work, including interpersonal conflict with management, management not addressing environmental issues, and increased workload due to understaffing. He recommended that she remain off work until June 13, 2022.

On June 10, 2022 Dr. Prabhas Gupta, a Board-certified internal medicine specialist, diagnosed stress, anxiety, and adjustment disorder secondary to work pressure, and stress emanating from conflicts with management, short staffing, and a lack of support at work. He concurred with Mr. Johnson's opinions and recommended that appellant remain off work until June 13, 2022.

In a statement dated June 28, 2022, M.R. indicated that the work environment had been stressful from when she started as a lead clerk in October 2021 until she left the position on June 17, 2022. She noted that she and appellant often had to figure things out on their own, and fix things that were above their pay grade, without any assistance from management. M.R. noted that at one point the wi-fi system was down for days, and she had to get it fixed because management did not know how to do so. In October 2021, she indicated that there was an electrical

outage and chemical smell throughout the building, and they were forced to work in dark, unsafe conditions. In December 2021 or January 2022, M.R. and appellant were behind on box mail due to low staffing and a busy window, and her supervisor instructed them to stay late to complete the mail. She related that she could not do so due to childcare obligations, and the supervisor told her that she did not have a choice, and would be written up if she did not stay late. M.R. also indicated that there were multiple situations where she and appellant reached out to management for help, but were not given any help, including failing to provide staff to open the store, which led customers to be angry with her because management was never there to take the blame. She noted that whenever she and appellant requested assistance from management, management made them feel like they were the problem and an inconvenience. M.R. ultimately left the position due to these issues.

In a further development letter dated August 12, 2022, OWCP again requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It provided the statements by appellant and M.R. for review and comment.

In an August 18, 2022 response to OWCP's development letter, M.E., an employing establishment manager, indicated that: (1) he could not locate any work orders for the heater at appellant's work location; (2) there were no records to establish internet connectivity issues at the station; (3) there was an electrical outage due to a transformer failure, which was fixed by the electric company the same day; (4) he could not locate any work orders for a lack of supplies or defective equipment; (5) any increased workload was due to appellant not reporting for work; and (6) the station was a two-person operation, and if someone was unavailable there was usually a replacement sent to backfill.

By decision dated August 22, 2022, OWCP denied appellant's emotional condition claim, finding that she had not established a compensable employment factor in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 timely filed within the applicable time limitation of FECA,<sup>4</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.D.*, Docket No. 23-0989 (issued July 13, 2023); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.<sup>5</sup> 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.<sup>6</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>7</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 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>8</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>9</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.<sup>10</sup> Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>11</sup> However, to the extent 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>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

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> See *L.N.*, Docket No. 22-0126 (issued June 15, 2023); *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>8</sup> See *A.M.*, *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).

<sup>9</sup> *Lillian Cutler*, *id.*

<sup>10</sup> *R.A.*, Docket No. 21-0412 (issued January 10, 2023); *A.B.*, Docket No. 18-0635 (issued August 14, 2020); *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *re aff'd on recon.*, 42 ECAB 566 (1991).

<sup>11</sup> *A.B.*, *id.*; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *Thomas McEuen*, *id.*

<sup>12</sup> *Id.*

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>

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees, and provide evidence or argument to support that position.<sup>15</sup> Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.<sup>16</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>17</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>18</sup> Once OWCP undertakes to develop the evidence, it has the responsibility to do so in a proper manner.<sup>19</sup>

### ANALYSIS

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

The issue presented in the case is whether appellant sustained an emotional condition in the performance of duty. She alleged that she experienced anxiety and an exacerbation of a migraine condition, in part, due to overwork. Appellant asserted that she experienced emotional stress in carrying out her employment duties as a result of having to perform tasks outside of her capacity, and in carrying out her employment duties while understaffed and without working equipment, heat, wi-fi, and electricity in the office. She maintained that her supervisors failed to address these concerns, which made it difficult for her to perform her job duties. Appellant also alleged that when she raised these concerns with management, she became the subject of frivolous investigative interviews, and her supervisors treated her as an inconvenience, offered no assistance, and minimized her concerns. She maintained that her supervisors failed to correct issues with her

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<sup>13</sup> See *C.G.*, Docket No. 20-0058 (issued September 30, 2021); *R.B.*, Docket No. 19-0434 (issued November 22, 2019); *O.G.*, Docket No. 18-0359 (issued August 7, 2019).

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

<sup>15</sup> 20 C.F.R. § 10.117(a); *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

<sup>16</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011).

<sup>17</sup> *D.B.*, Docket No. 19-0443 (issued November 15, 2019); *K.S.*, Docket No. 18-0845 (issued October 26, 2018); *D.L.*, 58 ECAB 217 (2006); *Jeral R. Gray*, 57 ECAB 611 (2006).

<sup>18</sup> 20 C.F.R. § 10.121.

<sup>19</sup> *F.V.*, Docket No. 19-0006 (issued September 19, 2019).

pay rate. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed her emotional condition, in part, to performing the regular or specially assigned duties of her position as a sales, service, and distribution associate. She alleged that she was overworked, because her duty station was chronically understaffed after a third employee left in September 2021, equipment she needed to perform her duties was often broken, and, at times, the office lacked heat, electricity, and wi-fi. These issues occurred within the same time period, which made it difficult for appellant to complete her work duties. Appellant submitted a photograph of the thermostat with an indoor temperature of 59 degrees dated December 31, 2021 and text messages between herself and M.R. dated January 20, 2022 wherein she discussed problems with the internet, printers, computers, electricity, and heat. She further noted that she and M.R. were forced to handle supervisory tasks without assistance from management due to staffing shortages. In her June 28, 2022 statement, M.R., a co-worker, corroborated appellant's allegations that there were staffing issues at that location, that they were forced to perform supervisory tasks beyond their job duties, that their requests for assistance were ignored by management, and they could not complete their work duties due to understaffing. She also noted the electrical outage issue, as did M.E. in the employing establishment's August 18, 2022 response to OWCP's questionnaire. The Board has held that overwork, when substantiated by sufficient factual information to corroborate appellant's account of events, may be a compensable factor of employment.<sup>20</sup> In light of appellant's description of her duties and responsibilities at an understaffed and under supported facility, as well as the corroboration by M.R., the Board finds that appellant has established a compensable employment factor with respect to her allegation of overwork.<sup>21</sup>

In addition, 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.<sup>22</sup> In determining whether the employing establishment erred or acted abusively, the Board will examine the factual evidence of record.

Appellant alleged that when she raised her concerns with management, her supervisors treated her as an inconvenience, offered no assistance, and minimized her concerns. These allegations were substantiated by M.R., who also indicated that there were multiple situations where she and appellant reached out to management for help, but were not given any help and were made to feel like they were the problem and an inconvenience. Thus, the Board finds that management's failure to address the needs raised by appellant constitutes error and abuse by the employing establishment. Appellant has therefore established a compensable employment factor in this regard.

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<sup>20</sup> *F.T.*, Docket No. 21-0489 (issued September 8, 2022); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *I.P.*, Docket No. 17-1178 (issued June 12, 2018); *William H. Fortner*, 49 ECAB 324 (1998).

<sup>21</sup> *F.T.*, *id.*; see *L.Y.*, Docket No. 20-1108 (issued November 24, 2021).

<sup>22</sup> *Supra* note 12.

As appellant has established overwork and error and abuse by the employing establishment as compensable factors of employment, the case must be remanded for an evaluation of the medical evidence with regard to the issue of causal relationship.<sup>23</sup> Therefore, the Board will remand the case for further development of the evidence with regard to whether appellant has submitted rationalized medical evidence establishing that she has an emotional or medical condition, and that such condition is causally related to the accepted compensable employment factors of overwork and error and abuse.<sup>24</sup>

The Board further finds that this case is not in posture for decision regarding whether appellant established a compensable factor of employment regarding her allegation of incorrect pay rate and the failure of management to correct the issue. On August 12, 2022 OWCP requested that the employing establishment address the accuracy of appellant's allegations and claims and included copies of her various statements. In response, the employing establishment failed to respond to appellant's allegations regarding her incorrect pay rate. Thus, the Board finds that the employing establishment did not fully respond to the August 12, 2022 development letter. Moreover, OWCP did not request further information from the employing establishment regarding appellant's pay records, which is information that is normally in the exclusive control of the employing establishment. As discussed, OWCP's procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.<sup>25</sup>

The Board, therefore, finds that it is unable to make an informed decision in this case with regard to appellant's allegations of an incorrect pay rate and failure of management to correct the issue.<sup>26</sup>

Although it is a claimant's burden of proof to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>27</sup>

Accordingly, the case must also be remanded to OWCP for further development of the evidence regarding appellant's allegations of an incorrect pay rate. OWCP shall request that the employing establishment provide a detailed statement and relevant evidence and/or argument regarding appellant's allegations of an incorrect pay rate and the failure of management to resolve the issue.

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<sup>23</sup> S.S., Docket No. 21-0814 (issued July 14, 2021); M.D., Docket No. 15-1796 (issued September 7, 2016).

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 16.

<sup>26</sup> *See V.H.*, Docket No. 18-0273 (issued July 27, 2018).

<sup>27</sup> *See P.K.*, Docket No. 21-0967 (issued December 3, 2021); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No 15-1535 (issued September 23, 2016).



Following this and this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 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: December 15, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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