



exacerbation of Crohn's disease causally related to factors of his federal employment. He asserted that he experienced stress and anxiety from a hostile work environment while performing his supervisory duties.

In a development letter dated June 2, 2021, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. In a separate letter of even date, it requested that a knowledgeable supervisor address the accuracy of his allegations and any additional relevant information and documents. OWCP afforded both parties 30 days to submit the requested information.

In an undated response, an unidentified individual with the employing establishment related that appellant had requested 10 days of administrative leave because he was having difficulty adjusting to a disciplinary action. Management authorized annual leave in lieu of administrative leave and informed him of the resources of the Employee Assistance Program (EAP), noting that his September 25, 2020 e-mail about his mental state after his demotion had raised concerns. The individual denied that appellant worked in a hostile environment and advised that the claim had been filed as a response to a disciplinary action. The individual knew that appellant had preexisting conditions, including Crohn's disease.

By decision dated August 17, 2021, OWCP denied appellant's emotional condition claim. It found that he had alleged an occupational disease due to a hostile work environment. OWCP determined that appellant had not established any compensable employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an undated statement, appellant maintained that management had treated him differently after he filed claims and appeals. Beginning September 26, 2020 management treated him unfairly and in a harsh manner, which he believed was reprisal for an Equal Employment Opportunity complaint.

On August 16, 2022 appellant requested reconsideration. In an accompanying statement, he related that e-mails and witness statements accompanying his request supported that his work environment was hostile. Appellant advised that the September 2020 incident was his "breaking point." He maintained that e-mails from supervisors about other employees showed that management did not discipline equally. Appellant related, "Management disciplined me as though I was on probation, but allowed probationary employees more leniency than I was afforded." He described his medical problems because of the hostile work environment. Appellant asserted that an employee physically threatened him in July 2020, but management allowed the employee to work with him on the same shift for three months, even after notification of the incident. He described other situations with threatening employees that management had handled differently. Appellant maintained that an employee accused him of watching pornography, and that employee was not disciplined even though a fact finding showed that the allegation was false. He advised, "In September 2020 after employees defamed my character, but were not disciplined, employees behaved inappropriate [and] used profanity to myself and other supervisors." Appellant advised that he was wrongfully demoted for fulfilling his responsibilities as a supervisor.

With his request, appellant submitted e-mails and letters from the employing establishment. In an e-mail dated December 8, 2019, he found a subordinate absent without leave. In an e-mail

dated January 9, 2020, appellant advised J.P., his manager, that he had questioned the whereabouts of a subordinate.

In a police report dated January 20, 2020, regarding a July 14, 2020 incident, a synopsis of witness statements noted that appellant became upset and raised his voice aggressively after J.C., a coworker, kept asking about a tuna sandwich. J.C. yelled at appellant and later told him that he was going to “bust [him] up” if he yelled again. The officer indicated that either both parties would receive a disorderly conduct, or that it would be left with management to handle administratively. With the police report were witness statements describing the incident.

In an e-mail dated February 8, 2020, a supervisor complained to appellant and other supervisors about issues with subordinates and advised that the issues could be corrected if supervisors did their jobs.

In an e-mail dated July 24, 2020, appellant related that he raised a concern with J.C., and that J.C. later used profanity, made an aggressive gesture toward him, and J.C. told appellant that he would kill him.

On August 10, 2020 the employing establishment notified appellant that he had failed to satisfactorily complete his probation period as a supervisor. It described the incidents upon which it based its decision, including being disrespectful to staff and complaints from staff of intimidation and yelling.

In an e-mail dated September 15, 2020, appellant advised that he had talked with a subordinate about using profanity.

In a letter dated September 28, 2020, the employing establishment informed appellant that he was the subject of an investigation into whether he viewed pornography on a personal electronic device at work and visible to others.

In an e-mail dated December 11, 2020, appellant advised that he had given L.M. a verbal warning for using a loud and aggressive tone on December 10, 2020 when appellant told him not to put an isolation patient’s food on a china plate. E-mails from another individual also complained of L.M.’s behavior.

In an e-mail dated January 6, 2021, appellant expressed concern about E.B., a subordinate’s, behavior. E-mails dated 2019 and 2020 from other individuals also complained of E.B.’s behavior.

In an e-mail dated April 21, 2021, appellant informed J.P. that one of his subordinates put food for an isolation patient on a china plate. He advised that he thought it should be on paper and the individual became upset. Appellant moved the food to paper, and the subordinate became angry and yelled aggressively.

On September 26, 2022 the employing establishment controverted appellant’s claim. It asserted that the evidence was insufficient to support that management’s actions toward appellant were inappropriate.

In an undated statement received September 27, 2022, appellant maintained that the employing establishment violated his privacy by accessing his medical records.

By decision dated November 10, 2022, OWCP denied modification of its August 17, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>6</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>7</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage of FECA.<sup>8</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *L.N.*, Docket No. 22-0126 (issued July 15, 2023); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *S.D.*, Docket No. 23-0898 (issued July 13, 2023); *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

<sup>7</sup> 28 ECAB 125 (1976).

<sup>8</sup> *See L.Y.*, Docket No. 21-0344 (issued June 15, 2023); *M.R.*, Docket No. 18-0305 (issued October 18, 2018); *Robert W. Johns*, 51 ECAB 136 (1999).

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employing establishment, the disability is deemed compensable.<sup>9</sup>

OWCP's procedures provide:

“An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission.”<sup>10</sup>

OWCP's regulations provide that an employing establishment who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.<sup>11</sup> Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employing establishment is imperative to properly develop and adjudicate the claim.<sup>12</sup>

### ANALYSIS

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

Appellant alleged that he sustained depression and an exacerbation of Crohn's disease due to a hostile work environment. He advised that management had retaliated against him after he filed claims and appeals. Appellant related that an employee had physically threatened him in July 2020, but management allowed the employee to continue working with him on the same shift for three months. He further maintained that an employee accused him of watching pornography, and that the employee was not disciplined even after a fact-finding investigation established the allegation was false. Appellant related that in September 2020, after his character was defamed, employees used profanity to him and the other supervisors. He asserted that he was demoted for fulfilling his supervisory responsibilities. Appellant submitted emails showing disciplinary actions he had taken against subordinates, and a September 28, 2020 letter from the employing

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<sup>9</sup> *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, *supra* note 7.

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17j (July 1997); *see also J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.K.*, Docket No. 20-0508 (issued December 11, 2020); *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

<sup>11</sup> 20 C.F.R. § 10.117(a); *G.K.*, *id.*; *D.L.*, Docket No. 15-0547 (issued May 2, 2016).

<sup>12</sup> *Supra* note 10 at Chapter 2.800.7a(2) (June 2011).

establishment informing him that he was the subject of an investigation into whether or not he had viewed pornography on an electronic device at work.

OWCP, in a June 2, 2021 development letter, requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and any relevant information and documents. The employing establishment, however, did not respond fully to this request. It provided a response from an unidentified individual who asserted that appellant had filed a claim in response to a disciplinary action. On September 26, 2022 the employing establishment generally asserted that the evidence was insufficient to demonstrate that management acted inappropriately in its actions.

The Board finds that it is unable to make an informed decision in this case as the employing establishment did not adequately respond to OWCP's request for information.<sup>13</sup> As discussed, OWCP's procedures provide that, in emotional condition cases, a statement from the employing establishment is necessary to adequately adjudicate the claim.<sup>14</sup>

Although it is a claimant's burden of proof to establish his claim, OWCP is not a disinterested arbiter, but rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment.<sup>15</sup>

The case will accordingly be remanded for OWCP to further develop the evidence. On remand OWCP shall request that the employing establishment provide a detailed statement from a knowledgeable supervisor, and any other relevant evidence and/or argument regarding appellant's allegations, including the results of any fact-finding investigations. OWCP's procedures provide that, if an employing establishment fails to respond to a request for comments on a claimant's allegations, OWCP's claims examiner may accept the claimant's statements as factual.<sup>16</sup> Following this and any necessary further development, it shall issue a *de novo* decision regarding whether he has established an emotional condition in the performance of duty.

### **CONCLUSION**

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

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<sup>13</sup> *A.F.*, Docket No. 23-0277 (issued August 4, 2023); *J.R.*, Docket No. 20-1382 (issued December 30, 2022); *G.I.*, Docket No. 19-0942 (issued February 4, 2020); *V.H.*, Docket No. 18-0273 (issued July 27, 2018).

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *See A.F.*, *supra* note 13; *S.L.*, Docket No. 19-0387 (issued October 1, 2019); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2016).

<sup>16</sup> *O.G.*, Docket No. 18-0359 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 4, 2024  
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