

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

K.J., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
SANTA MONICA AIRPORT, Santa Monica, CA,
Employer**

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**Docket No. 22-0611
Issued: January 5, 2024**

Appearances:
Stephanie Leet, 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 March 17, 2022 appellant, through counsel, filed a timely appeal from a February 23, 2022 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 an emotional condition causally related to the accepted compensable employment factors.

FACTUAL HISTORY

On April 21, 2020 appellant, then a 43-year-old air traffic controller, filed an occupational disease claim (Form CA-2) alleging that she sustained post-traumatic stress disorder (PTSD), agoraphobia, anxiety, and depression causally related to factors of her federal employment. She noted that she first became aware of her conditions and realized their relationship to her federal employment on October 17, 2019. Appellant did not stop work. On the reverse side of the claim form, B.H., appellant's supervisor, disagreed with appellant's portrayal of the training environment at the employing establishment. Additionally, he contended that her allegations of stress involved administrative functions which were not compensable employment factors.

In a March 16, 2020 narrative statement, appellant noted that she filed a complaint with the Equal Employment Opportunity Commission (EEOC) in March 2018, alleging reprisal tactics designed to impair her training progress and ability to work as a controller. She also alleged that she was subjected to unusually stressful and disturbing conditions compared to others in the same job. In May 2018, appellant developed PTSD symptoms, including panic attacks, night terrors, hyperventilating, headaches, vomiting, trembling, and sweating in addition to feelings of hopelessness, paranoia and hypervigilance as a result of her hostile work environment. She denied having any psychiatric conditions or treatment prior to the hostile work environment. Appellant alleged that in April 2018 D.C., her primary trainer, was openly hostile and aggressive toward her during training, when he yanked her headset plug from a radio console and demanded that she leave the tower. She reported the incident to R.R., an acting air traffic manager, who insisted that she continue to be trained by D.C. Appellant noted that D.C.'s erratic behavior continued for at least three months. She also reported her problem to her subsequent new supervisor, S.J. On June 15, 2018 appellant asked S.J. to move her away from D.C., but he threatened her by advising her to not make an enemy of him. She also complained to J.G., an air traffic manager, who did not respond. In July 2018, appellant complained to J.G. that she was unfairly treated by S.J. S.J. had delayed appellant's certification and asked D.C. to write a derogatory letter about her to further delay her progress. On December 21, 2018 he physically barred her from the tower when she tried to start her shift and insisted that she talk to him without union representation regarding false infractions she had allegedly committed. S.J. blocked the stairway and did not allow appellant to sign in for her shift, punched his fist into his hand. After appellant's repeated requests to stop, he moved away. In retaliation, she was written up by S.J. Appellant reported the incident to J.G. and asked him to remove S.J. from her training team, but J.G. denied her request. On February 16, 2019 S.J. assigned M.J. to appellant's training team. M.J. berated and humiliated her resulting in a panic attack and her absence from work for four days. Management made appellant train with him for an additional four months until June 2019 when she refused to continue to do so. Appellant reported M.J.'s actions to J.G. who did not remove him from her team until two months later. On August 16, 2019 K.W., a trainer, did not like a technique appellant was using and yelled at her while she was working traffic. Appellant adjusted, but he aggressively put his hand in her face and demanded that she

stop talking and stand in a certain spot on the floor. She reported the incident to B.H. and J.H., but they wanted her to continue training with K.W. Shortly thereafter, J.H. suspended appellant's training. On October 17, 2019 appellant participated in a Training Review Board. Although the Training Review Board subsequently found numerous anomalies in her training and noncompliance with the national training order, S.J. terminated her training. On November 7, 2019 he violated additional employing establishment policies by insisting that appellant work control positions to help with staffing and failing to submit employee records to the national employee service team until January 2020.

OWCP, in a development letter dated May 20, 2020, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In an undated response, received by OWCP on June 10, 2020, appellant attributed her emotional condition to several other incidents at work. She alleged that on April 9, 2018 she was monitoring C.H., an employee, by listening to him on the radio while wearing a headset in the tower. C.H. became upset with appellant when she did not respond to another employee's nonwork-related question and also admonished and yelled at her and snatched her headset out of the console. Appellant reported the incident to R.R., the acting air traffic manager, who denied her request for a new trainer. On June 2, 2018 she refused to train with C.H. On June 24, 2018 S.J. denied appellant's request for a new trainer. Appellant asserted that her training was delayed for six months while no one else's training was delayed for more than one week. On February 16, 2019 she witnessed M.J., a controller, yell at S.J. when he refused S.J.'s request for him to be on appellant's training team. S.J. failed to take any action against M.J. for his conduct. On June 19, 2019 M.J. yelled at appellant during training and the incident was witnessed by S.J. who denied appellant's July 1, 2019 request to immediately remove M.J. from her training team. M.J. was subsequently removed from her team in September 2019.

Appellant submitted evidence, including statements from managers and a trainer regarding her training, complaints of discrimination and sexual harassment, and investigation of her inappropriate behavior on December 23, 2018.

Appellant also submitted medical evidence. In a June 4, 2020 progress note, Levon Margolin, Ph.D., a licensed clinical psychologist, noted that appellant related her work-related stress to several incidents at work, including the employing establishment's efforts to terminate her training and employment since October 2019. Dr. Margolin provided an assessment of recurrent, severe major depressive disorder without psychotic features. He recommended an arising out of employment/course of employment (AOE/COE) evaluation to determine whether appellant's case involved an industrial injury.

In an April 13, 2020 report, Valerie M. Susman, Ph.D., a licensed clinical psychologist, noted that appellant related that her emotional distress was due to several incidents at work, including being in a hostile work environment for the past four years and possibly six years at the employing establishment. Appellant related that she was lied on and verbally abused by her

coworkers and falsely investigated and threatened with termination by management. She further related that she did not want to be around people and developed agoraphobia in August 2018. Dr. Susman diagnosed PTSD, single episode of moderate major depression, and panic disorder with agoraphobia. She opined that appellant's psychological symptoms and deterioration in her ability to function were due to prolonged harassment which was condoned by management, noninclusion, verbal abuse, and investigations.

In a July 24, 2020 letter, D.D., an employing establishment manager, responded to OWCP's May 20, 2020 development letter. He denied appellant's allegations. D.D. noted that appellant was informed in October/November 2019 that she did not successfully complete her training requirements after the conclusion of her Training Review Board. Appellant was also aware that her training failure would result in her separation from the employing establishment, which was effective June 6, 2020. D.D. noted that the Merit Systems Protection Board (MSPB) found that appellant's removal was appropriate. He indicated that she received verbal counseling regarding the December 21, 2018 incident. D.D. concluded that the medical evidence submitted was also insufficient to establish appellant's claim.

D.D. submitted witness statements in response to appellant's allegations. In a July 13, 2020 statement, R.R. related that he was aware that appellant and D.C. did not see eye to eye on some things, but his input was not required. He acknowledged that he insisted that D.C. remain on appellant's training team because D.C. had a wealth of knowledge from the viewpoint of an air traffic controller and a pilot that was beneficial for her training needs.

In a June 29, 2020 memorandum, C.H., a district executive adviser, did not dispute that an interaction occurred between appellant and her trainer but, noted that appellant's description of the interaction was inaccurate and a manager determined that further inquiry, investigation, or corrective action was warranted. She maintained that appellant's behavior in December 2018 warranted counseling.

In a supplemental letter dated September 21, 2020, D.D. continued to challenge appellant's claim and submitted additional evidence. In a September 18, 2020 memorandum, S.J. denied threatening appellant to not make an enemy of him regarding her request to remove D.C. from her training team. He also denied physically barring her from entering the tower at the beginning of her shift and punching his fist into his hands in a menacing manner. S.J. further denied witnessing M.J. display aggressive, agitating, berating, and hostile behavior towards appellant. He noted that appellant's allegation that K.W. yelled and displayed aggressive hand gestures toward her was investigated. B.H. witnessed the alleged incident and disagreed with her account. K.W.'s knowledge of the incident also conflicted with appellant's account.

By decision dated November 4, 2020, OWCP denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish a compensable factor of her federal employment. It also found that the medical evidence of record was insufficient to establish that a diagnosed medical condition was causally related to the implicated employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 20, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 28, 2021, an OWCP hearing representative vacated the November 4, 2020 decision because OWCP failed to properly explain its findings in its November 4, 2020 decision. The hearing representative remanded the case to OWCP for an appropriate decision on appellant's emotional condition claim and provided detailed reasons for accepting or denying the claim.

By development letter dated January 29, 2021, OWCP requested that the employing establishment review the evidence of record, including appellant's June 10, 2020 statement, and provide comments.

In a February 15, 2021 letter, N.T., on behalf of the employing establishment, responded to appellant's allegations. She referenced B.H.'s statement that, following a meeting with appellant on September 1, 2020, he granted her request to remove J.G. from her training team and replaced him with D.M. Appellant further referenced B.H.'s statements regarding appellant's complaints against C.B. B.H. noted that on January 11, 2019 he witnessed appellant refuse to answer C.B.'s work-related question while in the tower. He met with appellant and C.B. and advised them to maintain professional standards.

By decision dated March 18, 2021, OWCP again denied appellant's emotional condition claim, finding that the evidence of record was insufficient to establish a compensable employment factor and, therefore, did not establish an injury as defined by FECA.

On April 8, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated June 2, 2021, the prior OWCP hearing representative vacated the March 18, 2021 decision and remanded the case to OWCP to provide a clear decision and proper findings regarding whether appellant established compensable factors of employment.

In a June 16, 2021 letter, J.S., on behalf of the employing establishment, again controverted appellant's emotional condition claim.

By decision dated July 12, 2021, OWCP again denied appellant's emotional condition claim, finding that she had not established a compensable employment factor.

On August 2, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received an August 16, 2021 report by Angela M. Hargrow-Anthony, Ph.D., a licensed clinical psychologist. Dr. Hargrow-Anthony indicated that appellant related that her stress and disability from work to several work incidents, including verbal harassment by coworkers and her trainers, being required to make decisions in time-sensitive and potentially life-threatening situations with understaffing, and failure to receive proper training.

She diagnosed PTSD, panic disorder, and recurrent episode, severe major depressive disorder. Dr. Hargrow-Anthony opined that the diagnosed conditions resulted from ongoing, repeated, and severe workplace harassment while working in a high-stress understaffed environment and under excessive work demands. She recommended that appellant not return to work as an air traffic controller, or any other position related to air travel, given her extreme reactions to the thought of being near an airport. Additionally, Dr. Hargrow-Anthony noted that appellant's symptoms made it incredibly difficult for her to think quickly, problem solve, and focus in stressful, time sensitive and/or life-threatening situations.

Following a telephonic hearing held on December 9, 2021, OWCP received additional evidence, including an MSPB decision dated November 16, 2021. The MSPB found that the employing establishment failed to meet its burden of proof to establish, *inter alia*, that appellant received and completed the required training, she was notified of the applicable standards, her performance was unacceptable, it provided an accurate and reasonable assessment of her performance, and appropriately removed her from employment. It also found that appellant failed to meet her burden of proof to establish that she was subjected to discrimination based on race and/or retaliation for prior EEO activity. The MSPB ordered her reinstatement.

By decision dated February 23, 2022, OWCP's hearing representative modified the July 12, 2021 decision to find that appellant had established compensable employment factors with respect to the employing establishment's termination of her training in November 2019 and employment effective on June 6, 2020. However, the hearing representative denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted compensable employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim,⁴ 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.⁵ 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.⁶

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

³ *Id.*

⁴ *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).

⁵ *A.M.*, Docket No. 21-0420 (issued August 26, 2021); *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ 20 C.F.R. § 10.115; *A.M., id.*; *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).

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 identified compensable employment factors are causally related to the diagnosed emotional condition.⁷

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.⁸ 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.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted compensable employment factors.

OWCP accepted that appellant had established as compensable factors of employment that her training was improperly terminated in November 2019 and her employment was improperly terminated on May 28, 2020, while in the performance of duty. The issue, consequently, is whether the medical evidence of record is sufficient to establish that appellant sustained a diagnosed physical or emotional condition due to the accepted compensable employment factors.

In support of her claim, appellant submitted an April 13, 2020 report from Dr. Susman. Dr. Susman diagnosed PTSD, single episode of moderate major depression, and panic disorder with agoraphobia. She opined that the diagnosed conditions and deterioration in appellant's ability to function were due to prolonged harassment, which was condoned by management, non-inclusion, verbal abuse, and investigations. In an August 16, 2021 report, Dr. Hargrow-Anthony

⁷ 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).

⁸ *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

⁹ *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

¹⁰ *M.B.*, Docket No. 20-1160 (issued April 2, 2021); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

diagnosed PTSD, panic disorder, and recurrent episode, severe major depressive disorder. She opined that the diagnosed conditions resulted from ongoing, repeated, and severe workplace harassment while working in a high-stress understaffed environment and under excessive work demands. Dr. Hargrow-Anthony also addressed appellant's work capacity. The Board finds that the reports of Dr. Susman and Dr. Hargrow-Anthony are of no probative value because neither physician provided an opinion on causal relationship between the diagnosed emotional conditions to the accepted compensable employment factors.¹²

Additionally, appellant submitted a June 4, 2020 report from Dr. Margolin, who provided an assessment of recurrent, severe major depressive disorder without psychotic features. While Dr. Margolin noted that appellant had attributed her work-related stress to several incidents at work, he recommended an AOE/COE evaluation to determine whether her case involved an industrial injury. As Dr. Margolin offered no opinion on the causal relationship between the accepted compensable employment factors and appellant's diagnosed conditions, the Board finds that his report is insufficient to establish her burden of proof.¹³

As appellant has not submitted reasoned medical evidence explaining how her diagnosed emotional condition was causally related to the accepted compensable employment factors, the Board finds that she has not met her burden of proof.

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 an emotional condition causally related to the accepted compensable employment factors.

¹² See *P.B.*, Docket No. 20-0124 (issued March 10, 2021); *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *L.C.*, Docket No. 08-1655 (issued April 2, 2009); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2024
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