

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

C.C., Appellant)	
)	
and)	Docket No. 21-0519
)	Issued: September 22, 2023
DEPARTMENT OF THE AIR FORCE,)	
THE PENTAGON, Washington, DC, Employer)	
)	

Appearances: *Case Submitted on the Record*
Paul H. Felser, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 18, 2021 appellant, through counsel, filed a timely appeal from a September 4, 2020 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 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 that she sustained an emotional/stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On June 27, 2019 appellant, then a 56-year-old lead information technology specialist, filed an occupational disease claim (Form CA-2) alleging that she sustained depression, anxiety, panic attacks, and chest pain due to harassment due to factors of her federal employment including hostile treatment from D.M., her previous immediate supervisor. She noted that she first became aware of her claimed injury on September 1, 2014, and first realized its relation to her federal employment on October 9, 2014. On the reverse side of the claim form, T.B., appellant's immediate supervisor, indicated that D.M. retired in October 2018 and that appellant stopped work on April 3, 2019.

In a June 27, 2019 statement, appellant indicated that she worked as a lead information technology specialist for approximately four years and suffered stress, which worsened her mental physical and mental health. She reported that her depression, anxiety, and panic disorder first began in 1985 when she was on active duty with the U.S. Air Force. Appellant advised that her workload as a lead information technology specialist was "very heavy, fast-paced, and strenuous." She indicated that, in addition to her primary customer support duties, she had 11 other work duties. Appellant noted that the position of lead information technology specialist involved managing information technology support for approximately 400 employees, providing guidance for 20 client support technicians, handling more than one thousand help desk tickets, managing employing establishment web pages, providing telephone and encryption card changes, resolving malfunctions, completing tri-annual inspections, developing and overseeing information assurance programs, dealing with personal mobile device policy, and handling matters relating to training, cybersecurity, and telecom inventory.

In a July 4, 2019 statement, appellant advised that reference should be made to an attached Equal Employment Opportunity (EEO) complaint for a description of the employment factors she believed caused her claimed conditions. In the EEO complaint, covering the period of mid-2014 through mid-2018, she indicated that D.M. became her team leader in September 2014 and her first-level supervisor in 2016. Appellant asserted that D.M. continuously berated her in front of coworkers, including an occasion when she berated her for taking notes. She indicated that D.M. yelled and cursed at her, and she believed that D.M. wanted her to have another heart attack. Appellant noted that the initial request for reasonable accommodation she submitted to several managers was not processed, and that she later attended a meeting where management questioned the medical documentation she submitted in conjunction with a second request for reasonable accommodation. She advised that she was allowed to telework one day but would have preferred three days of telework. Appellant indicated that she felt stressed when she worked at home because D.M. said she did not want teleworking employees "at home sleeping." She noted that D.M. would telephone her when she teleworked and implied she was not working on occasions when she could not reach her. D.M. required her to report regarding what she was working on at home. Appellant asserted that, by February 2019, the attitudes of some of her coworkers had changed towards her in that some of them would walk by her cubicle and stare at her in a hostile manner. She indicated

that she discussed her military-based 100 percent disability rating with D.M. and she felt uncomfortable when D.M. questioned how she was able to obtain the rating. Appellant claimed that on May 3, 2018 D.M. intentionally prevented her from completing a task related to her performance appraisal by locking her out of the performance management and appraisal program system. She asserted that, when she confronted D.M. regarding the matter, D.M. became belligerent and shouted profanities at her. Appellant noted that coworkers treated her as though she were stupid and a “marginal employee who couldn’t be trusted.” She claimed that D.M. would say to others at work that she did not want to do her job.

Appellant indicated that, when she asked for another information technology specialist to help her with her duties relating to communications security, D.M. responded with profanity and told her that she had to perform the work assigned to her. Her duties relating to communications security were time consuming and involved obtaining signatures from multiple personnel. Appellant noted that D.M. offended her by telling her that she was “too quiet” and indicated that, when she discussed how she had performed certain tasks, D.M. told her that “she did not want to hear your mouth.” An office reorganization resulted in appellant being moved directly on the other side of a cubicle partition from D.M. Appellant indicated that D.M. told her that she had wanted to place her where she could keep an eye on her, and that no other employee was moved at that time to her knowledge. She asserted that D.M. called her lazy in front of the entire office when she asked another employee about the location of a yellow envelope to put key cards in. Appellant claimed that during a work meeting when the good attributes of other employees were discussed, D.M. stated, “I don’t have anything good to say about [appellant].” She asserted that D.M. assigned her to communications security and then questioned if they were completed shortly after assigning them. Appellant indicated that D.M. mocked her for consulting a notepad and told her she should not need to use a notepad. She indicated that she asked B.C., D.M.’s supervisor, to intervene on her behalf, but that B.C. stated that he did not know what she wanted him to do about the situation. Appellant noted that she did not receive a bulletin regarding bullying in the workplace, which was sent to all other employees, and that D.M. and another manager laughed about the matter. She advised that C.B., a coworker, told her that D.M. slandered her by announcing her absence to the entire office and claiming that she never came to work.

In a July 5, 2019 letter, the employing establishment challenged appellant’s claim, asserting that it was untimely filed and that the evidence of record did not support the occurrence of the injury as alleged.

In an undated statement received by OWCP on July 8, 2019 appellant provided further details about the claims she made in her EEO complaint, including her claim that on May 3, 2018 D.M. intentionally locked her out of the performance management and appraisal program system. She asserted that, several years prior to 2018, a coworker yelled at her in front of other coworkers. Appellant indicated that in July 2016 D.M. asked her why she laughed at a joke told by one of her coworkers even though the other coworkers present also laughed. She asserted that D.M. accused her of not wanting to do her job, particularly with regard to her duties as the secure voice responsible officer. Appellant claimed that D.M. would assign her new tasks every 5 to 10 minutes throughout the workday and would humiliate her in front of her coworkers if she forgot something. She alleged that she was unfairly subjected to leave usage restrictions for six months.

Appellant submitted medical evidence in support of her claim, including a July 4, 2019 report from Dr. Shahida Chowdhury, a Board-certified psychiatrist, who diagnosed depression, panic disorder, and generalized anxiety disorder. Dr. Chowdhury indicated that the reported hostile working environment increased appellant's anxiety and depression.

In a July 8, 2019 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. OWCP afforded appellant 30 days to respond.

On July 16, 2019 OWCP received additional medical evidence in support of appellant's claim.

In an August 7, 2019 letter, T.B. asserted that the employing establishment did not discriminate against appellant on the basis of disability or race, noting that D.M. had a disability and was the same race as appellant. He noted that appellant's reasonable accommodation request was disapproved due to her failure to provide adequate medical documentation. T.B. advised that appellant had been granted one day of telework per week and that she had been moved to a quieter environment on her non-telework days.

By decision dated February 28, 2020, OWCP denied appellant's emotional/stress-related condition claim, finding that it was untimely filed. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 3, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. After a preliminary review, OWCP's hearing representative issued a May 1, 2020 decision, finding that appellant filed a timely emotional/stress-related condition claim as she continued to be exposed to claimed employment factors within three years of the filing of her Form CA-2. The hearing representative set aside the February 28, 2020 decision and remanded the case to OWCP for evaluation of whether appellant established a compensable employment factor, to be followed by the issuance of a *de novo* decision.

By *de novo* decision dated May 14, 2020, OWCP denied appellant's emotional/stress-related condition, finding that she did not establish a compensable employment factor. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 19, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On May 21 and 27, 2020 OWCP received additional evidence, including disciplinary actions, e-mails sent between appellant and managers, and EEO documents. In a February 15, 2019 EEO document, appellant repeated a number of her claims regarding D.M.'s actions, which she believed constituted harassment and discrimination. She asserted that D.M. told her that she should watch more television shows so that she would have something to talk about with her coworkers. A May 5, 2020 EEO discovery document provided further details regarding appellant's claimed employment factors. In this document, appellant asserted that T.B. was given a new job in her office in order to "keep an eye" on her and "create a hostile work environment,"

and that T.B. failed to forward calls she made about an absence from work. She also indicated that other managers failed to stop D.M.'s bullying, and that D.M. and other managers did not assist her in remedying a \$2,469.00 debt, which she believed was erroneous. In February 21 and March 4, 15, 20, and 27, 2019 EEO documents, D.M., T.B., and other managers denied that they subjected appellant to harassment or discrimination.

In a February 21, 2020 statement, appellant alleged that she was given an improper progress report in November 2016, her cell phone was improperly removed from a locker, and her laptop computer was wrongly confiscated. She further asserted that D.M. unfairly criticized her writing skills, and that another manager told her that she was "just a guest" in her office. Appellant also submitted additional medical reports in support of her claim. In a witness statement, A.N., a coworker, indicated that, when he asked other coworkers if they knew why appellant was always so quiet, they responded that appellant was lazy and incompetent, and that she was a malingerer. He asserted that, on an almost daily basis, coworkers would make disparaging remarks about appellant outside her immediate presence. A.N. believed that the adverse treatment of appellant was due to her race, and asserted that he was unfairly disciplined when he voiced concerns to management about the treatment of appellant.

During the hearing held on August 3, 2020, counsel asserted that appellant sustained stress because management placed pressure on her "to do the work, get the job done, catch up, and do the work ahead of time." After the hearing, appellant submitted additional factual documents, including disciplinary actions, e-mails sent between her and managers, and a May 6, 2020 EEO document in which she repeated a number of her claims regarding D.M.'s actions, which she believed constituted harassment and discrimination. In this document, appellant expressed her belief that D.M. timed her bathroom breaks, and asserted that he told her she was lazy when she complained about her workload.

By decision dated September 4, 2020, OWCP's hearing representative affirmed OWCP's May 14, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 employment injury.⁴ 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.⁵

³ 5 U.S.C. § 8101 *et seq.*

⁴ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 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).

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.⁶

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.⁷ 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.⁸

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁹ This burden includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹⁰

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.¹¹ 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.¹²

⁶ 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).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁹ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁰ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹¹ See *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹² *Id.*

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional/stress-related condition in the performance of duty, as alleged.

Appellant has alleged that she sustained an emotional/stress-related condition as a result of a number of incidents and conditions at her workplace. OWCP denied her claim, finding that she had not established a compensable employment factor. The Board must, therefore, initially review whether these alleged incidents are compensable employment factors under the terms of FECA.¹³

Appellant alleged that her stress was due to her regular or specially assigned duties under *Lillian Cutler*.¹⁴ Appellant indicated that she worked as a lead information technology specialist for approximately four years and suffered stress, which worsened her mental physical and mental health. She advised that her workload as a lead information technology specialist was “very heavy, fast-paced, and strenuous” and indicated that, in addition to her primary customer support duties, she had 11 other work duties. The Board finds that appellant has not established an employment factor with respect to her regular or specially assigned duties as she only provided a generalized account of her work duties.¹⁵

Appellant also claimed that management committed error and abuse with respect to various administrative/personnel matters. In particular, she claimed that D.M., her immediate supervisor, unfairly scrutinized and criticized her actions throughout the workday, mishandled her work assignments, and interfered with her ability to complete work tasks. Appellant alleged that D.M. mishandled matters relating to leave usage, reasonable accommodation requests, work equipment, and performance evaluations, and improperly carried out disciplinary actions. She asserted that other managers, including T.B., her immediate supervisor since late-2018, also committed wrongdoing with respect to some of the above-noted administrative matters, and generally indicated that managers were not responsive to her requests to rectify problems in the workplace.

The Board has held that administrative and personnel matters, although generally related to the employee’s employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹⁶ 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, coverage will be afforded.¹⁷ In determining whether the employing establishment has erred or acted abusively, the

¹³ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ See *Lillian Cutler*, *supra* note 7.

¹⁵ See *W.M.*, Docket No. 15-1080 (issued May 11, 2017).

¹⁶ *T.L.*, Docket No. 18-0100 (issued June 20, 2019); *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 556 (1991).

¹⁷ *M.S.*, Docket No. 19-1589 (issued October 7, 2020); *William H. Fortner*, 49 ECAB 324 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.¹⁸

The Board finds that appellant has not submitted sufficient evidence to establish error and abuse with regard to the above-noted administrative/personnel matters. The case record reveals that appellant filed an EEO complaint with respect to some of these matters; however, there is no indication that she obtained a final determination from an administrative body showing that the employing establishment committed error or abuse.¹⁹ Although appellant expressed dissatisfaction with the actions of several superiors, the Board has held that mere dislike or disagreement with certain supervisory actions will not be compensable absent error or abuse on the part of the supervisor.²⁰ Appellant has not substantiated error or abuse committed by the employing establishment in the above-noted matters and, therefore, the Board finds that she has not established a compensable employment factor with respect to administrative or personnel matters.

Appellant also alleged harassment and discrimination by coworkers and supervisors. In particular, she claimed that D.M. often yelled at her, used profanity, and berated her with respect to various matters. Appellant claimed that a number of D.M.'s statements, which she believed constituted harassment or discrimination, were made in front of her coworkers and were intended to humiliate her. She alleged that D.M. harassed her by telephoning her when she teleworked and implying, she was not working on occasions when she could not reach her. Appellant claimed that D.M. harassed her by moving immediately next to her work cubicle as a form of intimidation, and by monitoring her bathroom breaks. She asserted that D.M. purposefully prevented her from completing work tasks, including an occasion when she locked her out of the performance management and appraisal program system. Appellant reported that she did not receive a bulletin regarding bullying in the workplace, which was sent to all other employees, and that D.M. and another manager laughed about the matter. She claimed that a manager told her that she was "just a guest" in her office. Appellant alleged that, on one occasion, a coworker yelled at her in front of other coworkers. She asserted that, by February 2019, the attitudes of some of her coworkers had changed towards her in that some of them would walk by her cubicle and stare at her in a hostile manner.

To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.²¹ The Board has held that unfounded perceptions of harassment do not constitute an employment factor.²² Mere perceptions are not compensable under FECA and

¹⁸ *J.W.*, Docket No. 17-0999 (issued September 4, 2018); *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁹ *See M.R.*, Docket No. 18-0304 (issued November 13, 2018).

²⁰ *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²¹ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

²² *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.²³

The Board finds, however, that appellant did not submit sufficient corroborative evidence in support of her allegations regarding harassment and discrimination. Appellant submitted a statement in which A.N., a coworker, indicated that coworkers would make disparaging remarks about her outside her immediate presence, including remarks about her work skills and her work ethic. The Board notes that this statement is vague and nonspecific and therefore is insufficient to establish a compensable employment factor.²⁴ Moreover, this statement relates to comments, which did not occur in appellant's presence, and such comments generally do not rise to the level of harassment or discrimination.²⁵ Appellant did not submit witness statements or other documentary evidence demonstrating that the alleged harassment and discrimination occurred as alleged.²⁶ Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As the Board finds that appellant has not established a compensable employment factor, it is not necessary to consider the medical evidence of record.²⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional/stress-related condition in the performance of duty, as alleged.

²³ See *id.*

²⁴ See generally *T.G.*, Docket No. 19-1668 (issued December 7, 2020).

²⁵ See *C.L.*, Docket No. 14-0983 (issued January 23, 2015) (finding that isolated comments not made in the claimant's presence did not establish the existence of a hostile work environment or harassment/discrimination).

²⁶ See *B.S.*, Docket No. 19-0378 (issued July 10, 2018).

²⁷ See *B.O.*, Docket No. 17-1986 (issued January 18, 2019) (finding that it is not necessary to consider the medical evidence of record if a claimant has not established any compensable employment factors). See also *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 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