

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

B.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
EAST ORANGE VA MEDICAL CENTER,
East Orange, NJ, Employer**

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**Docket No. 23-1079
Issued: March 14, 2024**

Appearances:

*James D. Muirhead, 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 August 9, 2023 appellant, through counsel, filed a timely appeal from a July 12, 2023 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/stress-related condition in the performance of duty, as alleged.

FACTUAL HISTORY

On April 20, 2020 appellant, then a 64-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety, emotional stress, and mental exhaustion due to factors of her federal employment, when while on vacation she received a voicemail from her supervisor stating that the unit would be transferring workplace to a different employing establishment facility in two days. She noted that she first became aware of her condition and realized its relation to her federal employment on March 20, 2020. Appellant did not stop work.

In an April 18, 2020 statement, appellant provided a timeline of events regarding the transfer of her unit. She indicated that on March 20, 2020 she was notified that her unit was being transferred to a different employing establishment facility and that she was to report to the unit on March 23 or 24, 2020. Appellant recounted that on March 23, 2020 her stress level worsened and she went to the employing establishment emergency room where she was treated for anxiety and hypertension. She explained that on March 24, 2020 at 11:00 a.m., her supervisor notified her to report to duty at the other employing establishment facility at 2:00 p.m. Appellant asserted that she was shocked, mentally exhausted, and outraged and the news reinforced all the workplace stressors that she had been dealing with over the years. She reported that on March 26, 2020, management also made a change and decided that staff who relied on the shuttle service had a choice of working on the medical floor in the current employing establishment facility, but there was no other information or detail. Appellant indicated that on April 2, 2020 there was another change in management decisions and she was informed that all annual leave for the next six weeks had been cancelled due to COVID-19.

Appellant further asserted that the March 20, 2020 incident aggravated a preexisting, long-term exposure to workplace stress conditions. She explained that there were challenges and stressful situations working with the substance and alcohol population, especially with veterans, and that, over time, the workload and stressful environment became overwhelming. Appellant reported that in May 2016 she wrote an e-mail expressing the extremely hectic work environment and shortness of staff situation. She noted that she could never go out for a dinner break and often had to eat her meals at the office desk. Appellant also related that within the last three years, there had been two shocking, abnormal traumatic events involving the patients that she had witnessed. She contended that it had become common practice to transfer problematic employees to her work unit, and consequently, she had experienced abusive behavior from co-workers, a former supervisor, and a nursing service employee.

Appellant also described a specific incident on June 14, 2019. She explained that a photograph, which recognized the employing establishment's most valued employee of her unit and included herself, was posted on the bulletin board in the staff lounge. Appellant related that on June 14, 2019 she discovered that her eyes were ink-blotted out on the photograph twice and scribbled over. She noted that the event was very hurtful and traumatic to her.

OWCP received a description of appellant's duties as a nurse assistant.

In an undated statement, appellant alleged that her unit had poor staffing, loud and abusive behavior of staff toward nurses, and that only one nurse was available to train the other nurse on the unit routines. She also asserted that when it is one registered nurse and one nursing assistant, both staff should get paid 8.5 hours because neither person was allowed to leave the unit on her break time. Appellant explained that their unit had veterans that were struggling with substance abuse, legal issues, medical, psychological, social problems, and homelessness that needed attention. She emphasized the need for adequate staffing in order to provide the proper support for the veterans.

Appellant submitted several e-mails in support of her claim, as follows: a September 18, 2012 e-mail to L.G. where appellant informed him that she did not like being yelled at in a loud and intimidating tone of voice as soon as she stepped foot in the door; an October 24, 2012 e-mail in which appellant informed L.G. that she was disturbed when she overheard him discussing the personal details of a staff member; a May 29, 2015 e-mail with a picture of a group of individuals with black markings scribbled over one of the women's face; a May 18, 2016 e-mail to L.G. where appellant described an extremely hectic evening involving being short staffed, no completed laundry, and two demanding patient situations; a May 13, 2018 e-mail to her supervisor, V.J., where appellant alleged that Nurse Y began to "come down on [her]" for not taking a patient's temperature; a May 23, 2018 e-mail in which appellant informed V.J. that she overheard Nurse Y say loud enough for her to hear "why don't she put a bandage on your finger, you don't need a license to do this" when she advised a patient to see Nurse Y about scratches on the patient's arm; an August 7, 2019 e-mail in which V.J. noted that there had been reports of staff allegedly raising their voices at veterans, slamming doors in their faces, or ignoring questions.

In an undated statement, appellant indicated that around the evening of June 14, 2019 was the first time that she discovered that someone had ink blotted out her eyes in the photograph in the staff lounge of her and other employees. She explained that the ink blots were done on the laminated cover, so she took the laminated cover off. Appellant noted that about one week later, a new laminate cover was placed over the photograph. She reported that on August 28, 2019 around 3:30 p.m., she discovered that the same thing was done again to the photograph, but this time, her eyes were blotted out on the copy itself. Appellant indicated that V.J. was made aware of the incident.

Appellant submitted an email dated October 3, 2019 in which she informed V.J. that there had been two recent incidents of someone marking over her face on the photograph that was posted in the staff lounge. She explained that at 5:50 p.m. that evening, the photograph was not marked on, but at 9:35 p.m. she saw that the photograph was defaced.

In a development letter dated April 27, 2020, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence and provided a factual questionnaire for her completion. In a separate letter of the same date, OWCP also requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding her occupational disease claim. It afforded both parties 30 days to submit the necessary evidence.

In a letter dated April 27, 2020, Christopher Hannon, a doctor of nursing practice, indicated that appellant was currently being treated due to a work-related incident that occurred on March 20, 2020. He noted diagnosed conditions of chronic post-traumatic stress disorder (PTSD), generalized anxiety disorder, and recurrent major depressive disorder.

In response to OWCP's development questionnaire, appellant submitted a statement signed on May 19, 2020 in which she recounted a series of incidents which she believed contributed to her emotional condition. She listed the unexpected news for her work unit to transfer to a different employing establishment facility, no personnel action transfer notice, no discussion on the implementations or arrangements over the move, reckless and indecisive planning, and a toxic hostile workplace environment. Appellant reported that she had no sources of stress outside her federal employment that contributed to her work stress. She explained that she first noticed her condition on the day of the incident and sought treatment at the employing establishment's emergency department. Appellant alleged that she was already in a fragile state of mind due to prolonged exposure to a toxic work environment and the incident triggered an extreme emotional distress.

In a statement dated March 15, 2017, appellant alleged that around 10:30 p.m. she called the nursing service about a question and a Dr. Brown, one of the nursing service supervisors, answered the telephone. Appellant asserted that Dr. Brown asked her to work overtime because they were short of staff and abruptly cut appellant off, saying that she could not help her because she needed more staff. She also contended that Dr. Brown came down on the unit for her rounds and in the presence of a patient and a nursing staff member asked a patient how appellant was treating her. Appellant asserted that when the patient said that appellant was treating him just fine, Dr. Brown then said, "I bet she had to twist your arm to say that." She explained that she felt shocked, reluctant, and intimidated to report the remarks that she made.

Appellant submitted additional e-mails, summarized as follows: March 8, August 8 and 15, 2017 wherein appellant requested various new pieces of furniture for the unit; a December 24, 2017 e-mail where appellant recounted that a patient had informed her that he heard the staff in the office making derogatory remarks about him being an addict; a June 7, 2019 e-mail in which V.J. explained that it had been brought to her attention that staff were raising their voices at veterans and speaking to them in an untoward manner; a March 20, 2020 e-mail where V.J. informed the staff her work unit would be transferred to a different employing establishment facility on March 23 or 24, 2020; and an April 10, 2020 e-mail in which V.J. thanked the staff for working together as a team during their transfer.

In a letter received by OWCP on May 27, 2020, V.J. explained that she did not concur with the allegations from appellant. She indicated that on March 20, 2020 all work unit staff were e-mailed to notify them of the pending transfer to the different employing establishment facility. V.J. reported that all work unit employees were given a choice to remain at a different unit on the employing establishment campus, but appellant did not request to remain at the current employing establishment campus. She also contended that there were no staff shortages. V.J. reported that appellant had no increase or change in her workload or assignments, and that appellant was able to perform the duties of the job without any requests for accommodation.

In a statement dated May 27, 2020, M.M., director of clinical services, indicated that around March 20, 2020 she was informed that, due to the COVID-19 surge, appellant's work unit would be relocated to a different employing establishment campus. She noted that this unit was not the only unit that was relocated. M.M. reported that some of the staff brought their concerns about the relocation to her attention and that she was able to accommodate having them remain on the East Orange campus. She reported that appellant never requested accommodation from her.

Appellant submitted psychiatric treatment notes dated March 27 through 28, 2012 by Dr. Isidore M. Keiman, a Board-certified psychiatrist and neurologist, who indicated that appellant was seen for treatment of underlying psychiatric disorders and advised to schedule an outpatient appointment with a psychiatrist.

In an emergency room record dated March 27, 2012, Dr. Purabi M. Simon, an osteopath Board-certified in emergency medicine, indicated that appellant was seen for complaints of having a panic attack.

In a report dated April 27, 2020, Dr. Helene Miller, a family psychiatrist, indicated that appellant presented that day for a psychiatric evaluation due to complaints of anxiety, panic attacks, and depression. She related appellant's history of stressful situations at the employing establishment reported that appellant presented with symptoms consistent with PTSD related to workplace incidents that have taken place during her 16 years as a certified nursing assistant for the employing establishment. Dr. Miller diagnosed chronic PTSD, generalized anxiety disorder, and recurrent moderate major depressive disorder.

In a series of reports dated May 4 through June 5, 2020, Dr. Miller reported that appellant was out of work due to elevated anxiety and fear of returning to work. She reviewed appellant's history and diagnosed chronic PTSD, generalized anxiety disorder, and recurrent moderate major depressive disorder.

In a letter dated May 14, 2020, appellant indicated that she was going to provide a more detailed work-load description and additional e-mails for review. She described that she worked on a one-floor level building unit that was separate from the main building. Appellant noted that people had to be buzzed in to be permitted on the unit. She reported that the building was a residential treatment program for alcohol and drug abuse. Appellant explained that the staff consisted of 12 registered nurses and 3 nursing assistants, including herself. She noted that she had submitted e-mails earlier about the staff verbal abuse towards the patients and complaints by veterans. Appellant alleged that this created a hostile and stressful work environment because the veterans were angry, hurt, hostile, and difficult, which required her to defuse situations or give emotional support. She also provided a more detailed description of her nurse assistant duties.

By decision dated October 22, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the alleged incidents. Therefore, OWCP concluded, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted reports dated July 2, 2020 through April 22, 2021 by Dr. Miller, who indicated that appellant was seen for follow-up treatment for PTSD, major depressive disorder, and panic disorder. Appellant recounted that her anxiety and depression continued but had improved. Dr. Miller conducted a mental status examination and diagnosed chronic PTSD, recurrent moderate major depressive disorder, and panic disorder. She reported that appellant continues to deal with anxiety and insomnia related to her work issues which had not been settled yet.

On October 4, 2021 appellant requested reconsideration.

Appellant submitted an e-mail dated July 16, 2021 by D.D., a registered nurse. D.D. indicated that on the night of June 14, 2019 appellant had reported that a group picture posted in the staff lounge, which she was depicted in, had her eyes blackened out.

OWCP also received a report dated January 15, 2021 to the employing establishment from appellant indicating that on October 3, 2019 appellant experienced a severe level of distress when she witnessed that a photograph of her displayed in the staff lounge on the bulletin board was defaced by coworkers.

By decision dated December 21, 2021, OWCP modified the October 22, 2020 decision, accepting as factors of employment the June 4 and August 28, 2019 incidents involving the photograph of appellant and other employees being defaced. However, it denied appellant's claim finding that she had not established causal relationship between the accepted factors of employment and her diagnosed conditions.

On April 29, 2022 appellant requested reconsideration. In attached statements, she alleged that the employing establishment erred and abused their discretionary authority when it transferred the work unit to a different employing establishment facility without notifying the local union. Appellant cited federal and state statutes, which noted that local union representatives must be notified of relocations and transfers. She also provided a timeline of the work unit transfer. Appellant indicated that she was providing witness statements confirming the hostile work environment.

OWCP received statements with illegible signatures.

OWCP also received a May 27, 2020 treatment note by Dr. Ernest Fontecha, a Board-certified internist, who indicated that appellant was receiving medical treatment for allergic rhinosinusitis and anxiety "exacerbated by stressors at work and COVID-19."

By decision dated July 25, 2022, OWCP denied modification of the December 21, 2021 decision.

On May 1, 2023 appellant requested reconsideration.

By decision dated May 4, 2023, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On July 10, 2023 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated July 12, 2023, OWCP modified the July 25, 2022 decision, finding that appellant had not established a compensable factor of employment and, thus, she did not sustain an injury in the performance of duty, as alleged.

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 timely filed, 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.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

To establish an emotional/stress-related 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/stress-related condition; (2) medical evidence establishing that he or she has a diagnosed emotional/stress-related or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional/stress-related condition.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.⁷ There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.⁸ However, disability is not compensable when it results from

³ *Id.*

⁴ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *J.T.*, Docket No. 20-0390 (issued April 2, 2021); *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *G.R.*, Docket No. 18-893 (issued November 21, 2018); *George H. Clark*, 56 ECAB 162 (2004); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁷ *H.M.*, Docket No. 22-0433 (issued September 27, 2022); *L.Y.*, Docket No. 18-1619 (issued April 12, 2019); *L.D.*, 58 ECAB 344 (2007).

⁸ *See A.M.*, Docket No. 21-0420 (issued August 26, 2021); *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

factors such as an employee's fear of reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.⁹

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.¹⁰ 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.¹¹

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.¹² Mere perceptions of harassment are not compensable under FECA.¹³ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.¹⁴ Additionally, verbal altercations and difficult relationships with supervisors, when sufficiently detailed by the claimant and supported by the record, may constitute factors of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.¹⁵ The claim must be supported by probative evidence.¹⁶ If a compensable factor of employment is substantiated, OWCP must base its decision on an analysis of the medical evidence, which has been submitted.¹⁷

ANALYSIS

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

⁹ *Lillian Cutler, id.*

¹⁰ See *A.R.*, Docket No. 18-0930 (issued June 5, 2020); *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

¹¹ *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *Kim Nguyen*, 53 ECAB 127 (2001); *William H. Fortner*, 49 ECAB 324 (1998). See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon*, 42 ECAB 566 (1991).

¹² See *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

¹³ *R.B., id.*; *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁴ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *D.W.*, Docket No. 19-0449 (issued September 24, 2019); *C.W.*, 58 ECAB 137 (2006).

¹⁵ *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Y.B.*, Docket No. 16-0193 (issued July 23, 2018); *Marguerite J. Toland*, *supra* note 13.

¹⁶ *Id.*

¹⁷ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of medical record.

Appellant attributed her emotional condition in part to *Cutler*¹⁸ factors. She alleged that she had a heavy workload due to staff shortages. Appellant explained that because there was only one nurse and one nursing assistant working on a shift, she often had to eat her meals and take her breaks at the office desk due to insufficient staffing. In a letter received by OWCP on May 27, 2020, V.J. explained that she did not concur with the allegations from appellant. She contended that there were no staff shortages, and that appellant had no increase or change in her workload or assignments. Appellant has not provided any evidence to contradict the employing establishment's statement that there were no staff shortages, nor has she provided evidence to support that her unit was understaffed or that she had a heavy workload. Accordingly, she has not met her burden of proof to establish this factor of employment.

Appellant has also alleged feeling anxious and overwhelmed due to the stressful situations of working with veterans dealing with substance and alcohol issues. She explained that the veterans she worked with could be angry, hurt, hostile, and difficult and required her to defuse situations or give emotional support. Appellant submitted an October 29, 2012 e-mail, wherein M.R. explained that their unit had veterans that were struggling with substance abuse, legal issues, medical, psychological, social problems, and homelessness that needed attention. Appellant also provided a description of her duties as a nursing assistant, which indicated that her duties involved providing supportive counseling to patients and defusing crisis situations and disruptive behavior. The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.¹⁹ The Board finds, therefore, that the factual evidence of record supports that appellant worked with veterans dealing with psychological and social issues, and thus, she has established a compensable employment factor with regard to her regularly assigned duties.²⁰

Appellant also attributed her emotional/stress-related condition to several administrative and personnel actions on the part of management. She described that in March 2020 her supervisor notified her that her unit was being transferred to a different employing establishment facility with only a few days to prepare for the move. Appellant also alleged that on April 2, 2020 management informed staff that all annual leave for the next six weeks had been cancelled due to COVID-19 and that management refused to provide new furniture.

In *Thomas D. McEuen*,²¹ the Board held that an employee's 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 the employee. The Board has further held that disputes

¹⁸ *Lillian Cutler*, *supra* note 8.

¹⁹ *C.R.*, Docket No. 21-0463 (issued April 28, 2023); *K.J.*, Docket No. 17-1851 (issued September 25, 2019); *P.W.*, Docket No. 08-0315 (issued August 22, 2008); *Jeral R. Gray*, 57 ECAB 611 (2006).

²⁰ *See R.B.*, Docket No. 21-0643 (issued February 9, 2023).

²¹ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

regarding the handling of leave use and attendance matters,²² work assignments,²³ and dissatisfaction with supervisory actions,²⁴ are administrative functions of the employer, and not duties of the employee.²⁵ Absent evidence establishing error or abuse, a claimant's disagreement or dislike of a managerial action is not a compensable factor of employment.²⁶ In determining whether the employing establishment erred or acted abusively, the Board has to examine whether the employing establishment acted reasonably.²⁷

Appellant alleged that the employing establishment erred and abused their discretionary authority when it transferred her unit to a different location without notifying the local union. The Board has recognized that the assignment of a work location is an administrative function of the employer and, absent evidence of error or abuse, does not constitute a compensable employment factor.²⁸ In letters received on May 27, 2020, V.J. and M.M. indicated that appellant's unit was not the only unit to be relocated due to COVID-19. They also explained that staff were given the opportunity to express their concerns about the relocation and remain on the current employing establishment campus. The Board finds that under the circumstances presented, the employing establishment acted reasonably in informing appellant of the unit transfer and offering an option to remain in the current work location.²⁹ Thus, appellant has not established error or abuse on the part of management.³⁰ The Board finds that she has not submitted sufficient corroborative evidence to substantiate error or abuse in the above-noted matters and, therefore, she has not established a compensable factor regarding these administrative or personnel matters.³¹

Appellant also attributed the claimed emotional/stress-related condition to a pattern of harassment from coworkers. In particular, she provided several e-mails wherein she described incidents on September 18 and October 14, 2012, May 18, 2016, March 15 and December 24, 2017, and May 13 and 23, 2018 about coworkers who had yelled at her or spoke to her in an

²² *M.C.*, Docket No. 20-1051 (issued May 6, 2022); *R.B.*, Docket No. 19-0343 (issued February 14, 2020); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

²³ *V.M.*, Docket No. 15-1080 (issued May 11, 2017).

²⁴ *N.S.*, Docket No. 21-0355 (issued July 28, 2021); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²⁵ See *L.N.*, Docket No. 22-0126 (issued June 15, 2023); *M.C.*, Docket No. 18-0585 (issued February 13, 2019); see also *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558; *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

²⁶ See *S.S.*, Docket No. 18-1519 (issued July 17, 2019); *Donny T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁷ *K.W.*, Docket No. 20-0832 (issued June 21, 2022); *M.R.*, Docket No. 18-0304 (issued November 13, 2018); *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 6.

²⁸ *D.W.*, Docket No. 22-0639 (issued May 10, 2023); *Anita Martin*, Docket No. 02-1077 (issued November 12, 2002); see also *David M. Furey*, 44 ECAB 302, 306 (1992).

²⁹ See *D.W.*, *id.*

³⁰ See *V.H.*, Docket No. 22-0882 (issued June 9, 2023).

³¹ *R.K.*, Docket No. 20-0623 (issued February 9, 2022); *P.B.*, Docket No. 19-1673 (issued December 1, 2021).

intimidating or disparaging tone. Appellant did not, however, submit corroborative evidence in support of her allegations regarding these incidents. She did not submit witness statements or other documentary evidence demonstrating that the alleged pattern of harassment occurred.³²

Appellant also described two specific incidents that occurred on June 14 and August 28, 2019 when someone put ink blots on her eyes and scribbled on her face in a group picture that was displayed on the bulletin board in the staff lounge. Appellant submitted an e-mail dated October 3, 2019 in which appellant informed V.J. that there had been two recent incidents of someone marking over her face on the photograph that was posted in the staff lounge. The e-mail included a picture of a group of individuals with black markings scribbled over someone's face. Appellant submitted an e-mail dated July 16, 2021 by D.D., a registered nurse, who indicated that on the night of June 14, 2019, appellant had reported that a group picture in the staff lounge of which she was in, had her eyes blackened out. Lastly, appellant submitted multiple medical reports that made reference to the photograph of herself being defaced. While the perpetrator is unknown, the Board finds that appellant has provided reliable and probative evidence to demonstrate that an individual scribbled and defaced appellant's face in a group photograph at work. Thus, appellant has established a compensable employment factor with respect to this allegation of harassment.³³

As appellant has established compensable employment factors, the only question for determination is whether these incidents caused or aggravated appellant's diagnosed emotional condition. Since OWCP found in its July 12, 2023 decision that there were no compensable employment factors, it did not review the medical evidence submitted on the issue of causal relationship.³⁴ The Board will, therefore, set aside OWCP's July 12, 2023 decision and remand the case for a review of the medical opinion evidence to determine whether she has established that her emotional/stress-related condition is causally related to the accepted compensable employment factors.³⁵ After any further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's emotional condition claim.

CONCLUSION

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

³² *B.S.*, Docket No. 19-0378 (issued July 10, 2018); *L.C.*, Docket No. 20-0461 (issued June 2, 2021); *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

³³ *W.J.*, Docket No. 20-1226 (issued January 6, 2023); *E.G.*, Docket No. 20-1029 (issued March 18, 2022).

³⁴ *Supra* note 22.

³⁵ *V.H.*, *supra* note 30; *see also M.J.*, Docket No. 20-0953 (issued December 8, 2021); *Z.S.*, Docket No. 16-1783 (issued August 16, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2023 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: March 14, 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