United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 22-0227**
	)	**Issued: March 28, 2023**
U.S. POSTAL SERVICE, KISSIMMEE POST OFFICE, Kissimmee, FL, Employer	)	

Appearances:
Lisa Varughese, Esq., for the appellant[1]
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 November 30, 2021 appellant, through counsel, filed a timely appeal from a June 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

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 March 4, 2020 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2), alleging that she sustained stress, anxiety, severe depression, post-traumatic stress disorder (PTSD), and insomnia due to factors of her federal employment, including the actions of her immediate supervisor and the postmaster at the facility. She asserted that her immediate supervisor and postmaster engaged in a pattern of harassment, humiliation, disparate treatment, and discrimination for employment injuries sustained under other claims.[3] Appellant noted that she first became aware of her claimed conditions and their relation to her federal employment on February 10, 2020. On the reverse of the Form CA-2, A.N., her immediate supervisor, noted that appellant stopped work on February 26, 2020.

In a March 7, 2020 witness statement controverting appellant's allegations of harassment, A.N. noted that on the morning of February 26, 2020, she met briefly with appellant and I.I., a union steward, about appellant's failure to follow instructions. She alleged that appellant had questioned her instructions and blamed management for her poor performance since A.N. returned from a detail assignment on February 10, 2020. A.N. gave appellant two hours of assistance to comply with her eight-hour-a-day work restriction. Shortly after 4:30 p.m., after appellant had returned from her route, A.N. observed her placing mail by her case. She inquired as to whether appellant had brought back undelivered mail. A.N. alleged that appellant asked her to check her telephone and stated that she was speaking with customer service supervisor S.R. She asked again if appellant had brought back mail. Appellant allegedly told A.N. to watch her tone and stated that she was off the clock. A.N. instructed appellant to depart the workroom floor if she were no longer on duty. Postmaster D.M. then approached. Appellant told D.M. that she was off the clock. D.M. instructed appellant to leave the building. Appellant then gathered her belongings and allegedly accused D.M. of speaking to her disrespectfully. On March 3, 2020 A.N. received an e-mail that appellant had filed an Equal Employment Opportunity (EEO) complaint against her and D.M. She contended that she had always treated appellant professionally, but that her "poor performance, attendance issues, and failure to follow safety regulations speak for themselves."

In a March 10, 2020 witness statement, Postmaster D.M. generally denied appellant's allegations. He contended that appellant accused him of harassment to distract from her poor safety and attendance record. D.M. alleged that on February 26, 2020 at approximately 4:30 p.m.,

[3] OWCP previously accepted two traumatic injury (Form CA-1) claims and one occupational disease claim. Under OWCP File No. xxxxxx217, it accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome. Appellant underwent right carpal tunnel release and a first dorsal compartment release on March 22, 2019, and a left carpal tunnel release on August 29, 2019. Under OWCP File No. xxxxxx258, OWCP accepted a superior glenoid labrum lesion of the right shoulder sustained on January 20, 2018 when appellant pulled a package from her delivery vehicle. On October 1, 2018 appellant underwent arthroscopic debridement, subacromial decompression, and open biceps tenodesis of the right shoulder. Under OWCP File No. xxxxxx332, OWCP accepted a lumbar strain sustained in a December 19, 2019 employment-related motor vehicle accident.

he heard A.N. ask someone "what they brought back" and instruct them to answer her. He then walked to the workroom floor and saw A.N. speaking with appellant. D.M. alleged that appellant spoke to customer service supervisor, S.R. and ignored A.N. He asked appellant if there was a problem. Appellant indicated that she was off the clock. D.M. instructed her to leave the building. Appellant allegedly ignored him. D.M. again instructed appellant to leave the building and she again ignored him. Appellant then said, "You know, you don't have to talk to me like I'm a dog, I'm a human being." She then stated, "[y]ou watch, you will both see," and left. D.M. posited that appellant's insubordination had been motivated by an investigative interview earlier that day about her poor attendance and failure to obey instructions to tuck in her polo shirt. He explained that appellant had not been singled out as all employees were required to tuck in their shirts while on duty. D.M. denied that he or anyone else had yelled at appellant. Appellant reported the February 26, 2020 incident to an employing establishment inspection service hotline when she left the building. D.M. telephoned a team lead inspector to provide his version of events.

In a March 10, 2020 witness statement, S.R. asserted that at approximately 4:30 p.m. on February 29, 2020, she had been sitting at her desk when appellant approached to request that S.R. convey customer information to a clerk. During the conversation, A.N. approached, excused herself for interrupting, and stated that she needed to know how much mail appellant had left on her route that still needed to be delivered that day. Appellant responded to A.N. by stating that she was in a conversation and continued to speak to S.R. A.N. again stated that she needed to know what mail was left. Appellant repeated that she was in a conversation and no longer on the clock. A.N. asked appellant a third time about the remaining mail. D.M. then approached and inquired as to what had occurred. Appellant stated that she was off the clock. D.M. then asked appellant to leave the building. Appellant stated that she had been relaying information to S.R. D.M. "again told her sternly to leave the building, she went to get her things and leave." S.R. contended that neither D.M. nor A.N., spoke inappropriately to appellant "nor was there any yelling by either of the two."

In a March 12, 2020 report, Dr. Markus Kronberg, a Board-certified orthopedic surgeon, diagnosed strain of neck muscle. He limited appellant's lifting to no more than 20 pounds.

In a March 13, 2020 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

In response to OWCP's development letter, appellant submitted a March 30, 2020 statement alleging a pattern of managerial hostility, discrimination, and an unsafe work environment. She contended that D.M. became rude, disrespectful, and intimidating toward her following a January 20, 2018 employment injury that necessitated approximately five months of light-duty work. Appellant alleged that D.M. yelled at her for parking in an empty parking space reserved for supervisors. She also alleged that in June 2018, D.M. directed supervisor F.L. to transfer her from customer service to a custodial position. D.M. instructed F.L. that if appellant could not perform the custodial job there would be no other work available. Appellant explained that she attempted to perform the duties on June 25, 2018 but aggravated previously accepted employment conditions of a shoulder injury, bilateral carpal tunnel syndrome, and bilateral

tendinitis of the hands.[4] She was examined by her physician on June 26, 2018, who told appellant that she would hold her off from work unless appropriate light-duty work was provided. Appellant contended that she underwent three work-related surgeries in 18 months but was not offered light-duty work although other employees had been given light-duty positions. On December 19, 2019 she sustained neck and back pain in a motor vehicle accident while delivering her route. Appellant alleged that D.M. and A.N. harassed her daily while she was on light duty, including yelling at her in front of coworkers to tuck in her polo shirt if she had forgotten to do so when exiting the lavatory. She contended that two of her coworkers wore their polo shirts out but were not asked by management to tuck their shirts in. Appellant alleged that on an unspecified date, she had not worn her identification (ID) badge as her badge holder clip had broken. She informed A.N. that her ID was in her purse in her locker, but that she needed a new clip. On February 25, 2020 appellant requested in writing to speak to her shop steward regarding the alleged harassment, disparate treatment, and being forced to exceed her eight-hour per day medical restriction. On February 26, 2020 the investigative interview occurred in the morning, and the alleged incident with A.N. and D.M. asking her to leave the building happened that afternoon. Appellant alleged that D.M. yelled loudly at her to leave the building. She asserted that employing establishment security recordings made between 4:33 and 4:40 p.m. on February 26, 2020 demonstrated "clerks and customers trying to look inside or even looking at each other because of all the yelling inside the office." Appellant noted that she left the building in tears.

In a March 30, 2020 report, Dr. Carmen Ana Sierra, a Board-certified family practitioner, diagnosed PTSD, major depressive disorder, single episode, and threat of job loss.

On April 2, 2020 OWCP received an undated statement by coworker F.R., alleging that approximately two to three days following the February 26, 2020 incident, managers took no action when another carrier wore non-regulation sneakers. Also, other letter carriers were not spoken to for failing to tuck in their polo shirts while on duty.

On April 2, 2020 OWCP received an undated statement by coworker, R.S., alleging that management had been "getting on" appellant as her polo shirt was not tucked in. R.S. alleged that "[o]ther carriers with shirts that needed to be tucked in were not confronted as much as [appellant.]" She also alleged that appellant was forced to work overtime although she was not on the overtime list.

On April 3, 2020 OWCP received an undated statement by coworker J.M. alleging that on February 10, 2020 D.M. harassed appellant about not tucking in her uniform shirt although he did not approach other employees who wore their shirts out. J.M. recalled that on February 26, 2020 appellant called her at approximately 5:10 p.m. crying and stated that she was a "nervous wreck" because of the incident that afternoon with D.M.

On April 17, 2020 OWCP received a March 25, 2020 statement by A.N. in response to OWCP's development letter. A.N. controverted appellant's allegations. She noted that after sustaining work-related injuries on December 5, 2019, appellant had "only worked 11 days since she was back to full duty" when she was involved in a motor vehicle accident. A.N. noted that

[4] *See id.*

because appellant had been involved in an occupational December 19, 2019 motor vehicle accident, she had been issued a letter of warning on January 10, 2020 for failure to follow safety regulations. She contended that appellant "was released to full duty on December 27, 2020 [following an employment-related motor vehicle accident (MVA)] and between her absences she worked for only 22 days by February 8, 2020." A.N. also alleged that appellant was not motivated to work as her husband had retired and started a real estate business.

On April 29, 2020 OWCP received an undated witness statement from coworker E.M. E.M. asserted that on February 26, 2020 he had been speaking to supervisor S.R. when appellant approached them and informed S.R. that she was unable to finish delivering her route. A.N. then approached and asked what had happened. Appellant stated that she was off the clock and speaking to S.R. E.M. recalled that less than a minute later, Postmaster D.M. "came yelling" at appellant to get out of the building as she was off the clock. He contended that D.M. "looked mean and angry." Appellant stated that she needed to retrieve her belongings by her case. D.M. remained with appellant and walked her out of the building.

By decision dated May 5, 2020, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Commencing September 14, 2020, OWCP received reports dated August 25 through November 10, 2020 by Dr. Jose Ruiz, a Board-certified psychiatrist, holding appellant off work from August 25 through November 20, 2020.

On April 22, 2021 appellant, through counsel, requested reconsideration.

On April 22, 2021 OWCP received appellant's March 1, 2021 statement. Appellant contended that D.M. retaliated against her for work absences and light-duty work status following a January 20, 2018 employment injury.[5] She alleged that D.M. yelled at and humiliated her in front of other supervisors, singled her out for minor dress code infractions, discriminated against her, and engaged in a pattern of harassment. Appellant alleged that on February 26, 2020 D.M. "used a rude, loud voice," "continued violently shouting" at her, and stood uncomfortably close to her while she collected her belongings. She continued to experience decreased appetite, hopelessness, depression, diminished concentration, panic attacks, weight loss, excessive worry, hypervigilance, distraction, and being easily startled.

On April 27, 2021 OWCP received a March 8, 2021 report of a March 3, 2021 examination by Dr. Todd Finnerty, a licensed clinical psychologist. Dr. Finnerty related appellant's account of a pattern of discrimination, humiliation, harassment, retaliation, and disparate treatment by D.M., hostility while on light-duty work for a January 20, 2018 employment injury, being assigned custodial work while on light-duty work in June 2018, and the February 26, 2020 incident in which D.M. yelled at her in front of other employees and ordered her to leave the building. He noted that appellant had a history of mild depression and anxiety prior to these incidents but that her

[5] *Supra* note 3.

symptoms had been under control prior to January 2018. Dr. Finnerty diagnosed generalized anxiety disorder, major depressive disorder, panic disorder, acute stress reaction, PTSD and other reactions to severe stress. He attributed these conditions to D.M.'s conduct following the January 20, 2018 employment injury. Dr. Finnerty found appellant totally disabled from work.

In a May 11, 2021 statement, D.M. contended that appellant's allegations were false and an attempt to distract from her poor work and attendance record. He noted that appellant sustained an employment injury on January 20, 2018. On June 22, 2018 D.M. "changed her modified[-]duty assignment to some light custodial duties" due to a personnel shortage. Appellant worked for approximately two hours before she stopped work and filed a claim for aggravation of an employment condition accepted in 2014. She returned to full duty on December 5, 2019. Appellant was involved in an occupational MVA on December 19, 2019 for which she filed a new traumatic injury claim. She returned to full duty on December 27, 2019 and on January 3, 2020 submitted medical documentation restricting her to working no more than eight hours a day. D.M. asserted that on February 10, 2020 he observed that appellant had not tucked in her polo shirt. He informed her that she must tuck her shirt in and contended that he did not yell or scream. D.M. recalled subsequently instructing four other employees to tuck in their shirts. He contended that he was not in appellant's personal space on February 26, 2020 and "was never within 30 feet" of her.

By decision dated June 8, 2021, OWCP modified its May 5, 2020 decision accepting as factual that in June 2018 D.M. instructed supervisor A.L. to place appellant in a custodial position; the occurrence of the December 19, 2020 MVA that appellant had been placed on light duty following the accident; that on an unspecified day she was questioned about not wearing her ID; that appellant had been asked to tuck in her uniform shirt; that she met with a union steward for an investigative interview regarding uniform instructions and work attendance; and that she met with S.R. on February 26, 2020 to discuss information about a customer at which D.M. was also present. It denied the claim, however, as appellant had not established any compensable factors of employment. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

[6] *Supra* note 2.

employment injury.[7] 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.[8]

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.[9]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[10] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[11]

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.[12] 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.[13]

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.[14]

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[7] *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

[8] 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[10] *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125 (1976).

[11] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

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

[13] *Id*.

[14] *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

Mere perceptions of harassment or discrimination are not compensable under FECA.[15] A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.[16] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[17]

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.[18] 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, it must base its decision on an analysis of the medical evidence.[19]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish compensable factors of employment.

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.[20] The Board notes that appellant's claim does not directly relate to her regular or specially assigned duties under *Lillian Cutler*.[21] Rather, appellant primarily claimed a pattern of harassment and discrimination.

Appellant submitted statements detailing her interactions with D.M. She described multiple incidents beginning in January 2018, including the February 26, 2020 incident, in which D.M. would yell at her, single her out for criticism, and humiliate her in front of her coworkers. For harassment or discrimination to give rise to a compensable disability under FECA, there must

[15] *A.E., supra* note 11; *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

[16] *J.F.*, 59 ECAB 331 (2008); *Robert Breeden, supra* note 14.

[17] *R.D.*, Docket No. 21-0050 (issued February 25, 2022); *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).

[18] *See O.G., supra* note 14; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[19] *Id*.

[20] *R.K.*, Docket No. 20-0623 (issued February 9, 2022); *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

[21] *Supra* note 11.

be evidence that harassment or discrimination did in fact occur.[22] In addition to her own detailed statements, appellant provided several witness statements. Coworker E.M. asserted that on February 26, 2020, as appellant spoke to A.N., D.M. "came yelling" at appellant to get out of the building and that he "looked mean and angry."

Verbal altercations, when sufficiently detailed and supported by the record, may constitute compensable factors of employment.[23] The Board therefore finds that appellant has provided reliable and probative evidence regarding D.M. yelling at her on February 26, 2020.[24] Thus, appellant has established a compensable employment factor with respect to this allegation of harassment by D.M.

Appellant also attributed her emotional condition to discrimination and disparate treatment by D.M., including repeated instruction to tuck in her polo shirt while other employees were permitted to wear their shirts out. Coworker J.M. asserted that on February 10, 2020 D.M. told appellant to tuck in her polo shirt, but did not instruct J.M. to do so although her shirt was also untucked. D.M. confirmed in his May 11, 2021 statement that he instructed appellant to tuck in her polo shirt on February 10, 2020 and that she had to be instructed on this matter repeatedly, unlike other employees. The Board finds that the specificity of J.M.'s and, D.M.'s statements, in conjunction with appellant's account of events, is sufficient to establish this incident of disparate treatment by D.M.[25]

Appellant's allegations regarding a change in work assignment in June 2018,[26] the assignment of light-duty work following December 2019 employment injuries,[27] a February 26, 2020 investigative interview,[28] and being instructed to wear her ID badge[29] relate to administrative or personnel management actions. As a general rule, administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regularly or specially assigned work duties of the employee and are not

[22] *J.F.*, 59 ECAB 331 (2008); *Robert Breeden, supra* note 14; *see S.B.*, Docket No. 18-1113 (issued February 21, 2019); *Janet I. Jones*, 47 ECAB 345, 347 (1996).

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

[24] *Id*.

[25] *M.C.*, Docket No. 20-1051 (issued May 6, 2022); *cf. William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents are not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[26] *M.C.*, *id.*; *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Gary N. Fiocca*, Docket No. 05-1209 (issued October 18, 2005); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[27] *Id*.

[28] *R.K.*, Docket No. 20-0623 (issued February 9, 2022).

[29] *See Todd Meldrum*, Docket No. 94-0286 (issued February 13, 1996).

covered under FECA.[30] In *Thomas D. McEuen*,[31] the Board has held that 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. However, the Board has also held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, such action will be considered a compensable employment factor.[32] 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.[33]

The Board finds that appellant has not submitted any corroborative evidence to establish error or abuse in the above-identified administrative and personnel functions. As such, she has not established a compensable employment factor with regard to these administrative matters.[34]

As OWCP found that there were no compensable employment factors, it did not analyze or develop the medical evidence. Accordingly, the Board will set aside OWCP's June 8, 2021 decision and remand the case for consideration of the medical evidence with regard to whether appellant has established an emotional condition in the performance of duty causally related to the compensable employment factors of harassment and disparate treatment. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish compensable factors of employment. The Board further finds that the case is not in posture for decision as to whether appellant had established an emotional condition causally related to the accepted compensable employment factors.

[30] *Matilda R. Wyatt*, 52 ECAB 421 (2001).

[31] *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

[32] *William H. Fortner*, 49 ECAB 324 (1998).

[33] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[34] *M.C.*, *supra* note 25.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 28, 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