

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

<hr/>	)	
E.C., Appellant	)	
	)	
and	)	<b>Docket No. 25-0376</b>
	)	<b>Issued: April 21, 2025</b>
<b>DEPARTMENT OF THE ARMY, U.S. ARMY</b>	)	
<b>CORPS OF ENGINEERS, St. Paul, MN,</b>	)	
<b>Employer</b>	)	
<hr/>	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 11, 2025 appellant filed a timely appeal from an October 30, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Appellant alleged that the employing establishment denied him access to witness statements. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional/stress-related condition in the performance of duty, as alleged.

## FACTUAL HISTORY

On July 9, 2024 appellant, then a 61-year-old leverman, filed an occupational disease claim (Form CA-2) alleging that he sustained acute stress disorder and acute anxiety disorder due to factors of his federal employment involving workplace climate, behaviors, and hostilities, along with threatening comments and actions while onboard a vessel. He noted that he first became aware of his condition and realized its relation to his federal employment on August 8, 2022. Appellant did not stop work.

In an August 9, 2022 statement, appellant asserted that B. had asked him in front of others why he had filed a complaint with the Occupational Safety and Health Administration (OSHA), and he asked if B. knew that the reporting process was supposed to be anonymous. He stated that he regarded B.'s question as a stressful and harassing act due to the tone of his inquiry. Appellant stated that he sometimes felt uncomfortable or intimidated in presenting problems to supervisors. He noted that, during his performance review, he was told that "everyone [saw] that [he was] not doing anything" and that made him feel as though everyone was against him.

In a May 10, 2024 memorandum, the employing establishment acknowledged that appellant had requested a reasonable accommodation due to workplace stress-related anxiety. It further acknowledged that he had submitted medical documentation containing a diagnosis of generalized anxiety disorder exacerbated by situational stressors. The employing establishment offered appellant an interim accommodation of light duty while clarification from appellant's physician was forthcoming and noted that appellant would be approved for leave if he did not wish to perform light duty. The memorandum also included a series of questions for appellant's treating physician regarding appellant's ability to perform duties of his position as a leverman. It requested that appellant respond by May 31, 2024.

In a May 10, 2024 memorandum, J.B. an employing establishment representative, informed appellant that depending on the nature and severity of any focus or concentration issues related to his conditions, there was a potential safety concern, and clarification from appellant's physician was needed. He informed appellant that his shift would be changed effective May 29, 2024; however, out of an abundance of caution, appellant would be placed on light duty until clarification from his physician was obtained. J.B. further informed appellant that he could take leave if he preferred and that he would not be penalized for taking leave if that were his preference.

In a May 14, 2024 reply, appellant alleged stressful, difficult and challenging workplace conditions. He stated that his specific stress and anxiety stemmed from misbehavior from supervisors. Appellant disagreed with a light-duty assignment and characterized it as punitive, further asserting that he was "completely capable of performing my duties and provide leadership in the absence of these detrimental workplace conditions."

Appellant submitted progress notes from Dr. Kory A. Holzer, a clinical psychologist, dated September 14, 2022.

The employing establishment continued to challenge the claim, asserting that appellant's claimed injury did not arise in the performance of duty.

In a development letter dated July 22, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical information needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In an April 8, 2024 e-mail, appellant informed A.L., his supervisor, that on or about 8:24 a.m. on April 5, 2024, as he approached a work area, the crew supervisor stated that he was not needed to watch and to find something else to do. He perceived this statement as hostile as he felt it ostracized him and belittled him in the presence of the team. Appellant stated that he continued to experience exposure to hostile, degrading, vulgar, and inappropriate comments directed towards him in the workplace. He noted that he was experiencing workplace stress and anxiety due to the April 5, 2024 incident and other instances, and that this stress and anxiety resulted in stomach issues and sleep issues. Appellant requested to be assigned to work with B.K., a team leader.

In a May 4, 2024 e-mail to A.L., appellant noted a concern regarding a "racial comment" made to a coworker. He stated that the comment was a demonstration of a hostile climate in the workplace. Appellant noted that as a result of this climate, he experienced stress and anxiety from working with A.L.

In an undated e-mail addressed to "C," appellant noted comments by coworkers involving violence, racism, and sexism, which presented a psychological and moral difficulty. He stated that he perceived behaviors in the workplace as hostile, in part as retaliation for past filing complaints with the Equal Employment Opportunity Commission (EEOC) and OSHA. Appellant noted that he experienced significant stress and anxiety resulting from this workplace climate.

In a May 11, 2024 e-mail, appellant expressed to A.L. that he wanted to appeal his performance assessment. He stated that he believed his ratings were, in part, a retaliatory response to his activity before the EEOC. In a May 14, 2024 e-mail, appellant further inquired to A.L. about an appeal of his performance assessment. In a May 15, 2024 response, A.L. informed appellant that the concerns identified on his performance review would not be removed, and that he and B.K. were available for discussion.

In a May 11, 2024 e-mail to employing establishment officials, appellant expressed that voicing his complaints and concerns would result in a negative impact on his career and his ability to perform his duties.

Appellant submitted a progress note from Dr. Holzer dated June 27, 2024, who diagnosed trauma, stressor-related disorder, and attention deficit hyperactivity disorder (ADHD) "predominantly inattentive presentation."

In a July 31, 2024 letter, appellant stated that he sustained acute anxiety in connection with his federal employment. He explained that during his employment, he developed emotional strain,

work-related stress, and acute anxiety as a result of exposure to working conditions including disparaging remarks, threats, and hostilities. Further, appellant stated that continuous physical and mental hard work produced acute anxiety, emotional stress, occasional fatigue, difficulty breathing, chest discomfort, and a racing heart while he was at work. He attributed his condition to workplace comments and behaviors from supervisors and coworkers related to violence, racism, and sexism. Appellant perceived that behaviors in his workplace were hostile in retaliation for past reporting to the EEOC. He stated that he experienced advanced and chronic psychological illness, hypertension, and acute anxiety resulting from and aggravated by workplace conditions.

In an August 16, 2023 e-mail, appellant informed A.L. that he had a disability connected with stress, generalized anxiety, and attention deficit hyperactivity aggravated by workplace stress due to its climate and management. He noted that he had been exposed to coarse and inappropriate comments in the workplace that resulted in a stressful and unsafe work environment.

In an August 31, 2023 e-mail, appellant related to B.K. a formal reporting of a hostile workplace environment based on the actions of a crew supervisor, a first line supervisor, and a second line supervisor. He perceived that comments and behaviors directed toward him were an organized action to restrict and impair his workplace performance, opportunities, and career. Appellant attributed part of these actions to his activity and participation in complaints before the EEOC as well as presenting safety concerns and concerns about the workplace to his supervisor and management. He noted that in the last weeks a crew supervisor made concerning comment on marine radio to a fellow employee, part of which appellant quoted as “If we have to brake for a boat I’m going to kick you in the face.” Appellant related that, on August 11, 2023, he met with the crew supervisor, who asked him if appellant had a problem with him or a problem with being on the crew. He perceived that these questions were related to his reporting the comment to his supervisor. Appellant further related that when he met with A.L. on August 14, 2023, it was communicated to him that the comment did not concern a hostile work environment because the comment was directed towards another crew member. He perceived that his concerns were being characterized as a personal problem. Appellant requested that his concerns be communicated to a district commander, E.S.

In an August 31, 2023 reply, B.K. advised appellant that he was aware of comments made on August 11, 2023 on marine radio between crew members. He noted that A.L. had called him at home after it occurred, and action had been taken to address the incident.

In an undated statement, appellant asserted that A.L. had discriminated against him. He explained that he had requested a meeting with administrative staff to correct pay issues, and that upon arrival in the office, he was asked why he had filed a complaint with OSHA. Appellant noted that the reporting process was supposed to be anonymous. He perceived that he was cornered and attacked by a supervisor due to his concerns. Appellant felt humiliated and that his credibility had been damaged. He noted that the workplace had caused him significant stress. Appellant alleged that, in 2020, A.L. had asked him, “Why are you always standing around?” and stated, “You are standing around and not working and everyone sees that you not doing anything.” He noted his perception that everyone was against him. Appellant stated that he was discriminated against due to participating in a discrimination complaint of a coworker; because he filed an age discrimination complaint; and because he had presented a complaint before the EEOC dated November 2, 2019. He noted that he had overheard a comment from a supervisor that he had perceived as racially

prejudiced and directed towards a crew member. Appellant stated that he presented a concern of harassment to A.L.; that on October 8, 2019 when attempting to exit the bathroom, he found that a line or rope had been placed across the doorway, preventing him from exiting. He perceived this incident as a form of sexual harassment. Appellant also noted that he had presented general workplace concerns to A.L. on October 6, 2019.

In another undated statement, appellant noted that he experienced acute anxiety, workplace stress, difficulty sleeping, hypertension and upset stomach attributable to a hostile work environment and harassment in the workplace. He alleged that a supervisor blocked him in the bathroom with a line, resulting in anxiety and worry about his acceptance and safety at work. Appellant also alleged that he was exposed to harassing or abusive workplace comments from his supervisor made to himself and other crew members.

Appellant continued to submit e-mail evidence. In a September 24, 2015 e-mail, he expressed continuing concerns related to health and safety at the employing establishment.

In an April 14, 2016 e-mail, appellant informed L.B. that he perceived retaliation from his supervisor and the employing establishment's local management resulting from his participation in a complaint before the EEOC, in particular his complaint of discrimination in non-selection based on age. He complained that he had not been scheduled for the training required to upgrade his professional license.

In a November 2, 2019 e-mail, appellant informed A.L. of a comment directed toward another crew member that he perceived as racially prejudiced. In a November 3, 2019 reply, A.L. assured appellant that he would look into the incident and that he took complaints like this one seriously.

In a July 23, 2022 e-mail, appellant informed J.B. that he wished to elevate an inquiry to the next level of his chain of command regarding observations of workplace management. He perceived negative impressions, behaviors, representations, and career actions as a result of comments and interactions at work. Appellant recounted the events in the August 2, 2022 e-mail regarding being asked why he had filed a complaint to OSHA.

Appellant submitted a July 8, 2019 psychological evaluation from Michelle J. Freedman, Ph.D., a clinical psychologist; a December 3, 2019 treatment plan; and July 27, 2011 progress notes from Dr. Mariana Vosika, a Board-certified psychiatrist, dated July 27, 2011. Appellant also submitted medical records from Dr. Holzer dated August 22, 2022 through July 24, 2024.

On August 16, 2024 appellant replied to OWCP's July 22, 2024 development letter. He explained that his claim related to a hostile work environment, threatening comments and actions, contradictory direction, and a perception of retaliation due to participation in claims before the EEOC and OSHA. Appellant's symptoms included stress, anxiety, depression, trauma stress disorder, dissociation, ostracization, loss of sleep, hypertension, upset stomach, palpitations, nervousness, and worry.

In an undated supplemental statement, appellant explained the duties of his employment, including monitoring radio channels used for crew communication. He alleged that over the radio, he was exposed to various statements made by a supervisor to another crew member including that

the supervisor was “going to kick somebody in the face,” “that he was going to beat somebody,” and that “someone was a slave driver.” Appellant further alleged that he was prevented from safely exiting the bathroom when a supervisor fastened a line across the door.

In a development letter dated August 29, 2024, OWCP requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It requested a response within 30 days.

On October 2, 2024 the employing establishment replied that it had previously provided a response.

By decision dated October 30, 2024, OWCP denied appellant’s emotional/stress-related condition claim. It found that he had not established a compensable factor of employment, and thus the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim,<sup>4</sup> 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>5</sup> 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.<sup>6</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>7</sup>

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

---

<sup>3</sup> *Id.*

<sup>4</sup> *H.S.*, Docket No. 24-0926 (issued January 10, 2025); *B.K.*, Docket No. 23-0902 (issued November 29, 2023); *L.G.*, Docket No. 21-0690 (issued December 9, 2021); *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *T.B.*, Docket No. 25-0018 (issued November 4, 2024); *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>6</sup> *B.K. supra* note 4; *L.G., supra* note 4; *S.S., id.*; *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> 20 C.F.R. § 10.115(e); *B.K., id.*; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *Michael E. Smith*, 50 ECAB 313 (1999).

evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.<sup>8</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment.<sup>9</sup> 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.<sup>10</sup> On the other hand, the disability is not covered when 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.<sup>11</sup>

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.<sup>12</sup> Where, however, 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.<sup>13</sup>

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.<sup>14</sup> Mere perceptions of harassment are not compensable under FECA.<sup>15</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>16</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>17</sup>

---

<sup>8</sup> See *B.K., id.*; *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).

<sup>9</sup> See *B.K., id.*; *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>10</sup> See *B.K., id.*; *S.K.*, *supra* note 8; *D.T.*, Docket No. 19-1270 (issued February 4, 2020); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

<sup>11</sup> See *B.K., id.*; *Gregorio E. Conde*, 52 ECAB 410 (2001).

<sup>12</sup> See *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *Thomas D. McEuen*, *supra* note 10.

<sup>13</sup> *L.R.*, Docket No. 23-0925 (issued June 20, 2024); *M.A.*, Docket No. 19-1017 (issued December 4, 2019).

<sup>14</sup> *A.F.*, Docket No. 24-0952 (issued December 13, 2024); *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

<sup>15</sup> *Id.*

<sup>16</sup> See *S.G.*, Docket No. 22-0495 (issued November 4, 2022); *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 9.

<sup>17</sup> *A.F.*, *supra* note 14; *S.G., id.*; *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablonski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

## ANALYSIS

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

Appellant has not attributed his conditions to the performance of his regularly or specially assigned duties under *Cutler*,<sup>18</sup> or to actions by his managers/supervisor under *McEuen*.<sup>19</sup> Rather, he has alleged harassment and discrimination.

Appellant alleged that his performance ratings were, in part, a retaliatory response to his activity before the EEOC, that an offer of a light-duty assignment was punitive, and that he had not been offered opportunity for upgrade training. He also alleged that he was questioned regarding his filing of an OSHA complaint.

Regarding appellant's allegations of harassment, discrimination, and retaliation, the Board finds that his allegations were vague and unsubstantiated, and therefore insufficient to establish compensable employment factors.<sup>20</sup> The Board finds that appellant did not submit any witness statements or other corroborative evidence demonstrating that the alleged retaliation, harassment and/or discrimination occurred as alleged for any of his allegations.<sup>21</sup> As noted above, mere perceptions of harassment are not compensable under FECA, a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence, and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>22</sup> Thus, the Board finds that appellant has not submitted probative and reliable evidence that retaliation, harassment, and/or discrimination did in fact occur.<sup>23</sup>

Accordingly, the Board finds that appellant has not established a compensable employment factor under FECA. Thus, appellant has not met his burden of proof to establish an emotional/stress-related condition in the performance of duty.<sup>24</sup>

---

<sup>18</sup> See *S.K.*, *supra* note 8; *D.T.*, *supra* note 10; *Thomas D. McEuen*, *supra* note 10; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>19</sup> *Supra* note 10.

<sup>20</sup> See generally *E.F.*, Docket No. 24-0727 (issued October 25, 2024); *T.G.*, Docket No. 19-1668 (issued December 7, 2020).

<sup>21</sup> See *B.S.*, Docket No. 19-0378 (issued July 10, 2019).

<sup>22</sup> *Supra* note 20.

<sup>23</sup> *Id.*

<sup>24</sup> See *E.M.*, Docket No. 19-0156 (issued May 23, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *L.S.*, Docket No. 16-0769 (issued July 11, 2016); *D.D.*, 57 ECAB 734 (2006).

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 his burden of proof to establish an emotional condition/stress-related condition in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2025  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board