

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

_____)
L.N., Appellant)

and)

U.S. POSTAL SERVICE, LYME POST OFFICE,)
Lyme, NH, Employer)

_____)

**Docket No. 22-0126
Issued: June 15, 2023**

Appearances:
James Noucas, Esq., for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 4, 2021 appellant, through counsel, filed a timely appeal from a June 14, 2021 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. 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.*

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 22, 2019 appellant, then a 63-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed panic attacks and severe anxiety due to factors of her federal employment, including disagreements and confrontations with her postmaster. She noted that she first became aware of her condition and realized that it was caused or aggravated by factors of her federal employment on June 26, 2019. Appellant stopped work on June 26, 2019. On the reverse side of the claim form, R.T., the postmaster and appellant's supervisor, asserted that appellant had related that her condition was not work related. R.T. contended that this was not a new emotional condition.

In an accompanying narrative statement, appellant alleged that her work environment was hostile as R.T. lied, cheated, and manipulated her. She asserted that others received preferential treatment. Appellant contended that R.T. shared inappropriate information about her home and personal life. She further asserted that R.T. ignored her personal and physical boundaries by touching her, hugging her, or rubbing her back. Appellant alleged that this behavior made her feel threatened and anxious. She asserted that R.T. also targeted her with unfair demands. Appellant believed that R.T. reported her to the district office.

In a series of e-mails beginning on July 19, 2019, R.T. described interactions with appellant on June 25, 2019 when she corrected her for reporting to work 45 minutes early without permission. She alleged that appellant began to yell and swing her hand as if she wanted to hit her. R.T. instructed her to stop pointing her finger in her face and lower her voice or expect discipline. She recounted that on June 26, 2019 appellant reported that she was unable to finish her route as she was not okay and yelled at R.T. On July 1, 2019 appellant requested advanced sick leave, apologized for her prior actions and informed R.T. that her responses were not work related. On July 24, 2019 R.T. noted that she instructed appellant and other carriers to deliver flyers the morning that they were received and appellant began yelling again.

In a July 24, 2019 note, Dr. Caitlin O'Donnell, a Board-certified psychiatrist, examined appellant due to a panic attack, depression, and severe anxiety attacks. She diagnosed depressive disorder and anxiety disorder. Appellant reported that her depressed mood was worse because of conflict at work.

In an August 12, 2019 development letter, OWCP requested additional factual and medical evidence in support of appellant's claim and provided a questionnaire for her completion. It afforded appellant 30 days to respond.

Appellant responded to the development questionnaire on August 30, 2019. She noted that her father had died in 2019 and that she had used all of her leave when she broke her wrist. Appellant asserted that she routinely cased flyers in the afternoon at work after completing her route in order to maintain a consistent delivery time for her customers. She had previously asked substitute carriers not to case the third-class mail on Saturday afternoon due to errors. Appellant alleged that R.T. did not interfere with this process until recently.

Appellant related that on Thursday, June 13, 2019, she cased flyers in the afternoon as usual and left marriage mail for a substitute. R.T. informed her on Monday, June 17, 2019 that she could no longer leave flyers for the substitute. Appellant asserted that she would case all her mail, if the substitute cased all of his. She asserted that R.T. was treating her differently from the male substitute. Appellant admitted that she became upset and that they were both arguing and voices were raised. On Tuesday June 18, 2019 R.T. informed her that the district required that all mail had to go out the day it came in. Appellant believed that this was a ploy and a lie. On June 24, 2019 the substitute left third class mail uncased and this made her anxious and angry. Appellant confronted R.T. and asserted that if she had to take all her mail out on the day it arrived, then so did the substitute. R.T. called appellant a liar as she did not take all her mail out. On June 25, 2019 she related that she was unable to sleep and went into work at 5:45 a.m. to case the substitute's mail with the goal of completing the work. R.T. confronted appellant, invading her personal space, and yelled that she was not to report to work early without permission. In response, she also raised her voice and pointed her finger in R.T.'s face, but she denied raising her hand to R.T. On June 26, 2019 appellant reported to work, but R.T. repeatedly left the office to speak on the telephone. Her coworkers informed her that she was the cause of the conversations and in trouble. Appellant left the employing establishment and experienced a panic attack on her route. After contacting her physician, she returned to the employing establishment and asked a clerk to unload her car. R.T. asked appellant if she was alright, and she responded that she was not. She further noted that her previous issues with anxiety was due to problems with one of her children.

Dr. O'Donnell completed additional treatment notes dated June 26 through April 30, 2020. She found that appellant was disabled beginning August 29, 2019 due to anxiety and conflicts with a coworker.

In a letter dated September 19, 2019, R.T., directed appellant to report for a pre-discipline interview on October 3, 2019 regarding her attendance and conduct.

On September 21, 2019 appellant informed R.T. of her diagnosis and alleged that she was subjecting her to harassment and retaliation.

In a report dated November 15, 2019, Dr. Jennie Holden, a licensed clinical psychologist, described appellant's background including a history of abuse. She noted that appellant was diagnosed with major depressive disorder and generalized anxiety disorder in February 2015. Dr. Holden described her work situation and noted that R.T. caused her discomfort by rubbing her back, giving her hugs, and acting as a "mother hen." She asserted that appellant backed away from R.T. to avoid being touched and to maintain a safe and comfortable distance. Dr. Holden noted that between June 13 and 26, 2019, appellant experienced increasing conflict with R.T., due to individualized expectations, confrontations, and the accusation that she was not performing her duties. She diagnosed other specified trauma and stressor-related disorder. Dr. Holden noted that appellant's childhood trauma was, in part, responsible for her difficulty with a female manager. She noted that underlying triggers related to her childhood traumas included difficulty in having women tell her what to do, avoidance, and fear of confrontation, and the inability to feel physically and emotionally safe due to R.T.'s lack of personal and physical boundaries, including touching and yelling. Dr. Holden concluded that appellant's experience with R.T. between June 13 and 26, 2019 caused her to have a significant decrease in her overall functioning and traumatic reaction. She found that appellant was unable to return to work at the specific employing establishment.

In a statement dated March 30, 2019, R.T., explained that at one time, appellant's practice of casing flyers was acceptable, but was now outdated. She noted that when she instructed her of change in the business process, appellant became angry and yelled at her. R.T. agreed that on June 24, 2019 she instructed all three members of staff present that flyers were to go out on the day they came in. She did instruct appellant on June 25, 2019 not to come in early without approval. R.T. acknowledged that she had stood and used heated words when appellant started waving her arms at her. On June 26, 2019 she noted that she had made telephone calls outside of the employing establishment's one room office to preserve privacy regarding predisciplinary actions against appellant and further noted that appellant was crying and upset.

R.T. asserted that she had considered appellant a friend and treated her accordingly with occasional hugs or a pat on the arm or back for comfort. She noted that she did not often hug or touch appellant, as she was not always approachable in that way. R.T. alleged that on July 1, 2019 appellant hugged her and apologized for her words and actions.

By decision dated June 19, 2020, OWCP denied appellant's emotional condition claim finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted factor of employment of hugging and shoulder/arm rubbing by R.T. It denied that the other alleged events were compensable factors of employment.

On September 28, 2020 appellant, through counsel, requested reconsideration. She provided a September 5, 2020 report from Dr. Holden, who explained that the touching by R.T. contributed to her diagnosed condition as it was unwanted, unpredictable, and it triggered her nervous system to feel threatened and unsafe. She noted that appellant had a predisposition to unwanted touching being especially traumatic due to abuse by a woman when she was a child. Dr. Holden asserted that when an individual experienced a traumatic event their brain could code any similar subsequent act as being equally or even more traumatic. Due to the unwanted touching by R.T., appellant experienced symptoms of hypervigilance, fear of leaving her home, and being in public spaces, nightmares, physiological arousal, reduced concentration, fear of confrontation and excessive worry about not being in control. She asserted that these symptoms were not present prior to the unwanted touching and therefore were directly linked to the unwanted touching by R.T.

On November 2, 2020 Dr. O'Donnell diagnosed anxiety and depression and requested that R.T. avoid all contact with appellant.

By decision dated December 1, 2020, OWCP modified its prior decision and denied appellant's claim on the basis that unwanted touching was not a compensable factor of employment.

On March 17, 2021 appellant, through counsel, requested reconsideration. She provided an additional statement asserting that R.T. touched her on "far more than on an occasional basis." Appellant asserted that if she believed a worker needed comforting, R.T. would rub their shoulders or touch their back. She alleged that any form of touching or rubbing caused her immense torment and suffering. Appellant also denied that she and R.T. were friends and asserted that their relationship was purely professional. She further denied hugging R.T. when she returned to work, as alleged, and noted that she merely apologized for an argument. Appellant asserted that she never hugged.

Appellant provided a statement from a coworker, K.K., dated February 1, 2021 alleging that R.T. was untruthful, tormenting to employees, and caused a hostile workplace. P.R., a coworker, completed an undated statement alleging that the employing establishment was tension-filled as a result of R.T.'s actions. He noted that she placed her hands on employees' shoulders and necks, rubbing in small circles.

By decision dated June 14, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim,⁵ including that he or she sustained an injury in the performance of duty, and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁶ 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.⁷

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.⁸

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.⁹ 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.¹⁰

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer, rather than the regular or specially

⁴ *Id.*

⁵ S.S., Docket No. 19-1021 (issued April 21, 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).

⁶ S.S., *id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ 20 C.F.R. § 10.115; *R.S.*, Docket No. 20-1307 (issued June 29, 2012); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ *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).

¹⁰ *Lillian Cutler, id.*

assigned work duties of the employee and are not covered under FECA.¹¹ Where, however, 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.¹²

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.¹³ 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 which has been submitted.¹⁴

ANALYSIS

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

Appellant alleged that she sustained an emotional condition due to various incidents and conditions in her workplace. OWCP denied her emotional condition claim, finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents and conditions are covered employment factors under the terms of FECA.¹⁵ Appellant has not alleged that her emotional condition was due to the performance of her regular or specially assigned duties arising under *Cutler*.¹⁶ Rather she alleged that she sustained an emotional condition as a result of conduct by her immediate supervisor.

Appellant attributed her emotional condition to administrative and personnel actions of the part of her supervisor including directions of how to perform her duties on June 17 and 18, 2019. On June 25, 2019 R.T. informed appellant that she could not report to work early without permission. Appellant also believed that on June 26, 2019 she was going to be subject to discipline. She alleged that she was treated differently than other employees.

¹¹ See *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

¹² *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

¹³ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, *supra* note 13.

¹⁶ *S.B.*, Docket No. 16-1522 (issued March 3, 2017); *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, *supra* note 9.

The Board has previously found that dissatisfaction with supervisory actions,¹⁷ the handling of disciplinary actions,¹⁸ work assignments,¹⁹ and monitoring of an employees' work activities²⁰ are administrative functions of the employer, and not duties of the employee.²¹ Absent evidence establishing error or abuse, a claimant's disagreement or dislike of a managerial action is not a compensable factor of employment.²² Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, she has not established a compensable employment factor regarding administrative or personnel matters.²³

Appellant also attributed her emotional condition to unwanted touching by her supervisor, R.T. R.T. has confirmed that she gave appellant occasional hugs or a pat on the arm or back. Appellant has expressed her discomfort with this touching. Additionally, P.R. noted that R.T. placed her hands on employees' shoulders and necks, rubbing in small circles. The record therefore establishes that there was unwanted physical contact made in the course of employment.²⁴ Accordingly, the Board finds that appellant has established a compensable employment factor.²⁵

As appellant has established a compensable employment factor, the only question for determination is whether these incidents of physical contact caused or aggravated appellant's diagnosed emotional condition.²⁶ Since OWCP found in its June 14, 2021 decision that there were no compensable employment factors, it did not fully analyze or develop the medical evidence. Thus, the Board will set aside OWCP's June 14, 2021 decision and remand the case for further proceedings. After such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's emotional condition claim.

CONCLUSION

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

¹⁷ *N.S.*, Docket No. 21-0355 (issued July 28, 2021); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

¹⁸ *C.J.*, Docket No. 19-1722 (issued February 19, 2021); *R.D.*, Docket No. 19-0877 (issued September 8, 2020); *D.L.*, Docket No. 09-1103 (issued February 26, 2010).

¹⁹ *V.M.*, Docket No. 15-1080 (issued May 11, 2017).

²⁰ *See R.L.*, Docket No. 17-0883 (issued May 21, 2018); *L.R.*, Docket No. 14-1990 (issued January 27, 2015).

²¹ *See M.C.*, Docket No. 18-0585 (issued February 13, 2019); *see Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²² *See S.S.*, Docket No. 18-1519 (issued July 17, 2019); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²³ *R.K.*, Docket No. 20-0623 (issued February 9, 2022); *P.B.*, Docket No. 19-1673 (issued December 1, 2021).

²⁴ *S.B.*, *supra* note 16; *M.B.*, Docket No. 07-1289 (issued September 25, 2007).

²⁵ *S.B.*, *id.*; *K.L.*, Docket No. issued 10-1331 (January 18, 2011).

²⁶ *S.B.*, *id.*; *R.W.*, Docket No. 11-0362 (issued October 24, 2011).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 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: June 15, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board