

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

P.G., Appellant)	
)	
and)	Docket No. 22-0259
)	Issued: January 5, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Chatham, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 9, 2021 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.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 25, 2021² appellant, then a 51-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed post-traumatic stress disorder (PTSD) due to factors of her federal employment, including, ongoing harassment by a coworker, V.B. She noted that she first became aware of her condition and realized its relation to her federal employment on March 2, 2021. Appellant stopped work on March 2, 2021.

In support of her claim, appellant submitted a February 28, 2021 counseling note by Amy Jennings, a licensed clinical social worker, who indicated that appellant related that V.B. had been attacking her on a regular basis for the past two years, including cussing, glaring, and threatening her, throwing items, slamming doors, and speeding away in vehicles. She indicated that she did not feel safe in the workplace and experienced symptoms of crying, vomiting, anxiety, poor sleep, and nightmares. Ms. Jennings diagnosed PTSD and recommended appellant be provided with a work area totally separate from V.B.

In a development letter dated April 8, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a statement by appellant bearing an illegible date, which indicated that, while she was walking outside to load her long-life vehicle (LLV), V.B. turned to face her, pulled her mask down, and glared at her. Appellant indicated that she felt intimidated and this caused her to experience severe anxiety.

In a statement dated October 13, 2020, appellant related that V.B. drove past her while she was on her route and made an obscene hand gesture. She also alleged that she observed V.B. falsely accuse another coworker, J.J., of getting V.B. into trouble.

In an October 13, 2020 witness statement, J.J. related that, while loading her vehicle next to appellant, V.B. approached her and stated, “when I talked to you about the hen house and you got me in trouble, that is what I was talking about were chickens.”

In further statements dated October 22, 2020, appellant related that V.B. had walked past her case and may have called her a profanity, but she was not certain. She further indicated that V.B. stared at her while she walked across the parking area, and that V.B. also accepted an invitation to breakfast that was directed at other coworkers. This made appellant feel intimidated, so she reported these incidents to a supervisor, who advised that nothing could be done.

On January 16, 2021 appellant related that V.B. walked by her case four times that day and gave her intimidating stares, put her hand on her hip and glared at her, and then went to

² Appellant subsequently filed a second Form CA-2 on August 13, 2021. She alleged that she developed PTSD due to recurring hostile work environment, which led to criminal charges and the issuance of an order of protection on August 2, 2021. Appellant noted that she first became aware of her condition and its relation to her federal employment on August 2, 2021.

management and made false allegations against her. She indicated that she felt unsafe and that coworkers N.E. and T.G. witnessed V.B.'s behavior.

In a January 16, 2021 witness statement, T.G. noted that several times, during the morning, he observed V.B. walking by and glaring at appellant, standing by her case, and trying to instigate a reaction from appellant. He related that he felt V.B.'s behavior was not good for the workplace environment.

In a separate witness statement dated January 16, 2021, N.E. indicated that he observed V.B. get in appellant's face for no reason and say something to her that he could not understand.

In a grievance form dated January 19, 2021, appellant alleged a hostile work environment due to the January 16, 2021 incidents and attached witness statements.

In a statement of even date, appellant alleged that V.B. advised management that she hated appellant.

In a statement dated January 20, 2021, appellant noted that V.B. slowly walked by her case several times that day and stared at her in an intimidating fashion. She related that she attempted to move to another location, but that V.B. followed her and kept staring at her, which made her feel very unsafe and uncomfortable.

Appellant, in an undated statement, related that she believed her work environment had been hostile as early as August 2019 and worsened in January 2020. She noted that she reported incidents to management and was told that if another incident occurred, management would take action to correct the situation, but management never did. Appellant alleged that she made a complaint and a hearing occurred in March 2020. She also noted that she filed a grievance for a hostile work environment in September 2020, which was investigated in November 2020 and resolved with an action plan for her duty station in April 2021. Appellant asserted that she had anxiety attacks, felt unsafe at work, cried nonstop at home and at work, and that her doctor prescribed medication and recommended she change her work environment.

An action plan for appellant's duty station dated April 1, 2021 outlined steps employees should take if they were subjected to threat or assault. It further noted that employees had the right to perform their assigned duties in an atmosphere free of threats, assaults, or other acts of workplace violence, and that employing establishment management must take all necessary steps to promptly address all work environment issues as they arise in order to ensure a safe working environment.

In a form report dated May 7, 2021, Dr. Christina Scheibler-Ventress, a Board-certified family medicine specialist, recommended that appellant remain off work March 29 through June 1, 2021 due to PTSD, stress, fearfulness, a hostile work environment, and threats by a fellow employee.

In a letter dated August 11, 2021, Dr. Scheibler-Ventress noted that appellant had recently returned to work and the harassment was magnified, which had a profound negative effect on appellant's emotional well being. She again recommended that appellant remain off work due to PTSD, which she opined was caused solely by the behavior of her coworker.

By decision dated September 21, 2021, OWCP denied appellant's claim, finding that she had not established any compensable factors of employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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) medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her 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.⁸ 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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

⁸ *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁹ 28 ECAB 125 (1976).

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

emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

For harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹² Mere perceptions of harassment or discrimination are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.¹⁴ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁵

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 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.¹⁶

ANALYSIS

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

The Board initially notes that appellant's allegations do not pertain to her regularly or specially assigned duties under *Cutler*.¹⁷ Nor do her allegations pertain to error and abuse on the part of management with regard to administrative matters.¹⁸ Rather, appellant has alleged harassment and a hostile work environment.

Appellant submitted a number of statements detailing her interactions with V.B. She described multiple incidents in which V.B. intimidated, followed, and harassed her. Appellant indicated that she felt unsafe and that coworkers N.E. and T.G. witnessed this behavior. Verbal altercations and difficult relationships with coworkers, when sufficiently detailed and supported

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

¹² *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

¹³ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁴ *Supra* note 12.

¹⁵ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

¹⁶ *See O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁷ *See R.D.*, Docket No. 19-0877 (issued September 8, 2020); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 9.

¹⁸ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

by the record, may constitute compensable factors of employment.¹⁹ In a January 16, 2021 witness statement, T.G. noted that several times during the morning, he observed V.B. walking by and glaring at appellant, standing by her case, and trying to instigate a reaction from her. He related that he felt V.B.'s behavior was not good for the workplace environment. In a separate witness statement dated January 16, 2021, N.E. indicated that he observed V.B. get in appellant's face for no reason and say something to her that he could not understand. The Board, therefore, finds that appellant has provided reliable and probative evidence regarding V.B. intimidating and following her.²⁰ Thus, appellant has established a compensable employment factor with respect to these allegations of harassment by V.B.

In denying appellant's claim, OWCP did not review the medical evidence submitted on the issue of an emotional and/or stress-related condition causally related to the accepted compensable factor of employment. The Board will, therefore, set aside OWCP's September 21, 2021 decision and remand the case for a review of the medical opinion evidence. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.

CONCLUSION

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

¹⁹ *J.M.*, Docket No. 16-0717 (issued January 12, 2017); *L.M.*, Docket No. 13-0267 (issued November 15, 2013).

²⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 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: January 5, 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